THE INTERNET FREEDOM AND BROADBAND DEPLOYMENT ACT OF 1999

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION

OF THE

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THURSDAY, JULY 27, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 11:30 a.m., in room 2420, Rayburn House Office Building, Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Gillmor, Cox, Deal, Largent, Cubin, Shimkus, Wilson, Ehrlich, Bliley (ex officio), Markey, Eshoo, Wynn, Luther, Sawyer, Green, McCarthy, and Dingell (ex officio).

Staff present: Justin Lilley, majority counsel; Cliff Riccio, legislative analyst; and Andy Levin, minority counsel.

Mr. TAUZIN. The hearing will please come to order. We will ask our guests to take seats and to get comfortable.

The members are on their way back from a series of votes, so they will be arriving shortly, but I think we can probably get started because we are going to have an interruption that I am going to make clear to all of you in just in a minute.

Let me first thank the panel for assembling today. We appreciate very much your being here.

Today is the first legislative hearing on H.R. 2420, the Internet Freedom and Broadband Deployment Act of 1999.

Our ranking member, Mr. Dingell, and I introduced this bill last year and I believe that it is one of the most important pro-consumer pieces of legislation that our subcommittee has considered this session.

To date, the legislation enjoys a cosponsorship of a majority of the House of Representatives, fully 225 members to be exact, including a majority of the Hispanic, rural and western caucuses.

While this overwhelming bipartisan support for the bill might surprise some, the warm response here in the House to H.R. 2420 really should not startle anyone. In fact there is a quite simple explanation of how Mr. Dingell and I have built a broadband coalition in such a short period of time, and that is this:

Most members of the House of Representatives understand that policies put forward in H.R. 2420 are absolutely critical for American consumers.

We are, after all, a consumer organization here in Congress. We represent, first and foremost, the consumers of America, our constituents.

If enacted, most members realize that H.R. 2420 will create full scale competition in our Internet backbone marketplace and thereby ensure that the Internet does not further vulcanize our society of has and has nots. It is as simple as that.

It is no secret that a huge sector of our Nation is not receiving or is not capable of receiving true, high speed, broadband services. The reason is because hundreds of communities are not near or are not linked to any of the hubs that enable access to Internet backbones, the real information super highways.

Moreover, very few companies are building high speed gathering lines all the way back from the backbone points of access to the rural remote and impoverished areas because it is simply too expensive and not profitable enough at this time.

What this means, of course, is that those living in areas that are not near Internet points of presence, or POPs, or that are not tied into a backbone facility via a gathering line, are not enjoying the fruits of a new economy.

Without a high speed connection to the Internet backbone, these Americans in rural areas and inner cities are relegated to the narrow band dirt road that is so incompatible with the rest of our high speed infrastructure that the flow of communications across our national web-based infrastructures will be significantly impeded.

See, without a UUnet, a spread, a cable wireless or AT&T, an email that is sent through a standard dial-up access must pass through a pokey, congested, public access point, rather than zap through a broadband hub.

Emails back up quickly. Web pages freeze and fold. You can forget about streaming video. And if we do not operate at these high speeds, Internet cannot evolve into a fluid nationwide communications network that all of us are hoping it will be.

Instead, smaller ISP subscribers will continue to encounter service disruptions, data transfer delays in every instance where broadband facilitated high speed traffic is thrust upon narrow band slower speed infrastructures that were designed to carry only voice for short intervals, not large volumes of data for extended periods of time.

Consider the case of John Brown of Albuquerque, New Mexico who runs a small ISP called IHighway. They quote a recent article about Mr. Brown in Forbes magazine:

"He'd like to give his clients the fastest possible link to the rest of the world but he can't because UUnet and a few other giant data haulers that dominate Internet traffic don't have the fat, 45-megabit lines in Albuquerque," and Brown can't afford the $120,000 a year to lease a pipe running 330 miles to UUnet in Phoenix.

There is also the case of Sheldon Jefferson, CEO of Net.com, an Internet provider serving residential business customers in the New York area.

To quote from his testimony to this subcommittee:

"My company is locked out of the broadband Internet market via cable. Not only can I not get access to local cable facilities, I must pay inflated prices for transit to the Internet backbone. These

prices are so high because the concentration of ownership of Internet backbone is in the hands of a few carriers and companies."

Once more, Mr. David Cushman, with the Children's National Medical Clinic here in Washington who said that, "Even in Northwest DC, many impoverished residential areas, including the 100 block of Michigan Avenue, just right up the road, have no direct links to the Internet backbone facility, must less a POP, despite the fact that the Nation's Capitol is the most" I repeat "the most wired city in the United States today."

So we have a digital divide growing because many people do not have access to backbone due to where they live and the dial-up access they have is limited or affords them only a narrow band Internet service.

To solve the problem, H.R. 2420 does something very simple, very pragmatic. It lifts the 20-year-old LATA restriction to enable the Bell Companies to haul data traffic from rural and underserved areas to Internet backbone facilities via their extensive fiber optic networks that are already in the ground in most states today.

This makes sense because the Bell fiber infrastructure reaches just about every square mile in states where Bell provides local service. Moreover, the fiber is available today to serve the high speed, broadband gathering lines that are absent in many rural and under served areas today.

We saw in several of our hearings a map we produced indicating, in my own State of Louisiana, 2 POPs, 1 in Baton Rouge and 1 in New Orleans.

And we also saw on those maps and I think Teddy has them again we saw the interlacing fiber optic lines that have been laid and paid for by the telephone ratepayers of my State that have been laid in the ground to serve the telephone network in our State, but nevertheless are crossed by the black LATA lines drawn on a map by a court here in Washington, DC in a settlement of the AT&T breakup.

Those LATA lines separating communities from the POPs that exist in New Orleans and Baton Rouge also separate those customers from those high speed POPs.

More importantly, those fiber lines that American citizens in my State paid for cannot effectively be used by their own company to deliver high speed Internet services for them to those POPs.

We also saw a competing map line at the last hearing, and we may see it again today, accompanied of course by some new information addressing the state of Internet POPs across the country.

The contention being made as of yesterday by those opposing the bill is that 94.7 percent of the Nation lives within 50 miles of an Internet POP of DS3 speed or higher 45 megabits. It is quite a revelation.

Just a few weeks ago, it was revealed that many of the POPs, however, represented to be high speed at our last meeting were in fact no faster than DS1 or T1 speed, not truly broadband speed, a far cry from the 45 megabits a second.

I know the Internet economy moves fast but I have my doubts about whether 250 POPs have been upgraded so dramatically in just a few weeks time.

What concerns me most, however, about the materials being distributed is that they lack description. Despite being a flat contention that every POP displayed is at least a DS-3 POP or greater, the materials being distributed provide no insight as to whether these so-called POPs actually do.

It is not clear, in other words, whether many of these POPs represent mere peering points, points at which IXEs access local traffic or, more importantly, whether any of these POPs reach rural and under served areas via gathering lines as opposed to serving only certain IXEs a limited number of cable modem customers.

So while speed is an important issue, no doubt, purpose is every bit as important. And equally important is the central question of why on earth would Washington tell a few telecommunications companies in this country that it cannot compete when even foreign countries' providers can come into America and buy up companies here and compete for customers, Internet high speed, broadband services.

And why, more importantly, have we paid for fiber in the ground that we can't use?

Anyway, I am interested in getting into a fuller discussion about these so-called POPs, and will have a number of questions about them as we move forward.

But let me just say at the outset that despite the contentions being made about POPs in the U.S. today, we are still inclined to doubt that enough of them are actually providing high speed Internet services to many of the small ISPs in communities across the country.

If there truly were enough POPs to go around, if in fact there were enough gathering lines extending to backbones, and if we did enjoy true competitive choice among backbone providers today, then I really doubt that folks like John Brown and Sheldon Jefferson would be up in front of my committee explaining that they are being shut out of the high speed revolution.

I wonder why anyone would be talking about a digital divide and why one exists, or why companies are predicting that as long out as 4 years from now, fully half of our country will have, at best, one provider, at worst, no provider, of broadband Internet services.

I doubt seriously that Dr. Cushner's Children's Hospital would be so abandoned in the most wired capital city in America if backbone providers today had a business plan to serve it, or the ISP it subscribes to.

In the final analysis, the high concentration of Internet backbone ownership in the U.S. is, even as we hold this hearing, effectively disenfranchising many Americans, not only in rural areas but in under served and poor urban areas as well.

And because of this, there is a glaring need to update the 1996 Act so that our legal framework becomes compatible with consumer demand and desire to facilitate a new Internet economy.

H.R. 2420's premise of allowing the Bell fiber to be used to transport data to and from areas that are being neglected by the backbone oligopolists is simply the right thing to do for business, and it is the right thing to do for consumers. It is the right thing to do for our Nation's economy.

Two-hundred-and-twenty-five members of the House now recognize this. I am confident that more will soon follow.

One caveat before I yield to my colleagues.

There are those at the FCC who are predicting today that in as short a period as 12 months to 18 months, all of the country will be experiencing the 271 relief that has been afforded now to the Bell Companies in New York and Texas.

We are just a year away or so from full, local and long distance competition in 271. And yet we are being told that the fiber that is laid in the ground to serve the data needs of America has to be held hostage to LATA lines drawn on a map to separate local and long distance years ago when AT&T was broken up.

My only point is, the sooner we get this legislation adopted, the sooner that full blown competition that Texas and New York are finally enjoying will be available to all parts of our country, and the sooner I can be satisfied that folks in Louisiana will have the same advantage of competition that folks in Texas and folks in New York are enjoying.

The Chair will yield to my friend from Massachusetts, the ranking minority member, Mr. Markey, for an opening statement.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

I thank you for calling this extremely interesting hearing on the broadband revolution that is taking place on the Internet today. It is happening at a breathtaking pace in its sweep and its impressive and its rapid revolution.

A few mere years after passage of the Telecommunications Act of 1996, consumers are reaping the digital dividend of communications competition. Without the competitive forces unleashed by the Telecom Act, we probably would not be having this hearing today.

The feature-rich, information-driven content that is every day igniting the enthusiasm of our Nation's entrepreneurs and investors is riding upon a telecommunications infrastructure that is the envy of the world.

Across the globe, country after country is trying to emulate the dramatic steps that America has made in opening up historic monopoly markets to marketplace competition, in building bandwidth and in bringing the benefits to all sectors of society.

The cable industry alone makes broadband capability available to 41 percent of U.S. homes and has over a million subscribers today. The competitive local telephone companies have driven broadband deployment on the competing wire and currently invest roughly a billion dollars per month on new telecommunications infrastructure around the Nation.

Bell Atlantic has proven it can meet the market-opening requirements of the Telecom Act in New York and is poised to file applications in other states in the near future, including Massachusetts which they expect to have approved by the end of this year.

In addition, wireless applications promise ever more capacity and competition for businesses and residential consumers.

In short, the marketplace is responding and the Telecom Act is working as we designed it. Moreover, the competitive telecommunications industry is exerting tremendous effort to meet the bandwidth needs of the growing Internet usage in our country.

That is because the goal of the telecommunications policy is not the deployment of a particular technology or application, but rather the goal of telecommunications policy is competition, everywhere and for everyone.

Competition will determine whether consumers prefer fireless services, DSL, cable modems or any other technology, and competition will pick winners and losers among applications.

The fundamental issue before us is whether we will continue our successful policy or instead insert uncertainty back into the marketplace.

The so-called carrot-and-stick approach contained in the Telecommunications Act clearly contains enough incentives to the Bell companies to open up their local telecommunications monopolies to free market forces as long as Congress does not entice them with some alternative.

So I thank you, Mr. Chairman, for giving me this opportunity, and I look forward to hearing from our witnesses.

Mr. TAUZIN. I thank my friend.

The Chair recognizes the gentleman from Richmond, Virginia, the chairman of the full Committee on Commerce, Mr. Bliley.

Chairman BLILEY. Thank you, Mr. Chairman.

Today the subcommittee returns to the topic of broadband deployment. I am looking forward to hearing from our distinguished panel of witnesses.

I am particularly interested in learning how parties might be impact if Congress were to deregulate the incumbent phone companies. These same companies tell the committee repeatedly that they need relief and that they need it now.

But as I said at the last hearing, I am puzzled because, as far as I can tell, this industry and its consumers are prospering under the current set of rules.

Indeed, much has happened over the past year alone. We have seen a real commitment to rolling out broadband service by competitors and incumbents alike. The numbers are astounding.

Let's take SBC, who is with us today, as an example. In November 1999, SBC pledged $6 billion to update its network. SBC assured shareholders that Project Pronto would pay for itself by delivering cost savings and generating substantial revenue growth.

SBC has already condition 15 million customer lines for DSL service, and the company aims to install between 4,000 and 5,000 DSL lines each day during the second half of 2000. That is right between 4,000 and 5,000 DSL lines per day.

SBC's customers are not the only ones who should be pleased. By every measure, its shareholders are doing quite well too.

In the second quarter of this year, SBC Data Services revenue grew by an impressive 38 percent, and SBC also announced a $1.8 billion of data services sales in just 3 months.

Verizon has also made great strides in just 1 year, reporting a 47 percent increase in the number of DSL subscribers since the first quarter of this year.

Morgan, Stanley projects that by 2002, a full 92 percent of Verizon's lines will be DSL capable. In fact, I have read that the real challenge for carriers like Verizon and others if finding enough technicians to fill the orders that are pouring in.

Covad is with us today too. And it has an equally impressive story to tell. Morgan, Stanley recently estimated that Covad is 6 months ahead of the competition in terms of market penetration and new product offerings.

It is worth noting that future job creation for Covad and others is dependent on the ability to share lines with incumbents like SBC. But the legislation before us today would extinguish new entrants' rights to share lines.

I look forward to an explanation as to why it would be good for the Congress new entrants' ability to share lines, particularly in light of the fact that future job creation in this industry is so dependent on line sharing.

So forgive me if I remain unconvinced that there is a problem that requires the help of the Federal Government. These facts lead me to conclude that competition is working, and that the 1996 Act is working.

Indeed, SBC and Verizon themselves have proved it is working. They are now offering a full bundle of services to consumers in New York and Texas. They are both putting downward pressure on long distance prices.

I look forward to Virginians enjoying this kind of price competition, and I yield back the balance of my time.

Mr. TAUZIN. I thank my friend. He is just a hard guy to convince.

But I want to thank the chairman for this hearing today and for his participation and his continued interest in the resolution of the issue.

And the Chair wishes now to make a unanimous consent that the statement of the ranking minority member of the committee, Mr. Dingell, and the written statements of all members who would like to submit written statements for the record be accepted in the record without objection, it is so ordered.

[The prepared statement of Hon. John D. Dingell follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Thank you, Mr. Chairman, for holding this hearing. I would also like to thank the Chairman of the Full Committee, Mr. Bliley, for his help in scheduling this important hearing today on H.R. 2420, the Internet Freedom and Broadband Deployment Act.

Chairman Tauzin and I introduced this legislation just over a year ago. Many changes have taken place in the telecommunications marketplace since then, but at least one thing has remained constant. Consumers are still chomping at the bit for faster access to the Internet, and continue to bemoan the ever-increasing "World Wide Wait."

Despite the tremendous growth in the sale of broadband Internet connections over the past year—both in the form of cable modem and DSL services—the clamor for higher surfing speed persists. The president of IP services for Nortel Networks put it best when he said, and I quote, "having a broadband pipe doesn't guarantee a broadband *experience*."

The reason for this disconnect (so to speak) is that the Internet is growing increasingly congested. And any connection between two points is only as fast as its slowest link. Experts say the solution to this problem lies in strengthening the most vulnerable points of the network. H.R. 2420 is designed to do just that.

By allowing Bell companies to transport data across LATA boundaries, this legislation will unlock the vast potential of existing fiber networks that are already built, in the ground, and ready to go. These existing networks are capable of alleviating the severe bottleneck that U.S. Internet traffic faces today. Unfortunately, the current regulatory scheme prevents these companies from fully utilizing this valuable

investment and, in the process, deprives consumers of the benefits additional competitors would bring to this market.

Opponents of H.R. 2420, argue that allowing Bells to transport interLATA data will reduce the incentive for them to comply with the market-opening provisions of the Telecom Act. This is illogical, irrational, and simply at odds with the facts. It is not surprising that more than 220 Members of the House recognize the fallacy of this argument and flatly reject it.

First, Congress need not provide an "incentive" for any person to obey the law. The Bell companies are required by statute to open their local networks to competition through various means. If they break the law, stiff penalties can and should be imposed swiftly. I would point out that non-Bell incumbent local exchange carriers, such as the former GTE, Frontier, Alltel, Sprint and others are all subject to the same Telecom Act mandates, but are not prohibited from offering long distance service. As one might expect, these companies are fully complying with the law without the need for any so-called "incentives" to keep them honest. The threat of heavy fines, adverse publicity, and the loss of goodwill are more than enough to do the trick.

Second, the long distance voice market generates nearly $100 billion in revenue each year. Any Bell company that leaves that much money on the table by not aggressively pursuing Section 271 entry into this market will be dealt with harshly by the financial markets and is likely to suffer the ultimate punishment for bad management.

Finally, those who say the Bell companies will purposefully avoid Section 271 long distance entry by offering voice telephone service over the Internet simply ignore the cardinal rule of doing business: which is, *always make sure you get paid.* H.R. 2420 flatly prohibits Bell companies from billing, collecting, or marketing voice long distance service. If a Bell company also is forbidden from spending a dime on TV commercials, telemarketers, frequent flier miles or rebate checks, how many customers is it likely to steal away from AT&T or WorldCom each of whom spends millions each year just to convince consumers to switch carriers?

H.R. 2420 is a sensible solution to a serious problem confronting consumers and policymakers today. The New Economy simply will not survive and prosper in a 56K dial-up environment. Congress must remove obstacles to the deployment of broadband technologies whenever and wherever it finds them.

Thank you, again, Mr. Chairman, for holding this hearing. I look forward to working with you to move this important legislation forward.

Mr. TAUZIN. The Chair now recognizes the gentlemen from Maryland, Mr. Wynn, for an opening statement.

Mr. WYNN. Thank you, Mr. Chairman.

In view of the shortness of time and the importance of this hearing, I would defer an opening statement and submit in the hopes that we can at least get some of the witnesses before we have to recess.

And with that, Mr. Chairman, I would relinquish my time.

Mr. TAUZIN. I thank the gentleman.

The gentlelady has an opening statement, Ms. Wilson?

Ms. WILSON. Yes, Mr. Chairman. I will just be very brief.

I am of the belief that the 1996 Telecom Act is working and that competition is growing both in Albuquerque and around New Mexico.

As it happens, my local Albuquerque office gets our local phone service from ESPIRE and I think that more competition should be the goal of any changes to the Act.

I support the idea of more competition in the data backbone market, and I am concerned though about the bill that it might result in less competition in local exchange Internet service providers and broadband access markets.

I have heard from a lot of consumer groups, Internet service providers, competitive local exchange providers, public utility commissioners, small businesses all across New Mexico about this bill, and almost unanimously they either outright oppose the bill, or they

have grave concerns that have to be addressed before it should move forward.

I would like to hear from the witnesses today about the need for the legislation. As I understand it, the Bell Companies are reporting record profits, and usually crediting their movement into the data world for these record profits.

I would also like to hear more about the impact this bill is going to have on backbone competition. And I would like to hear about the impact it is going to have on our burgeoning competitive telecommunication market across the country and specifically in New Mexico.

I would also like to make a clarification to a recent Forbes Magazine article that suggested that Albuquerque has no high speed Internet access.

Contrary to the Forbes article, my constituents in fact can receive high speed Internet access. UUnet, a subsidiary of Worldcom, provides high speed access. There are several DSL companies in Albuquerque including Covad, Rhythms, and ESPIRE. Comcast Cable is rolling out high speed cable modems.

In Des Moines, New Mexico, which has I think it is now 400 telephone customers in 2800 square miles, you can get DSL from the telephone co-op.

U.S. West, however, does not yet offer a high speed Internet access in Albuquerque. They have announced plans to roll out DSL, however.

I think that is an important point. All of these things would not have happened and high speed access would not be available in New Mexico yet if it were not for competition. And I do not want to do anything that would jeopardize the future vitality and competition within this industry and those will be the nature of my questions.

I yield the balance of my time.

Mr. TAUZIN. The Chair thanks the gentlelady.

The gentlelady from Missouri is recognized, Mrs. McCarthy.

Mrs. MCCARTHY. Thank you, Mr. Chairman.

I am very grateful for this hearing and I am going to be very brief and put my extended remarks in the record so that we can get on with the panel.

There are a lot of very positive developments happening for consumers in my district because of competition, and I do not want to change or act prematurely a law that is in place and working well. Any change that might reduce competition I think would be very adverse and it could lead to increased costs and stifling innovation, and if it ain't broke, don't fix it.

So, Mr. Chairman, I will yield back the balance of my time and put my remarks in the record.

[The prepared statement of Hon. Karen McCarthy follows:]

PREPARED STATEMENT OF HON. KAREN MCCARTHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Thank you Mr. Chairman and Representative Markey for holding this hearing on H.R. 2420, the Internet Freedom and Broadband Deployment Act. I look forward to the witnesses' testimony on the current state of broadband deployment and how this legislation will affect deployment in the future.

In 1996, Congress enacted the Telecommunications Act, which laid the legal framework for deregulating the telecommunications market. The removal of regulatory barriers was expected to promote competition and benefit the public interest. It was expected that the long term benefits to such deregulation would include increased consumer choice, decreased consumer prices, increased efficiency, the spurring of technological advances, and increased investment in the Nation's information infrastructure. I believe the Act is working and that we must ensure its continued success by allowing for the ongoing competition among telecommunications providers. Such competition benefits all consumers.

We are in the midst of an exciting time from a communications perspective. The communication tools people now have at their disposal due to the Internet is truly astounding. What is even more amazing, though, are the things we *will* be able to do in the future once broadband Internet access is more commonplace throughout the United States. That is why I am so interested in the state of broadband deployment.

One of the many benefits of the Telecommunications Act of 1996 is that it created a competitive telecommunications marketplace, as evidenced by the competitive local exchange carrier (CLEC) industry's success. There are currently over 375 CLECs in the United States, including 333 facilities-based CLECs, employing more than 70,000 people. These companies operate over 820 voice and 1,400 data switches, 10.4 million access lines, and over 4 million miles of fiber.

The CLEC industry's rise, in turn, created an amazing increase in broadband deployment. Competitors were the first to aggressively roll out broadband services, and are still among the industry leaders in the provision and deployment of Digital Subscriber Line (DSL) service. In fact, CLECs supply over 100,000 DSL lines, which represents about 20% of the total number of DSL lines currently in service.

Further, CLECs are deploying to smaller cities and towns. For example, Missouri-based BroadSpan Communications, which operates in my district, also provides broadband service to the 40,000 residents of Cape Girardeau, Missouri. As a result, CLECs are now able to offer DSL broadband service to approximately 25% of the country.

Local phone companies, on the other hand, had DSL technology for some time, but only began to deploy DSL in response to CLEC deployment. Now, however, every regional Bell operating company (RBOC) and GTE are deploying broadband services in their home regions. In fact, SBC has announced that, through its "Project Pronto" initiative, the company will provide DSL service to 77 million customers by 2002.

Other industries are also contributing to the current state of broadband deployment. For example, cable companies, wireless technologies, and other new entrants, including electric utilities, are all now offering broadband services. In fact, there currently are approximately 2 million U.S. cable modem customers, and 7,000 new cable modem customers are being added per day.

These companies are leading the way in broadband service. Greater Kansas City area customers are lucky to be the first in the country to benefit from these emerging technologies which the Telecommunications Act of 1996 has fostered.

I look forward to monitoring the innovations which competition brings through the effective implementation of the Act. I believe any attempt to change the Act prematurely will only hurt consumers by reducing competition, increasing costs, and stifling innovation. Allowing the Bells to transmit high speed data over long distance networks without requiring them to meet the 14-point competitive check list of open-market requirements in Section 271 of the Act will ensure less competition in the telecommunications market. In Chairman Kennard's testimony before the House Judiciary Committee on July 18, 2000, he 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 Chairman Kennard's assessment and I do hope that Congress allows the Act to work by not reopening it.

Thank you Mr. Chairman, and I yield back the balance of my time.

Mr. STEARNS [presiding]. I thank my colleague.

The gentleman from Texas is recognized.

The gentleman from Oklahoma is recognized.

Mr. Largent?

Mr. LARGENT. Thank you, Mr. Chairman.

The chairman of the subcommittee said the chairman of the full committee may be a hard guy to convince; I may be impossible.

In preparation for this hearing, this month I visited an SBC central office in Tulsa, and it is something that I would recommend that every member of this subcommittee do is take a central office tour, if they have not done so. It is extremely educational, and helps to put into context what we are doing with this legislation.

I came away from the tour with the favorable impression that Southwestern Bell has made a good faith effort in Oklahoma to abide by the intent of the 1996 Telecommunications Act. More than 50 companies have been approved by the Oklahoma Corporation Commission to provide local service.

Seventy-three interconnection agreements with SBC have been approved. Competitive local exchange carriers provide competitive local service in 66 of the 72 counties that SBC serves.

It is my understanding that SBC is very close to filing its 271 application in Oklahoma to provide long distance service.

I was left with the distinct impression that the Act is working as intended. CLECs have invested $30 billion in new networks since the passage of the Act, and continue to invest over a billion dollars every month in their networks.

Despite the CLECs' significant growth, incumbent local exchange carriers continue to serve between 93 and 95 percent of the local telephone market.

Since passage of the Act, the Bell companies and GTE have also done quite well in the data market. In the first quarter of this year, SBC, Bell Atlantic, Bell South, U.S. West and GTE posted anywhere from 32 to 41 percent growth because of data.

Why have competitors been able to make inroads in an industry that has been traditionally dominated by a few large monopolies? Largely because of Section 251 which lays out the interconnection requirements that incumbent local exchanges must comply with.

H.R. 2420 makes some significant changes to Section 251 as it pertains to data services. I believe these changes could hinder competition rather than help it.

I refer members to page 7 of the bill, beginning on line 7, it says, and I quote. "The Commission shall not require an incumbent local exchange carrier to a] provide unbundled access to any network elements used in the provision of any high speed data service other than those network elements described in Section 51.319 of the Commission's regulation as in effect on January 1, 1999, or b] offer for resale at wholesale rates any high speed data service."

So in essence, what we would be doing if we were to enact this legislation is to say to those companies who have invested billions of dollars to spur competition and develop innovative technologies, Congress really did not intend that data should be considered as a telecommunication service. Throw your business plan out the window and start over.

In my view, that is poor public policy. If we enact this legislation, why should those in the telecommunications industry or any other industry, for that matter, that comes before this committee, have any certainty about how to construct a business model if we change the rules of the road because one side does not like the rules.

As members of this subcommittee our first goal when developing legislation should be to do no harm. I fear that H.R. 2420 would

do significant harm. The Act is working, and if it ain't broke, don't fix it.

I yield back my time.

Mr. STEARNS [presiding]. I thank my colleague.

I understand that the gentleman from Minnesota does not have an opening statement. Okay.

The Chair recognizes himself. Let me just compliment the Chairman, who just stepped out momentarily, for his alacrity. He has 220 cosponsors. He deserves to have a hearing, and I think he has done great work in trying to present his case.

I, like my colleague from Oklahoma, am not one of the 220 members who are on the bill but I believe that this hearing is very important and I compliment him for having this hearing.

Like others, I am disappointed that the FCC has not sent a representative. I understand Mr. Kennard could not make it for personal reasons, and we respect that. I would remind him, though, that this is the sixth time this year he has not appeared before this subcommittee, and I think it is very important if he cannot come, that he send someone who shares his feelings about this, so that we have the full benefit of his sage wisdom.

The Telecom Act of 1996 I think is working. And I think the landscape is continuing to change. Consumers now have mind-numbing options. I mean, it is almost either from DSL or ISDN on long-distance providers and packages. Cable of course now is a legitimate competitor with Copper Voice and Data Services.

Competitive local exchanges have sprung up around the country, effectively competing with incumbents and bringing competition to the local phone market.

Additionally, new sectors have given birth to in the area of data, broadband and bandwidth, with data being one of the key components driving the telecom revolution, and the demand for bandwidth and broadband is growing day-by-day, if not, my colleagues, second-by-second.

Bandwidth now is even being traded as a commodity. Americans are electing to do away with their dial-up modems for lightening fast speeds being offered through cable and DSL to access the Internet, and this demand is being met not only by the incumbent phone companies but also by the cable providers, the CLECs and the LECs.

Furthermore the Commission, the Commission itself, has finally approved 271 applications for Bell operating companies' entry into long distance.

In the last year alone, Bell Atlantic won approval in New York and SBC approval in Texas. Bell South will soon be filing in Georgia, and the flood of applications will soon make its way to the FCC.

Now that the Bells finally have a clear blueprint for interLATA entry, I anticipate the landscape to be significantly different 12 months from today.

So clearly, it is an exciting time for telecommunications, for this revolution, and I appreciate the hearing, as I mentioned.

But the real question, members, we have to decide is do we want to go back and change the Telecom Act of 1996? That is the main question before this hearing.

Or, should we continue to let this percolate and try to let competition solve the problem without more government regulation?

And that concludes my opening statement.

The gentleman from Ohio, Mr. Sawyer, is recognized for an opening statement.

Mr. SAWYER. Well, thank you, Mr. Chairman. I assume that you have already sought unanimous consent for members to insert their statements into the record?

Mr. STEARNS. The Chairman had already done this, yes, sir.

Mr. SAWYER. Well, I thank you for the opportunity to speak, but I will take advantage of that opportunity and we can get on with the hearing.

[The prepared statement of Hon. Tom Sawyer follows:]

PREPARED STATEMENT OF HON. TOM SAWYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

The future of broadband is full of uncertainty, as competing companies and industries try to anticipate technological advances, market conditions, consumer preferences, and even cultural and societal trends. Congress should work to ensure that broadband deployment is timely, that industry competes fairly, and that service is provided to all sectors and geographical locations of American society.

H.R. 2420, the Internet Freedom and Broadband Deployment Act, would ease certain legal restrictions and requirements imposed on incumbent telephone companies to encourage the growth of broadband services. Specifically, H.R. 2420 contains two important provisions. First it allows the Bell companies to provide interLATA data service without completion of the 14 point check list outlined in section 271. Second, it exempts the Bell companies from unbundling and resale requirements.

Those supporting the lifting or modification of restrictions claim that action is needed to promote the deployment of broadband services, particularly in rural and under served communities. These communities argue that present regulations under section 271 are overly burdensome and discourage needed investment in broadband services. First, unbundling and resale requirements, when applied to advanced services, provide a disincentive for incumbent local exchange carriers (ILECs) to upgrade their networks. Second, the Bell operating companies (BOCs) interLATA data restrictions unnecessarily restrict the development of the broadband network. Third, ILECs are the only entities likely to provide these services in low volume rural and other under served areas. Therefore, proponents claim, until these regulations are removed, the development and the pace of deployment of broadband technology and services, particularly in unserved areas, will be lacking.

Opponents claim that the lifting of restrictions and requirements will undermine the incentives needed to ensure that the BOCs and the other ILECs will open up their networks to competition. Present restrictions, opponents claim, were built into the 1996 Telecommunications Act to help ensure that competition in telecommunications will develop. Modification of these regulations, critics claim, will remove the incentives needed to open up the "monopoly" of local services. A major change in existing regulations, opponents claim, would not only remove the incentives needed to open up the local loop but would likely result in the financial ruin of providers attempting to offer competition to incumbent local exchange carriers.

However, this belief that the RBOC's will not want to move forward in the Sec. 271 process is unfounded. There is a very clear trend line that has been developing within the telecommunications industry indicating a need to offer a complete bundled service to consumers. Consumers want to be able to receive one bill for all their telecommunications services and lacking a long distance component would be a significant impediment to offering a bundled service. RBOCs will still be required to complete Sec. 271 if they plan to offer long distance services. Therefore, regardless of the relief in H.R. 2420, it is in the RBOC's best interest to move forward with the Sec. 271 process in order to offer long-distance among their other services.

Along these lines, it is also interesting to note that several large and medium sized local exchange carriers—such as GTE, Cincinnati Bell, and Frontier—which have the same market incentives as the RBOCs, are free of section 271 obligations and continue to focus much of their business in local services. There is also robust investment and vigorous competition from new entrants in markets served by these medium sized companies.

I look forward to hearing from our witnesses today on the deployment of broadband services and the pros and cons of H.R. 2420.

Mr. STEARNS. All right. The gentleman from California, Mr. Cox, is recognized for his opening statement.

Mr. COX. I have no opening statement.

Mr. STEARNS. All right.

The gentleman from Ohio, Mr. Oxley, is recognized.

Mr. OXLEY. Thank you, Mr. Chairman, and welcome to our distinguished panel.

I strongly support efforts to promote broadband deployment through deregulation which is why I have co-sponsored this legislation.

If a regulation has outlived its usefulness for protecting consumers, whether due to technological innovation or market competition, it ought to simply be repealed. That is why I favor data relief for the Bell Companies and it is why I am against imposing open access regulations and horizontal ownership caps on cable systems.

I believe that when we look at the issue of broadband, we need to step back and make sure we are seeing the big picture. We want to make sure that we are closing the so-called digital divide in both urban and rural markets. And we want to be sure that we remain technologically neutral and not promote on way of addressing the problem over other alternatives.

So in addition to ILEC deregulation, which is an order, in my opinion, we should look at promoting wireless and cable solutions as well. No options should be ignored.

As usual, the best thing we can do is pursue deregulatory parity and let the consumer pick the winners and losers.

The most perfect mechanism for choosing technologies is not the Commission or the Congress, it is the competitive marketplace.

I am sure we will hear lots of suggestions today on how to help the market work its magic, and I am anxious to hear them all in due course. I am less interested in hearing about the need to maintain or even increase regulations based on a competitor's view of fairness, although I am sure we will hear a fair amount of that too.

Mr. Chairman, this is a very interesting issue and critical to the long-term deployment of broadband. I congratulate you for the effort, and I yield back.

Mr. TAUZIN. I thank the gentleman and I thank him for his support and his strong statement.

Are there any other members wishing to make an opening statement?

[No response.]

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman: I want to thank you for holding a third hearing on this important piece of legislation.

With over 220 cosponsors the need to act upon this measure is apparent.

Mr. Chairman, after this weeks hearing on the status of HDTV, I was struck by how a lack of competition can undermine quality of services delivered to consumers.

Yesterday, the members of this subcommittee were treated to a demonstration of the blame game on who was responsible for the slow rollout of Digital TV.

I walked away from that hearing wondering what would happen if there were two digital standards for consumers to choose from.

That lack of choice is, I believe, what we are faced with today.

Many consumers in heavily urban and rural areas do not have enough options when trying to gain access to a high speed Internet connection.

Lack of Internet options means that new business ideas are slower to develop, economic redevelopment of our inner-cities and rural areas are hampered, and children are denied a valuable educational tool.

My primary concern is how we can increase competition to address these types of issues as rapidly as possible. H.R. 2420 is important because it will further increase competition by allowing greater use of existing infrastructure.

We need to look no further than the cable industry to understand the importance of using existing infrastructure to deliver to consumers with this important service.

Allowing the Regional Bell Operating Companies use of their existing infrastructure to cross Inter-LATA boundaries to deliver high speed Internet services would provide consumer with more Internet options. Let me make one point very clear, I want vigorous competition in the Internet marketplace.

Mr. Chairman, we must not lose focus in all the rhetoric surrounding this issue.

At the end of the day, it is not which company may or may not gain an advantage over another.

The issue is are we going to increase the speed of broadband deployment to consumers.

Mr. Chairman, I again want to thank you for holding this hearing and I look forward to an informative panel discussion.

Thank you and I yield back the balance of my time.

PREPARED STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Thank you, Mr. Chairman for holding this hearing and offering another opportunity to appreciate the stunning success of the 1996 Telecommunications Act.

I had the honor of serving in Congress and on the Commerce Committee when the '96 Telecom Act was drafted and I served on the Conference Committee that put the Act together.

Our respected colleague, Congressman Tauzin, was also on the Commerce Committee when the Telecommunications Act was shaped in 1996. When Congress passed the Telecom Act, we intended that legislation to deregulate a communications industry in which competition had been choked off by years of monopolistic practices.

Mr. Tauzin, Mr. Goodlatte, Mr. Boucher and I agree that open and rigorous competition among telecommunications companies is the best guarantee that consumers will receive the broadest range of services at the best prices—and by definition, it is the most effective means to end monopolistic practices.

Since the 1996 Act was signed into law, we've seen the telecommunications revolution occur with breathtaking speed. No sooner does one technology seem to offer more speed and capability, when along comes another advancement that offers more data, faster.

We know the Telecom Act has resulted in a larger menu of broadband delivery options. It has increased competition and produced lower prices for the consumer.

One of the best examples of this is seen in the development of the Competitive Local Exchange Carriers—or CLECs. These companies—companies like Covad—are children of the Telecom Act.

And why do I call them this? These companies provide DSL-based access to the Internet through local loops or on their own high-speed fiber networks. Before the Telecom Act, these companies could not exist in a regulated environment. Only the Bells could offer this technology. It's important to note that the Bells had DSL technology but did not offer it. Instead, they offered the more expensive "T-1" lines to businesses.

But the Telecom Act deregulated the industry and allowed these companies to offer the DSL service. And once the Telecom Act allowed these companies to offer their services, what happened? Telephone companies that before had only offered the more expensive T-1 lines, began to rapidly expand *their* DSL service—a service they could have offered much earlier. The result was increased broadband services to consumers at a cheaper price.

And more dramatic successes are just around the comer. For example, there is a company in California called Next Level Communications offering *V*DSL that's *faster* than DSL and no more expensive for the consumer.

So I hope, Mr. Chairman, that Congress will let time be our advisor on this issue. We should be patient. We should refuse the temptation to change course in order to meddle in the marketplace while this revolution in telecommunications is happening around us.

I don't believe clear or convincing evidence has been offered that consumers are suffering because of the Act. In fact, when I listen to testimony before this Subcommittee what I often hear is "the Telecom Act is working . . . but." If the Act is working, as I believe it is, I am inclined to let it progress unimpeded by what may be well-intentioned but hasty Congressional intervention. While consumers are now getting more choices and lower prices, I'm concerned that the evidence also points to something else—namely, the different segments of the telecommunications industry are using the Internet as a reason to reopen the old debate that long distance companies and the RBOCs had regarding deregulation.

I believe Congress decided in 1996 the forum for that debate is in the marketplace, not the legislature. The development of the Internet is not a reason to reverse this decision. In fact, the one way to guarantee harm to the consumer is for Congress to try and re-insert itself into this competition. The best form of regulation is competition.

The incredible rate of convergence should stand as a signal to proceed cautiously and allow the Act to work. If we move hastily we may find ourselves confronted with an even more difficult set of issues and at a time sooner than we, or the industry, would prefer.

History can also give us reason to tread slowly. Recall that the law amended by the Telecom Act of 1996, the Communications Act of 1934, was actually based on economic principles contained in the Interstate Commerce Act of 1887 which regulated railroads. The principles to which we refer today, fair and nondiscriminatory interconnection and price oversight, originally were associated with the railroads and have been with us for a very long time. They have been around for almost as long as the incumbents enjoyed monopoly status during which time they built up significant economies of scale and scope. It was this entrenched status that the Telecom Act recognized when it sought to stimulate competition by requiring the incumbents to make their network elements available on an unbundled basis. This bill seems to forget that background and ultimate objective.

Broadband deployment has been stimulated because, using the timeworn principle of nondiscriminatory access, along with the ability to collocate and enter into line-sharing agreements, local markets have been opened. Consequently, broadband deployment is expected to increase exponentially over the next year.

I also want to try and put to rest a myth that some parties in the telecommunications industry are working hard to create—and that is when Congress was writing the Telecom Act of 1996 no one knew about the Internet and how it would impact the telephone industry. Therefore, goes the argument, we should re-open the Act to take the Internet into account.

On prior occasions I have cited to testimony from the 1995 Hearings before the Subcommittee on Telecommunications which demonstrates that the Internet not only was well documented, but also that its potential was appreciated at the time of the hearings.

And so I submit that the legislation being considered by you today may be premature. The so-called "incentives" for RBOCs to roll out DSL are unnecessary because clearly there are signals that competition already exists in this market.

And finally Mr. Chairman, let me lay an important marker down by asking this Committee how Internet telephony will effect the legislation it's being asked to consider. If we're being asked to reopen the Telecom Act because of the Internet, how will this legislation effect the developing market that allows telephone calls to be made over the Internet? This technology which is already in use, could have a dramatic effect on how we define something as basic as what a telephone call is.

I suggest the wisest course is to see where this technological revolution will lead. To do otherwise I believe will engender unnecessary marketplace disruption.

Mr. Chairman, again, thank you for holding this hearing on this important issue. I hope if this legislation is reintroduced next year you will have more hearings on it so we can fully explore the issues before us.

Mr. TAUZIN. Then I am pleased to begin the testimony of our witnesses.

As I do, let me announce that there is a special mass in memory of the life of our good friend Mr. Stupak's son who lost his life this year, which starts at 12:10.

And we will begin taking the testimony of the witnesses but members obviously will be excused if any would wish to go and attend that service, and we will try to complete the round of the witnesses and hopefully, by that time, members will have returned and we can begin the round of questions of our witnesses.

So if members feel as I would love to personally attend—if you want to attend, you are certainly excused to do so as we take the testimony of the witnesses.

Any further opening statements from anyone?

[No response.]

Mr. TAUZIN. Then the Chair is pleased to introduce the panel.

The panel is indeed a distinguished panel and pursuant to the request of the chairman of the Commerce Committee, we have tried to build a balanced panel. We will hear support and opposition to the bill that is before us today, and we will hear strong support and strong opposition. And that is as it should be.

The panel consists of Mr. James Ellis, Senior Executive Vice President and General Counsel of SBC Communications; Mr. Edward D. Young, Senior Vice President, Government Affairs of Verizon Communications; Mr. Arne "Skip" Haynes, President of Rainier Group; Mr. Dhruv Khanna who is the counsel for Covad Communications; Ms. Cindy Schonhaut, Senior Vice President of ICG of Colorado; Mr. Len Cali, the Vice President, Federal Government Affairs, of AT&T Corporation; and Mr. Steve Pociask of Joel Popkin & Company here in Washington, DC.

Let me also indicate that we did receive a call suggesting that two people who would love to attend could not make it here today, and I just wanted to let you know that they did want to make.

The CEO of AT&T had called us and let us know that he would personally have liked to have made it and hopefully we can hear from him at a future date, Mr. Cali.

And also the Chairman of the FCC called and expressed his regrets that he could not be here. This of course is the fourth or the fifth time that it has happened, and I assured my friend, Mr. Kennard, that this is the first time he really had a good excuse, not only a real authentic one but one I support.

He is attending the adoption hearing for his new son, and it is kind of a big day for him, and an exciting day, and I wanted to acknowledge that today and wish him and his new son and his family all the best wishes. It is a very big day for him and his family and I want to wish him well. And he is certainly excused from being here today.

We will begin with Mr. James Ellis, the Senior Executive Vice President and General Counsel for SBC Communications.

Mr. Ellis, all written statements of the panelists are part of our record, and so if you will kindly just summarize your statement within the 5 minute rule.

Mr. Ellis, the lights will indicate to you green, yellow, and red when you have just about completed your 5 minutes before the committee.

Mr. Ellis, please.

STATEMENTS JAMES D. ELLIS, SENIOR EXECUTIVE VICE PRESIDENT & GENERAL COUNSEL, SBC COMMUNICATIONS; EDWARD D. YOUNG III, SENIOR VICE PRESIDENT, FEDERAL GOVERNMENT RELATIONS, VERIZON COMMUNICATIONS; ARNE L. HAYNES, PRESIDENT, RAINIER GROUP; DHRUV KHANNA, EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL, COVAD COMMUNICATIONS; CINDY SCHONHAUT, SENIOR VICE PRESIDENT, ICG; LEONARD J. CALI, VICE PRESIDENT, FEDERAL GOVERNMENT AFFAIRS, AT&T CORPORATION; AND STEPHEN B. POCIASK, EXECUTIVE VICE PRESIDENT & CHIEF ECONOMIST, JOEL POPKIN & COMPANY

Mr. ELLIS. Mr. Chairman, members of the committee, good afternoon. I appreciate the opportunity to share my company's views on this important legislation.

We support the bill because we believe it will lead to increased deployment of advanced services, particularly in the rural areas. It will mean more competition for advanced services, and with that will be more customer choice and competitive prices.

It could not come at a more critical time. The experts say that the amount of traffic on the Internet doubles roughly every 90 days, and certainly the demand for high speed access is exploding. It is becoming increasingly clear that the role of the Internet and high speed access is vital to all segments of the economy.

We believe, in considering the legislation, a beginning point is a recognition of two fundamental facts. First, there is no bottleneck for advanced services.

Cable modem, which is provided by the cable companies, competes directly with our xDSL services. Cable Modems provided over their networks, their facilities, are completely independent from ours.

In addition, we have terrestrial wireless alternatives, satellite alternatives. They provide their services completely independent of our facilities.

Large customers have access to AT&T and Worldcom and others who provide direct access to the Internet over high speed capacities, and again without resort to the telephone company facilities.

There simply is no bottleneck.

In addition, we do not have even a leadership, let alone dominant position with respect to advanced services. Perhaps the best evidence why there is not a bottleneck is our competitors have four or five customers for every one we do.

But despite the fact that there is no bottleneck, no control, and despite the fact we are not even in a leadership position, we are subject to asymmetric regulation. The result of that asymmetric regulation is, on the one hand our competitors are completely free to operate the most efficient way they can; at the same time, we are subject to pervasive regulation.

It means we are handicapped. It means competitors are protected from competition. And ultimately it means the consumers, the customers, are denied a competitive marketplace and the benefits.

Now there are many aspects to this but the one that is the subject of this bill is of course the long distance restriction. Because of that restriction, we have significant handicaps in deploying

broadband services to our customers. It takes many forms, but let me give a specific example.

Illinois has 12 LATAs. We go in there to provide advanced services. That means, because of the long distance restriction, we have to put an ATN switch in each LATA and we have to put a point of presence to the Internet in each LATA.

It is very expensive. We cannot operate in an efficient way where you would follow normal traffic algorithms and combine demand and use a combination of switches and trunks. You can't do that.

Likewise, we cannot take demand for high speed access in one community and combine it with another community and in that way operate more efficiently and have a broader base deployment.

The discussion has mentioned project Pronto. We have been handicapped. We could have done it more efficiently. We could have reached many more customers without that restriction.

Another example is in the backbone. You have all heard of the backbone discussed, the backbone of the Internet. Well, that is the high level connection between the Internet hubs. And as was indicated several weeks ago when the Justice Department and the government took a position against the Worldcom merger, that was a principal reason because of the heavy concentration in three companies, the provision of that backbone. We have the facilities. They are in the ground. We are not permitted to participate in it.

Now there have been several suggestions in the comments today and in other places that we are seeking to turn around the Telecom Act. That is not true.

Advanced Services, DSL and Cable Modem, were not in commercial operation at the time that legislation was debated, and certainly the marketplace and technology have gone well beyond the situation that existed at the time of the Act.

Furthermore, I would tell you, we are not even seeking in any way to change our obligations to open the network. Indeed, it is absolutely critical that we be able to offer a complete package or we are not going to have a business. We must have the opportunity to offer voice telecommunications. In fact, 70-80 percent of our revenues are from voice. That will not change, we will continue to have that obligation.

But the fact is, the basic underlying principles behind the 1996 Act that is, the existence of a bottleneck and a dominant control of the local exchange simply do not apply in a case of advanced services. That is, we have neither a bottleneck nor dominant position.

I would make one other point.

There has been reference to how many POPs there are. I would simply say that the real question is whether the rural customer has access to high speed access to the Internet. And the fact is, according to NTIA, about 5 percent of the rural customers have that access, and we would like to change it.

Thank you.

[The prepared statement of James D. Ellis follows:]

PREPARED STATEMENT OF JAMES D. ELLIS, SENIOR EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SBC COMMUNICATIONS INC.

I am Jim Ellis, Senior Executive Vice President and General Counsel of SBC Communications Inc.

I want to compliment Chairman Tauzin and Ranking Member Dingell for their leadership in sponsoring HR 2420. SBC strongly supports HR 2420 and encourages this Committee to move this legislation to the full House. HR 2420 will have the effect of increasing competition in the market for high-speed data and Internet access services, by eliminating much of the regulatory disparity that currently exists between providers of these services.

There are two fundamental principles that should guide Congress in considering any legislation in this area. First, competitive markets should be free from governmental regulation. Second, if there is some public policy reason for regulating a market, all service providers should be subject to symmetric regulatory requirements.

In the market for high-speed data and Internet access services, these are the undisputed facts. First, there is no "bottleneck" in obtaining access to the customer. Second, the incumbent local exchange carriers (ILECs) are way behind in the provision of high-speed data and Internet access services. Third, the ILECs are required to assist their competitors in entering this market. Fourth, SBC provides high-speed data and Internet access services through separate affiliates. Finally, SBC's advanced services affiliates and the other Bell companies are at a competitive disadvantage in that they cannot provide high-speed data and Internet access services on an interLATA basis.

The effects of these regulatory disparities include 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 ILECs in general and the Bell operating companies (BOCs) in particular, and their competitors is essential to fulfilling the fundamental principles outlined above.

Background

Historically, the only telecommunications pathway or wire to nearly every home and business in this country was the local copper loop. Until recently, the local loop was part of a circuit-switched network that was capable of transmitting only narrow-band 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 services to the customer. 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 ILECs' local copper loops, in that it was capable of transmitting broadband video and high-speed data services.

Recently, additional telecommunications pathways to homes and businesses rapidly developed through various wireless technologies—in the form of digital satellite service, cellular and PCS service, and fixed wireless.

Meanwhile, as competition was developing in the telephone industry, the Internet began to evolve as a source of new high-speed broadband "advanced services." When the '96 Act was being debated in Congress, the scope of the Internet and the precise nature in which these advanced services would be provided to the public was uncertain. Congress sought to address this new telecommunications phenomenon and the promising new services it had to offer 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, the FCC has not actively sought to eliminate, or even reduce, regulation of the ILECs' offering of advanced services.

Cable Modem versus xDSL 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 broadband 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 equipped to provide high-speed broadband

services. Hence, they had to develop a new technology called Digital Subscriber Line or xDSL service, in order to provide digital information at high bandwidths over copper loops.

While the ILECs were developing xDSL service, the cable industry was rapidly deploying its cable modem technology. The ILECs are now playing catch-up and are scrambling to deploy Asymmetrical Digital Subscriber Line or ADSL service as a competitive alternative to cable modem service. But, the cable industry is far ahead of the ILECs in the actual provisioning of advanced services to consumers. At the end of the first quarter of 2000, there were approximately 2.5 million residential broadband subscribers in the United States, of which 1.9 million or 77% were cable modem subscribers and only 21% were xDSL subscribers.

Thus, the consumer market for the delivery of high-speed broadband Internet access and data services is a highly competitive market between the cable industry and the ILECs. It is a market in which cable modem service and xDSL service will provide the *same* high-speed Internet access and offer to the *same* residential and small business customers the *same* advanced and high-speed data services.

Most importantly, the ILECs had no "head-start" in the deployment of advanced service technologies. The ILECs possess neither *de facto* nor *de jure* monopoly in the provision of broadband Internet access, advanced services, nor high-speed data services. And finally, it is absolutely clear that the ILECs' local copper loop is no "bottleneck" in the provision of these services to consumers.

Asymmetric Regulation

Unfortunately, the rules and regulations that apply to the provision of advanced services by the cable industry and the ILECs 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 is *not* required to interconnect with its competitors, *nor* unbundle its facilities and make them available to competitors, *nor* resell its services. Moreover, the cable industry is not currently required to give its customers a choice of an Internet service provider. This unparalleled ability of the cable industry 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 Time Warner alone 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. Time Warner directly and through its ownership of RoadRunner provides cable modem service to approximately 38% of cable modem customers. Together, the Time Warner and AT&T consortia also own 8 of the top 15 video programming services, including 4 of the top 5. In addition, it is no secret that AT&T has been trying to negotiate a joint venture with Time Warner, and Time Warner and AOL, the largest Internet service provider, are planning to merge. This creates a situation where the cable industry could well develop a dominant position in the provision of certain forms of broadband Internet access, advanced services, and high-speed data services.

This is in stark contrast to the telephone industry, where the ILECs remain pervasively regulated *today*. Under Title II of the Communications Act, they 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 their competitors in offering competing xDSL services through the interconnection, unbundling, and collocation requirements of Section 251(a) and (c) of the '96 Act. 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 resale under Section 251(b).

Unfortunately, under such an asymmetric regulatory scheme, the regulators frequently determine the winners or losers in the marketplace, and not the consumer. This significantly affects the growth of new services and the availability of choice. Accordingly, any legislation addressing high-speed data and Internet access services should eliminate the regulatory disparity between the cable and telephone industries.

HR 2420 goes a long way toward accomplishing this objective by exempting high-speed data and Internet access service, and the facilities used to provide such services from regulation, and by eliminating any further unbundling requirements and the resale requirement in respect to high speed data service.

InterLATA Restrictions

One of the key regulatory disparities in the market for high-speed data and Internet access services is the interLATA restriction. Section 271(c) of the '96 Act pre-

vents the Bell operating companies (BOCs) and their affiliates from providing these services across LATA boundaries and Internet backbone service itself. Neither the cable companies, the interexchange carriers, nor the CLECs are subject to this restriction.

The interLATA restriction thus places the BOCs at a significant competitive disadvantage in the provision of these services, particularly to business customers.

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 a full service provider to these large business customers.

There is no need for the interLATA restrictions in respect to 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.

Finally, the interLATA restriction artificially inflates the BOCs' costs of deploying advanced service technologies, and renders that deployment less efficient. 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 interLATA relief, the BOCs will be in a position to connect these communities to the Internet, thus providing rural consumers and businesses with access to the same Internet access and high-speed data services that are available in urban areas.

Conclusion

HR 2420 has gained the support of many members of this Committee and over 220 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.

Mr. TAUZIN. Thank you very much, sir.

We would now like to welcome the Senior Vice President for Government Relations for Verizon Communications here in Washington, DC, Mr. Edward Young.

Mr. MARKEY. Mr. Chairman?

Mr. TAUZIN. Mr. Markey, I will yield for a second.

Mr. MARKEY. When I was a boy growing up, Mr. Chairman, we had a nice company. It was called New England Telephone, and we all knew how to pronounce that and it was passed on to us by our mothers and our fathers.

And then, about 15 years ago, Mr. Chairman, after paying about a million dollars, they decided to change the name into something that was absolutely unpronounceable, NYNEX. And it took us about 10 years to figure out how to say this word, okay, because it is some kind of test that you would give to, you know, to someone who was in some advanced foreign language course. This would be the last word you would give someone learning the English language, NYNEX. And so we all finally mastered it.

Then Bell Atlantic purchases or merges, I'm sorry, merges with NYNEX and they decide to give up this word. And then we all have to learn, in my home town, a new word, Bell Atlantic, which we have just about gotten used to saying.

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[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.

Then, this year, paying another million dollars, notwithstanding the fact that 98 percent of all people who look at it say "Varr-a-zon", which is probably how they should pronounce it if that is how the public wants to pronounce it.

There is a new name called "Ver-eye-zun." Now it captures a whole bunch of concepts that are supposed to be subliminally influencing us toward this horizon.

Mr. TAUZIN. It is pronounced "Her-i-zon."

Mr. MARKEY. Yes, Mr. Chairman.

So now after another million dollars, we now have a new name for this company all providing the exact same services in my home town with the hope that they will receive relief by the end of this year so they can move into the new horizon of new services, but the company is "Va-reye-zun."

Mr. TAUZIN. Thank you very much, Mr. Mokey.

As you know, both Mr. Bliley and I suffer from the below-the-Mason-Dixon-line pronunciations.

Mr. Young of Verizon Communications.

STATEMENT OF EDWARD D. YOUNG III

Mr. YOUNG. Thank you, Mr. Chairman.

Good afternoon and good afternoon to the members of the committee. And Congressman Markey, thank you for correcting that. It is a combination of horizon and veritas, which we can talk about later.

I should note that this is the first appearance before the subcommittee by Verizon. We were formed by a merger with GTE at the end of last month, and I am delighted that this first appearance is in support of H.R. 2420, the legislation that you, Mr. Chairman, and Mr. Dingell have introduced to assure that all Americans will realize the benefits of the Internet as fast as possible and affording more choices.

That the bill has already gathered 225 cosponsors is a testament to your leadership and the importance of this issue.

In my brief time, I would like to emphasize two key points. First, H.R. 2420 will help bring more quickly advance Internet services to more Americans and at competitive prices.

And then second, I want to emphasize that this bill does not, does not undercut the incentives that were put in place in the Act to open up local markets to competition.

Okay, how will 2420 accelerate deployment of Internet services? Well, the Bell Companies have the unique ability to provide vital pieces of the high speed Internet infrastructure, the links and hubs in the middle of the Internet architecture.

At one end, you have the high speed Internet backbones and at the other end, you have the local connections that connect towns and businesses to the Internet. But in between, there is a whole host of links, hubs, interconnections, interoffice facilities, that the Bell companies have at their disposal, as a result of providing ubiquitous local service, that could be used to increase the capacity of the Internet and to provide more access to more customers.

A good analogy is, if you think of the big Internet backbone as an interstate highway, what we provide is we provide the State roads, the access roads that run next to the highways, and the on-

ramps that allow that interstate to get to the local communities to provide Internet service.

So we have hundreds of thousands of miles of fiber among all the local exchange companies to help provide these services. And the benefits that H.R. 2420 provides is it allows us to use those facilities for a very narrow purpose, and that is just to provide Internet data services.

It allows us to use these backbones in places where there are not facilities today. Charleston, West Virginia; Duluth, Minnesota; Fayettville, Arkansas, where we will be able to use those facilities, once this bill passes, so that anybody can deploy high speed Internet services.

And I emphasize, anybody, Covad, Rhythms can take advantage of this local architecture, they will have equal access to it, to offer their own services under the Internet, so they will not have to go as far to get high speed connections, they will be able to provide services as well as we will, and therefore the customer wins.

Now, I say this is a narrow exemption because it only applies to data. This does not affect at all the requirement that we meet the 271 requirements for long distance relief for voice services. So what we are focusing on is a narrow exemption, an incidental interLATA exemption in the same way that you saw fit to allow us to provide cellular long distance service.

So if this bill has a narrow focus and benefits everyone, why do people oppose it? Well the main opposition comes from those who claim that this bill would gut the incentives in the Act to open up our local markets, and that is just simply not so for a number of reasons.

First of all, this bill does nothing to eliminate Section 251 of the Act. Section 251 contains the market-opening provisions, the 14 point checklist, if you will, that the Bell companies have to meet in order to get into long distance business.

The interconnection obligations still remain. The bill does nothing with respect to that.

With respect to voice service, there is still a valuable incentive for us to get into that market. It is a $100 billion plus market a year. We have every incentive to get into it.

Second, under our merger conditions, we have every incentive to get into it. Verizon, for example, cannot offer long distance service through its data affiliate, which it had to separate in its merger with GTE until it meets the 271 requirements.

So the point here is that there are lots of options for us, lots of incentives, excuse me, for us to continue to meet the 251 requirements.

The FCC has enforcement authority under which it can continue to monitor the hundreds of measures that we have to report to them every month to demonstrate that our markets are open.

So in sum, Mr. Chairman, we support this bill. We think that the incentives to open up the markets remain, but we think that the benefits to all Americans of getting more access to the Internet should start now.

[The prepared statement of Edward D. Young III follows:]

PREPARED STATEMENT OF EDWARD D. YOUNG, III, SENIOR VICE PRESIDENT, FEDERAL GOVERNMENT RELATIONS, VERIZON COMMUNICATIONS

Mr. Chairman, thank you for this opportunity to testify before the Committee. I am Edward D. Young, III, Senior Vice President, Federal Government Relations for Verizon Communications, the new company formed by the merger of Bell Atlantic and GTE. I am before you today to tell you that H.R. 2420 will accelerate the deployment of high speed Internet access to all Americans.

Mr. Chairman, the Internet is a wonderful tool that has developed far faster than anyone could have imagined. But its continued development and evolution into a technology that can handle any form of communications and any type of service anywhere in this country is threatened.

The current infrastructure on which the Internet rides is insufficient to handle the explosive growth, and the danger is that we won't recognize the scope of the problem until it seriously impairs our economic growth. Policy makers must avoid applying old regulatory models to an entirely new, competitive technology. The consequences of inaction are very serious. The entire Internet economy rests on the ability of businesses to reach consumers. Without Bell company broadband deployment and provision of high-speed Internet connections many local communities will never realize the promise of high-speed Internet, and Internet companies will not be able to reach their markets. This will have a serious impact on the value of the Internet economy itself—the sector that everyone agrees is driving economic growth.

In some all-too-important respects, today's policies for the Internet and broadband services are those that were intended for a local voice telephone market. This will slow deployment of broadband, inhibit competition and risk slowing investment at the very time when we need every possible player involved to help advance the capabilities and capacity of the Internet.

THE STATE OF THE INDUSTRY

A few short years ago, the Internet was something that only researchers and computer experts knew about. Electronic commerce was not part of our vocabulary. In the last five years, the growth of the Internet has been astounding, far outstripping the predictions of most experts. A University of Texas study estimated that the Internet economy was more than $500 billion last year.

With this growth, there has been increasing demand for bandwidth and speed. The 14.4k modems that were state-of-the-art a few years ago are the slowpokes, with 56k being the top speed achievable by most mass-marketed dial-up modems. As more and more people use the Internet and more complex information and bandwidth-intensive applications appear, it is clear that 56k just is not fast enough.

Moreover customers need to be assured of high-speed service from end to end. If the data is slowed at any point in the transmission, data can be lost, the connection may drop and some of the more exciting applications for education and telemedicine involving video, for example, will simply be impossible. The current regulatory scheme is not designed to provide the needed capabilities. We need competition and investment in the Internet from end-to-end—from the local connection to the nationwide and global backbone.

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, and economic development will be stunted in areas without high-speed connections. The Internet has driven the growth of the high tech sector and is increasingly important to American industries such as video and filmmaking. Disney, for example, recently testified to the Judiciary Committee about the importance of broadband deployment to its future. There is a very real danger that if the Internet does not advance to a new level, one capable of providing higher speed, higher quality connections, the growth and competitiveness of our economy based on the explosion of information technology could well be undermined.

THE WEAKEST LINK

The Internet is an end-to-end system based on hundreds of connections between different networks. At the top of this system is the Internet backbone, which links together thousands of web sites and Internet providers and takes traffic back and forth at high speeds across the United States. At the bottom are the local networks of wires and cables that bring the Internet into homes and businesses. Between the two are a variety of connection points and transport facilities and systems operated by local exchange carriers, ISPs, interexchange carriers and others.

There has been much talk in recent months about the first link—the one that connects the customer to her ISP. Local telephone companies and cable operators are

upgrading their networks to provide high-speed local services, broadband services. These can transport information to customers at many times the speed of 56k modem that is becoming the standard. H.R. 2420 contains several provisions to make sure this deployment is completed.

There has also been some focus on the Internet backbone. It was the degree of concentration in this market that caused the Justice Department to intervene to challenge WorldCom's takeover of Sprint. This market is plainly in need of new entry and more competition, and H.R. 2420 will allow this as well.

But less attention is being paid to the link in the middle, a link that is every bit as important as the ones on either end. The speed at which a consumer gets her data—a web page being transmitted to her home—is only as fast as the slowest link in the communications chain. Even if the consumer has the best available high-speed DSL or cable modem service and even if the backbone is operating well, she will not be able to get all the benefits of that service if the intermediate link to the Internet backbone is too slow.

There are vast areas of the United States that simply have no nearby high-speed connection to the backbone. Boardwatch Magazine, the standard authority on Internet backbone networks, reports that there are 43 Internet backbones that have major hubs (hubs with connectivity of 45 Megabits or greater). While Boardwatch shows more than 1000 major hubs, many of them are in the same city. For example, the Commonwealth of Massachusetts has 29 of these hubs, but every one of them is in the Boston metropolitan area; this leaves the western part of the state without any high-speed Internet connection point. Missouri has 38 hubs, but all are in its two big cities, with none in between. Illinois has 44, but all are in the northern part of the state. When this duplication is factored out, Boardwatch Magazine shows hubs in fewer than 130 cities.

The largest backbone providers have little incentive to connect their systems with smaller providers or to locate hubs away from major urban centers. 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.

This is happening all over the country. Forbes last month told the story of Mr. Brown and his ISP in Albuquerque, New Mexico. Mr. Brown wanted to gives his customers in Albuquerque the kind of high-speed Internet services available to businesses and consumers elsewhere, but he couldn't do that. The reason was that WorldCom and the other Internet backbone giants did not provide enough high-speed capacity to Albuquerque. To get that capability, Mr. Brown's only alternative would be to pay $120,000 a year to lease a circuit running to the WorldCom hub in Phoenix, Arizona. He can't afford to do that, so his ISP, therefore, uses a public interconnection point in California, which is slow and often congested.

This is not peculiar to New Mexico. There are no high-speed hubs in communities like Shreveport, Louisiana, Springfield, Illinois, and Jefferson City, Missouri. If an ISP in those cities wants to give its customers high-speed, reliable Internet access, it must buy high-capacity circuits of its own to carry its traffic to the nearest Internet hub. These charges are distance sensitive, so the farther away the ISP is, the more it pays to get to the Internet. And because these links to the Internet are almost always interLATA, the ISP pays the very same long distance companies that operate the Internet backbones.

However, the Bell companies already have high-speed fiber-optic facilities connecting virtually every city and town they serve. A Bell company could use this network to solve this Internet connection problem, and its incentives to do so are strong because of its local customer base. The Bell company could build Internet hubs in or near Shreveport, Springfield and Jefferson City, closer to the ISPs in these communities, and use the fiber that is already in place—but which cannot now be used for these purposes—to connect these hubs to the Internet backbone. That same fiber-optic facility could also be used to transport the Internet traffic collected by other hub providers in those areas. The Bells would compete in the regional and national backbone market place creating more hubs and offering more choices to ISPs. ISPs in these communities would get better service at a lower price, to the obvious benefit of their customers.

Rural areas, in particular, lack high-speed connections to the Internet backbone. Without these connections, it will be difficult for rural areas to retain businesses or to attract new businesses, especially those in the high growth area of today's information economy.

Companies like Verizon have the resources and the capabilities to make new backbone capacity and interconnection points available quickly to improve Internet services. But, today, the government says we may not do this.

Keeping Verizon and other new entrants out of the Internet backbone business has other harmful effects. In particular, it slows the deployment of high-speed local Internet access technologies (such as DSL), particularly in rural areas. Many rural areas of the country have no connections to the Internet backbone. In these areas, interLATA restrictions aimed at long distance voice services have had the inadvertent effect of preventing Verizon from providing high-speed Internet services, including DSL access. The reason is simple: There is little reason that Verizon or any other company would invest to provide DSL in a remote area if there is no cost-effective way to get the data to the Internet.

Finally, these restrictions do more than merely prevent us from improving the Internet—these restrictions, and the resulting high level of market concentration, have anticompetitive consequences as well. The Big-Three long distance companies can dominate the market, discriminate against other backbone providers and drive customers to their own backbones. This enables backbone providers to leverage downstream their backbone market power into the ISP and content markets. For example, the Big Three's backbone interconnection prices are about 50% higher than the average of the 43 backbone providers. As Shelton Jefferson, the CEO of Netcom, recently told this Committee, "These prices are so high because of the concentration of ownership of Internet backbone in the hands of a few long-distance and cable companies." Bell company entry into the Internet backbone market would preserve competitive parity, however. With their resources, Verizon and the other Bells could rapidly enter the backbone market and be treated as peers by the existing major backbone providers.

The Internet has stimulated economic growth and can continue to do so if we continue to invest in the necessary infrastructure and allow all to participate. It can also spread this growth to our smaller cities and rural areas. Passage of H.R. 2420 can make this happen.

Thank you.

Mr. TAUZIN. Thank you very much, Mr. Young.

We are next pleased to welcome Mr. Arne Skip Haynes, President of the Rainier Group.

Now what is interesting about Skip here is that in his bio, he tells us that his great grandfather, Pete, won the company in a is that pinochle or pinochle?

Mr. HAYNES. Pinochle, sir.

Mr. TAUZIN in a Pinochle game in 1912. So your great grandfather actually won the company in a pinochle game in 1912?

Mr. HAYNES. Yes, sir.

Mr. TAUZIN. That is amazing.

Mr. HAYNES. The actual story is, they are not sure if he won the company or if he won enough change to buy the company.

Because I can also tell you I am fourth generation manager of our company and when my father took over the company in 1954, the gross revenues were $32,000 a year.

Mr. TAUZIN. Wow.

Mr. HAYNES. And we are still very small.

Mr. TAUZIN. Well. Mr. Haynes, you are recognized, sir, for 5 minutes.

STATEMENT OF ARNE L. HAYNES

Mr. HAYNES. Thank you very much.

The point of my testimony here, sir, is to support H.R. 2420. I thank you, Mr. Chairman and members of the committee, for the opportunity to give that support.

I have submitted a record of the testimony. And just for the record, my son just graduated from college. He has joined the firm in our interactive media business and we have a commitment to telecommunications in small communities.

Mr. TAUZIN. You are not doing pinochle on the Internet yet, are you?

Mr. HAYNES. No, no.

We also have a lot of small company friends around the country, for example, Smokey Scanlon down in ETEL is competing with Bell South in New Orleans. And many of our friends throughout the country, small companies, are competing.

I am going to be moving into Mr. Stearns' area and competing in Ocala with high speed wireless data and am anxious to do that and am looking forward to it.

Again, I want to stress we are a small company. Our incumbent phone company has 3,800 access lines and that is fewer than the number of employees of most of the companies here.

We have about a thousand cable customers, those we have acquired since the Act was started. The Act was passed in 1996. We have about a thousand Internet customers and we have about 400 CLEC customers, and those are primarily residential and small business. I think our largest CLEC customer so far is six lines.

We are excited about being in telecommunications, staying in telecommunications, and I would note that our employee base is now up to 50 individuals which is about triple what it was when the Act passed in 1996.

I am testifying on behalf of our company, as well as the United States Telecom Association of which I am vice chairman.

The competitors we have include AT&T, Qwest, with their former U.S. West operations. We also provide long distance service so we compete with IXCs and a myriad of Internet service providers.

We need relief from regulation, both at the Federal and the State level, and I would like to point out, that is extremely important and there are some aspects of deregulatory effort here and more of that should continue for small companies as well as all companies.

There is no digital divide in the operations that we serve. We have Cable Modem service available to our cable customers. We will be rolling out DSL within 90 days to 100 percent of our incumbent customers as well as our CLEC customers, and that is in the State of Washington.

Our wireless they have not even got the technology to where they are selling it for public use yet, but that is where we are going soon in California and Florida.

I am either a very bright person for working the last 10 years to develop a data-oriented telecommunications network, or I am really stupid because I invested millions of dollars of our shareholders' money to make a data-ready network.

And I would like to invite Mr. Largent and any member of the committee to come to the foothills of Mount Rainier so that I can show you why line-sharing, as the FCC put it forward, would devastate the operations of our company and be absolutely a bad thing for residual customers who only want to use voice services.

The line-sharing concept is flawed. I have submitted some of the details in the record, and I would be happy to explore those with anyone.

And I would also like to suggest that while the record indicates our costs are high in our incumbent area, approaching a hundred dollars a month to serve a customer, 20 or so of which we get out

of local rates, those are not unusual or unrealistic costs in rural areas.

Any RBOC will also have high cost areas to serve as any mid-sized company would. It is a question of geography and the cost of facilities and the cost of employees who have to maintain these networks.

So again, it costs money to run these businesses. Competition is opening a lot of opportunities. It would be better served without any regulation but the regulation needs to be much lighter and much more fair than what it has been to incumbents.

I think that H.R. 2420, if passed, would allow us to continue to expand our operations in Washington State. If that and other regulatory efforts continue, we will be in trouble, and that is not good for any of our customers.

I am amazed and I see my red light has already come on, but a couple of points, if I could just have a second.

State regulators are drooling to fill a vacuum that any FCC regulation relief might come with, so I plead that every effort you make will be to reduce State regulation as well.

Relieving the large companies of the interLATA obligation is very positive for our customers because, as Mr. Young pointed out, there is a link that is broken, and it is not at our end and it is not in the middle, and we need high speed all the way through, and that will benefit our customers.

Thank you, Mr. Chairman.

[The prepared statement of Arne L. Haynes follows:]

PREPARED STATEMENT OF ARNE L. HAYNES, PRESIDENT AND CEO, THE RAINIER GROUP

My name is Arne L. Haynes. I am President and CEO of The Rainier Group. We have served telephone customers in the foothills of Mount Rainier (Washington) since 1910. My Great grandfather Pete won the Company in a pinochle game in 1912. I am the fourth generation manager and my son just joined the Company to lead our Interactive Media effort.

I am testifying for The Rainier Group and the members of The United States Telecom Association (USTA) of which I am Second Vice Chairman.

Our operations include: Mashell Telecom 3800 access line; Rainier Connect: 400 facilities based CLEC customers; 1000 cable television customers; 1000 Internet customers; 2600 long distance customers; MercedNet: Merced, California fixed wireless and CLEC; Ocala, Florida fixed wireless and CLEC; Merced Interactive Media—web content.

We compete with AT&T, Qwest (US West), a myriad of other IXCs and Internet Service Providers. We will soon compete with Pacific Bell and Bell South

We have 50 employees, triple our size since the 96 Act

WE NEED RELIEF FROM REGULATION! (Federal and STATE)

Regulation impedes our growth

Regulatory costs are obscene

There is no "Digital Divide" in our Washington State operation. We provide cable modem service and will roll out DSL to 100% of our service area in the next 90 days.

I am either very bright for developing a data ready network or STUPID for investing millions of shareholder dollars in plant that I must give to "competitors" at below cost rates. When the "Line Sharing" rule was passed by the FCC, I feared I had been stupid. Here is why:

Line sharing is a concept that concludes that since voice services paid for the facility, the incremental cost for someone else to put their DSL and Internet in the unused space is very low.

The concept is flawed because voice service was only part of the business case to support the investment we made. Our average cost per month to provide service in our rural ILEC is $100.00 per month. Our local revenues cover about 20% of the cost and direct support from Federal and State USF pays another 25%. The remain-

ing 55% comes from access revenue. Our IXC customers want access to come down. USF is capped at the Federal level and restrained at our State level. Our State ordered us to reduce access rates. We either need new revenue sources or we need to raise local rates.

We designed our data-centric plant with the plan to reap revenue from end user customers who need higher speed data. It is a higher cost network. Higher speed data is a service only some customers demand. We took the risk of investing more with the expectation that the data users would pay for the service. Anyone can pick their preferred ISP. We just want to be paid for the real cost of connecting at higher speeds. We don't think voice only customers should cross-subsidize high speed data users. Line sharing creates that cross subsidy. HR2420 corrects the problem.

I believe the provisions of HR2420 will allow us to continue to expand our operations. Without the deregulatory aspects of The Bill, we fear that our Washington operations will be severely harmed and expansion curtailed.

Simply stated, a competitor using our facilities at ridiculously low costs, can price their services below ours. Few, if any, of our costs go away. Residual customers will have to pay much higher rates. This is Robin Hood stealing from the poor to give to the rich!

I started our data focused expansion at the same time I rejoined the Company. I never dreamed that regulators would become so unfair and unreasonable. If the current regulatory climate persists I may not be able continue to invest shareholder money in our ILEC beyond the minimum required to meet plain old telephone service (POTS) obligations.1Meanwhile, our competitor, little old AT&T, has little or no regulation or requirement to unbundle their digital facilities. Subsequent to the 9th Circuit Court decision, why should my advanced services be subject to regulation and not theirs?

The elimination of regulation included in this Bill will allow me to better see the future opportunities to expand our services in our Washington operations. Today, the uncertainty and unreasonableness of regulation makes further investment considerably more risky. It took our Company ten years to build a data ready network. Regulatory errors could destroy that in months.

State regulators get many of their misguided notions from the FCC. Further, they are anxious to fill any vacuums created by less Federal regulation. Frankly, they are a bigger threat to our companies than the FCC. Any one of my employees knows better how to meet our customers' needs than anyone in regulation.

HR2420 also provides the RBOCs with the opportunity to provide InterLATA data services. This is a good feature that may allow small ISPs better rates for Internet backbone connections. I note that it does so while still forcing the RBOCs to meet existing criteria for entering the InterLATA toll business. The RBOCs will also have to pursue long distance voice through the 271 process because I know from my own experience you have to offer one stop shopping.

We do have a request into to Mr. Tauzin's office (attached) to modify the ISP co-location language. This language takes into account some challenges our small company members face with accommodating co-location. We do ask inclusion of that language.

Please let market forces work by passing HR2420 with the requested ISP Co-Location Amendment.

Thank you.

Mr. TAUZIN. Thank you very much, Mr. Haynes.

Next, we are pleased to welcome Mr. Dhruv Khanna, the Executive Vice President and General Counsel of Covad Communications, I understand one of the founders of Covad, and you actually helped create it not even in a pinochle game.

We welcome you, Mr. Khanna.

STATEMENT OF DHRUV KHANNA

Mr. KHANNA. Thank you very much. Good afternoon. I am Dhruv Khanna. I am co-founder and EVP and general counsel. I helped start Covad from my living room.

Mr. TAUZIN. If you can get the mike real close, because we have got a recorder who has to pick up your words.

Mr. KHANNA. I recall sending NYNEX an interconnection request from my home fax machine on March 7, 1997.

Thank you, Mr. Chairman, and members of the subcommittee. Thank you very much for the Telecom Act of 1996. But for the Telecom Act of 1996, Covad would not exist.

When the Telecom Act was being debated in Congress in 1995, the first of the Internet stocks, Netscape, went public back in the fall of 1995.

There were a couple of things that we knew. I was in-house counsel at Intel at the time. I knew about the massive demand for bandwidth. I knew about the massive PC penetration into the homes across the United States.

I also knew about the Netscape IPO and about the Internet revolution that we brewing at the time. I also knew about DSL technology, a technology that the local phone companies had hoarded, had put in mothballs, because they did not want to deploy the service that would radically cut their T1 revenues.

The Telecom Act of 1996 allowed us to break into that marketplace and compete with the phone companies, and we have done so reasonably well.

To date, standing here today or sitting here today, Covad provides service to almost 40 percent of all homes and businesses in the United States. By the end of this year, we have gone on record saying it will be 50 percent. By the end of next year, we have gone on record promising it will be 75 percent of all homes and businesses in the United States.

So I am proud to sit here today and state that our footprint, our network deployment exceeds that of SBC's and that of Bell Atlantic with respect to DSL.

While we were busy exercising our entrepreneurial wit and growing our footprint, the phone companies chose instead to merge. There was the No. 2 employee at U.S. West, Mr. Bob Knohling, who decided to quit that company and join Covad as our CEO.

We recently acquired Blue Star, a small data CLEC based in the southeast that competes in rural areas with Bell South.

To give you an idea of our growth, we are today one of the fastest growing companies in the United States. Our quarter-over-quarter line and revenue growth is approximately 40 percent. We did this, as I said, through our enterprise and based on the Telecom Act of 1996.

Our footprint dwarfs that of Bell Atlantic and of SBC. We beat them to marketplace. We were the first to offer two-wire DSL. We were the first to cut prices. We brought prices down for consumers, for example, in the U.S. west territory from $200 a month for ISDM to $20 a month for greater bandwidth.

We are today providing service from almost 2,000 offices nationwide, and we are today the largest national local telephone company. Thirty-three percent of our lines are consumer lines. Even without the implementation of line-sharing, our consumer base has grown rapidly up from 15 percent earlier this year, and by next year we expect to see our consumer business exceed our business business.

Our success has been based on two things that the FCC did in 1999. The first was cageless co-location. The Telecom Act, in several places, speaks about non-discrimination. But, sir and madames, we have been discriminated against.

We were denied cageless co-location by the phone companies upon request. We were denied line sharing which is something that the incumbents use to provide data services themselves. They are able to do so at much reduced costs at a much better price to consumers because they are able to share lines with themselves. Our requests for line-sharing were ignored.

We went to the FCC and were successful in persuading the FCC to take the pro-consumer actions to in fact implement your intent of nondiscrimination by giving us cageless co-location and line-sharing, and those are the two devices that have promoted Covad, have prompted Covad to go into the consumer space, and we shall soon be competing very vigorously with the phone companies and the Cable Modem service using our right to line-sharing, which is something this bill would take away.

This bill would also take away cageless co-location in addition to line- sharing.

If Congress is serious about bringing broadband services to rural areas, what Congress should do is to eliminate the exemption from competition that has been granted to the rural carriers.

And we would also request that Congress take far more seriously the enforcement of the Telecom Act as it exists today. My company has been subjected to not only violations of the Telecom Act, we have had our contracts breached and fraud has been committed on our company as well.

There was a central office in Menlow Park in which Mr. Ellis' company denied us space for over a year-and-a-half. We proved that. We won a $27.5 million verdict from the arbitration and that is the first success that we expect to see in the series of legal actions that we have been forced to undertake to enforce our legal rights.

Thank you.

[The prepared statement of Dhruv Khanna follows:]

PREPARED STATEMENT OF DHRUV KHANNA, FOUNDER, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, COVAD COMMUNICATIONS COMPANY

Thank you, Mr. Chairman for the opportunity to testify today. I am Dhruv Khanna, Founder, Executive Vice President and General Counsel of Covad Communications Company. I have one simple and concise statement to make today: **Thank you.**

Despite the incessant litigation, despite the seemingly endless implementation process, and despite the continuing lobbying battles, **the Telecommunications Act of 1996 is a stunning and startling success.** The Act has touched off a boom in telecommunications infrastructure investment never seen before. Broadband services **are** being deployed to residential consumers nationwide. With regard to DSL, now that firms like Covad can exist and enter the market, there has been a "Copper Rush," as companies vie to sign up as many DSL subscribers as quickly as possible. Today, as I testify here, Covad installation technicians will hook several hundred homes and small businesses to the Internet. And incumbent giants like SBC, according to their General Counsel's testimony yesterday before the Senate Commerce Committee, will sign up between 3,000 and 5,000. To use his words, we can't keep up with demand.

Consumers have been the big winners under the policies of the Telecommunications Act. But H.R. 2420—the Tauzin/Dingell bill—would fundamentally undermine the market-opening, pro-consumer provisions of the 1996 Act and subsequent FCC rules. This bill is not a "technical fix", as I have heard some folks describe it. Nor is this bill directed at promoting broadband deployment in rural areas. Make no mistake—H.R. 2420 is a **direct blow to broadband entrants like Covad.** Rather than "promote deployment," the bill would actually *stifle* competitive deploy-

ment, limit our rights to provide services to consumers—and would even require us shut down our service to many homes. And it will not help most rural areas.

The Covad Story

Covad is the nation's largest competitive provider of broadband DSL services in the United States. Our service is available now in over 70 cities, to over 40 million homes and businesses. That is quite an accomplishment for a company *that didn't exist four years ago.*

Immediately after the Act was signed and the FCC issued implementation rules, I helped found Covad in the Fall of 1996. For nearly a year, we had no money—and while we were arranging for financing, I was negotiating contracts with Pacific Bell, Bell Atlantic and others. I am pleased to report that Covad was the first company in America to deploy DSL on a commercial basis, back in December 1997.

During our founding, I personally had to answer the questions of the investment community related to our legal ability to provide DSL services over leased phone lines. And I had to fight the Bell companies every step of the way—over our legal rights to lease phone lines and provide DSL, over arcane collocation rules, and over delays in DSL loop delivery.

We have aggressively enforced the legal rights Congress, the FCC and commissions gave to us on behalf of consumers. And the signs of our success are beginning to show. For instance:

As of June 30, 2000, Covad has over 139,000 DSL lines installed.

Covad service is now available in 35 states, to over 37 million homes and 4 million small businesses. This represents 38% of American households.

Next year, Covad DSL will be available to **75% of the homes in America.**

Our deployment footprint reaches far and wide. As a residential provider, we must deploy in areas far from urban centers. For example, in the Baltimore/Washington area, Covad's DSL footprint stretches from Manassas to the Eastern Shore, and from Frederick to Fredericksburg.

Competition is occurring in small towns. Covad recently entered into an agreement to acquire a company called BlueStar, a DSL provider that was serving smaller cities in the Southeast—places like Lebanon, Tennessee, and Easly, South Carolina. Other start-up CLECs, like NewEdge Networks, are serving places like Durango, Colorado, and Prescott, Arizona. And NewEdge is just getting started. Entrants like NewEdge, BlueStar and Covad are in these towns well before the Bell companies begin to provide service there.

Our market penetration matches up with the offerings of the telephone companies:

Company	DSL Lines in Service (March 31)
SBC	201,000
Verizon (Bell Atlantic/GTE)	148,000
Qwest (formerly US West)	136,000
Covad	93,000
BellSouth	49,000

We launched a residential DSL service last year and a substantial percentage of our users are ordinary folks at home. Residential users are a key part of our business plan.

Our network build-out proves the genius of the 1996 Act. Indeed, our network relies heavily upon the unbundling and collocation provisions of Section 251 of the Act, and we truly appreciate the efforts of Chairman Bliley, Congressman Tauzin, Congressman Markey, Congresswoman Eshoo, and other members of this Committee and Congress who were instrumental in making sure that those provisions became law.

Broadband Deployment is Happening

Covad and other new entrants took a technology that was stagnating on the shelves of the Bell companies and are using it to breathe new life into the existing copper loop plant. The Bell companies are now following us and other new entrants into these new markets. So rapidly, in fact, that Credit Suisse expects SBC to be adding 15,000 DSL lines **A DAY** by the end of the year.

It is very simple to understand how this would happen. Basic economics tell us that monopolies have the incentive to restrict output of services and raise prices. This is what was happening with DSL technology before the 1996 Act—incumbents were selectively deploying only one form of DSL—called HDSL—and charging businesses upwards of $1000 to $1500 per month for this "T1" service. In the pre-1996,

monopoly era, residential consumers and small businesses were simply priced out of high-speed broadband services. They were restricted to dial-up or perhaps ISDN, which left them out of e-commerce.

As the following table shows, since 1996, the price of residential broadband services has continuously dropped.

Source: "NxGen Data Research—DSL & Broadband Markets, 1999—2005" July 1999

With these price decreases, an entirely new set of small businesses can now afford dedicated, high-speed connections to the Internet. The world of "e-commerce" is now open to the small, local, family-owned flower shop, because it can afford to take orders over the Internet. With a service like Covad SDSL, a start-up graphical design firm can now send large image files to its clients, without incurring huge per-minute ISDN bills. And a software programmer can telecommute from home, and spend more time with his or her family.

In my opinion, Congress should take credit for these steep price decreases and expanded availability of services. The pro-entry provisions of the 1996 Act, and the efforts of the FCC and state commissions to implement those provisions, are changing the lives of your constituents for the better.

H.R. 2420 Will Not Bring Broadband To Rural Areas

I understand that H.R. 2420 is being touted as a solution to the rural digital divide. This is simply not the case. Make no mistake, H.R. 2420 *affirmatively* undermines key principles of the 1996 Act and overrules important decisions by the FCC and the states. This bill is neither a "technical fix" nor a reasonably tailored measure to spur the construction of fiber networks in rural areas—the biggest losers under H.R. 2420 are data CLECs like Covad.

For instance, H.R. 2420 proposes a new section 232(j)(1)(A) of the Act that would **eliminate linesharing.** Linesharing is a vital means of ensuring that competitive LECs can offer broadband services in rural areas, where a second standalone line to the home is often not available. With linesharing, Covad can offer consumers in rural areas—even areas where the incumbent in not offering advanced services—access to broadband capability over the existing voice line. Without linesharing, such rural consumers would have no access to competitive broadband services.

Allow me to make a few additional points. First, as I demonstrated above, broadband *is* being deployed in rural areas. Secondly, there are only four companies in America that are bound by the interLATA restriction: Verizon, Qwest, SBC, and BellSouth. In many cases, these companies do not serve the truly rural areas of a State. Therefore, waiving the Section 271 requirements will do nothing for consumers in those areas because the companies that operate there *already* are free to offer whatever type of service their customers demand. As an example, examine the enclosed maps of Ohio and Minnesota. The Bell company does not operate in the rural areas of the State. It is abundantly clear that freeing the Bells from their Section 271 obligations will not help the rural customers of those states. And competitors like Covad often have no legal right to offer service in those areas.

Remember, any Bell company can operate free from regulation outside of its serving area. Yet to date, not a single Bell company has forcefully entered a market outside its territory. Bell companies are not entering the lucrative urban markets in other serving areas, let alone rural areas.

In addition, and perhaps most importantly, the FCC has adopted rules permitting a Bell Operating Company to request a modification of LATA boundaries in order to provide broadband services in rural communities. The BOC must simply prove to the FCC that no other broadband provider is willing or able to serve that rural market, and that the BOC actually intends to serve the rural community. Again, no RBOC has taken advantage of this rule. Given these facts, I am forced to ask if the Bell companies are truly interested in serving rural America, or if their motives lie elsewhere.

Enforce the Act, Don't Undermine It

Covad operates in the service territory of every Bell operating company and GTE. When we first started this odyssey in 1996, our business plan was fairly simple: buy DSL equipment, collocate it in the central offices of the incumbent, and lease unbundled copper lines from those central offices to our customers. [Along the way, we have struggled with repeated breaches by the incumbents of the Act, FCC rules, antitrust law, and our interconnection agreements with the local telephone companies.] We have been reasonably successful to date in getting the FCC and state commissions to pay heed to our concerns over collocation and loop delivery. These efforts culminated in several significant rulings and decisions in 1999 and this year.

Section 4(b) of H.R. 2420 would affirmatively repeal several of those decisions and would preempt the FCC and states from further addressing competitive concerns that we or other CLECs bring to their attention. I see no redeeming value to that portion of H.R. 2420—all I see is Covad and other CLECs left crippled in the marketplace, unable to grow and succeed.

Even when we get clear rules from the FCC or state commissions, incumbent telephone companies undermine them at every turn. For example—

GTE entered into a interconnection agreement with Covad to provide the 24 hour a day, seven day a week, access to central offices as required by the FCC's rules. GTE subsequently informed Covad that GTE's interpretation of "access" meant that Covad employees could only do work necessary to offer service between the hours of midnight and 4 AM.

BellSouth recently informed Covad that it did not have sufficient collocation space in several central offices to house Covad's equipment, and it rejected Covad's applications for collocation space in those central offices. BellSouth then informed Covad that a smaller amount of space, insufficient for Covad's needs, may be available in certain central offices, and that Covad should submit new applications for smaller space. When Covad requested the central office tours to which it is entitled by FCC rule, BellSouth refused to submit its central offices to inspection, stating that it had not actually "rejected" Covad's collocation applications, but rather had offered a chance at smaller amounts of space. When the FCC intervened, BellSouth not only agreed to provide tours, but relented in advance of those tours and admitted that sufficient space was available.

These are only a few examples of the obstacles that new entrants like Covad must overcome in order to provide service to your constituents. In thinking about enforcing the Act, you must keep in mind that since the incumbent carrier starts with nearly 100% market share, it wins for each day it delays entry. As a result, when an incumbent interprets the legal right of "24/7 access" to mean "between 12 am and 4 am", the onus is now on the entrant to enforce this legal right in any forum possible. Currently, Covad has pending two antitrust lawsuits and multiple state and FCC enforcement proceedings, and enforcement is still not happening fast enough for our end users, and your constituents.

I would also call your attention to the desires of your state regulators. At its annual summer meeting this week, the Telecommunications Committee of the National Association of Regulatory Utility Commissioners (NARUC) adopted a resolution on broadband deployment. Specifically, the NARUC Committee, comprised of state regulators from around the country, called on Congress to leave intact the market-opening provisions of the 1996 Act. In addition, the Committee called on Congress and the FCC to utilize enforcement tools to ensure that Bell Operating Companies and other incumbent LECs satisfy their obligations under existing law to open their monopoly territories to competition, which will guarantee all Americans access to innovative broadband services. Thus, the States are concerned not that existing laws are insufficient to provide consumers access to broadband services, but rather that incumbent monopolists are failing to meet their obligations, delaying competition and denying consumer choice. NARUC calls on Congress to reassert its dedication to competition by ensuring the Act is enforced properly, not by undoing the beneficial market-opening provisions of the Act.

Conclusion

In conclusion, H.R. 2420 would substantially undermine the market-opening provisions of the 1996 Act. New entrants like Covad are building business cases around those market-opening provisions of that Act and are deploying broadband services throughout America to the benefit of consumers nationwide.

Indeed, the model of collocation and unbundling adopted by the 104th Congress is being emulated throughout the world. Earlier this month, the European Commission issued a directive that would require incumbent telephone companies such as France Telecom, BT, and DT to implement local loop unbundling by the end of the year. Interestingly, U.S. local telephone companies *have actually supported* local network unbundling initiatives abroad—advocating as "pro-competitive" the very same rules that they are trying to eliminate at home. In addition, U.S. treaty commitments pursuant to the WTO oblige us to unbundle local networks—a treaty commitment that US trade negotiators are currently seeking to enforce on other WTO member states.

In conclusion, what stands between the competitive industry signing up millions of broadband subscribers is *not* the lack of interLATA "backbone" facilities or the "lack of POPs"—what holds companies like Covad back is the fact that the incumbent local telephone companies have not fully implemented the 1996 Act. I urge you to let competition work. Your constituents will benefit from innovation, greater

choices, and cheaper broadband access. The Telecommunications Act is working; let it work.

Mr. TAUZIN. Thank you very much, Mr. Khanna.

Next is Ms. Cindy Schonhaut. I understand the Executive Government and External Affairs Vice President for ICG. Have you just been promoted?

Ms. SCHONHAUT. No, but last promotion was a tough one to get. It took a while.

Mr. TAUZIN. That is a long title. But welcome and you are recognized for 5 minutes, Cindy.

STATEMENT OF CINDY SCHONHAUT

Ms. SCHONHAUT. Thank you, sir.

I am Cindy Schonhaut and I work for ICG Communications. I am also here representing two trade associations representing competitors, COMPTEL and ALTZ.

ICG is a competitive local telephone company that has actually been around since the late 1980's. We started in Denver, and that is where we are headquartered now.

Myself, I have been in Telecom almost exactly 20 years and 10 of those years, I have worked in local competition. So myself and the company really do both predate the Telecom Act.

Yesterday I was sitting on the Senate side in Senator Brownback's hearing on his broadband deregulation bill, and someone passed me a note and asked me if I could testify here today because a witness became unavailable.

Well, I really did jump out of my chair because I have been wanting to talk to this subcommittee for a really long time, first of all to tell you what I know, and what I have learned in my experience, and second of all, to also thank you, like Mr. Khanna did, for the Telecom Act that you passed, not just because it keeps me employed, although of course I like that, but also because it has done so much for this country and given this country an opportunity to see the economic benefits of competition.

Before the Act passed, there were local competitors. ICG existed. We could provide very few services to very few people in very few places. There was no way our industry was going to survive and really we were not going to be able to thrive at all.

But we opened up the market, and what we did in return, to thank you for passing the Telecom Act, is that we instigated the technological revolution that we have today in telecommunications. It just would not have happened without competition.

And that is why I am sort of puzzled by this bill. Because deregulating the ILECs and the Bell Companies to allow them to provide data services in order to incent and instigate the broadband deployment of more data services does not make sense to me. A monopoly is just not going to do it.

And here is a good example:

When the Act passed, right after the Act passed, Ameritech came to Colorado and got certified to be a local competitor. They never did use that certification. And of course they are not the RBOC there, that is U.S. West.

So Ameritech was thinking of competing in Denver. They never did it. And when they came along and decided to merge with SBC,

Ameritech said, well, we could not have gone to places like Denver because we did not have the critical mass necessary to compete in Denver against U.S. West.

We only had 35 million access lines. When we merge with SBC and we have 65 million access lines, we will have the critical mass to come and compete against U.S. West in Denver.

Well you can only imagine how that is received by investors in my company because we have no critical mass whatsoever. We are there and we are competing. We are struggling, but we are going to make it. And an RBOC cannot even comprehend how to go about doing that unless they have something like 65 million lines.

Mr. Young says the bill will not deregulate services because voice services will remain subject to the provisions of the Telecom Act. But that misses the point.

What is happening right now today is that voice services are fading, they are going to be given away free. I do not know if anybody watched any of the NBA games but NetZero was sponsoring those shows and they said they give away free voice long distance service. It is already here today.

It is going to be given away free and 90 percent of the revenue within 3 years in the telecommunications industry is going to be from data. Data and voice are going to be intertwined. That is what we are talking about today. Voice will continue to be regulated but nobody will be using it. So it is really not a relevant point.

I just want to make one point about the bill, and I am trying to sort of comprehend how I can persuade you to sort of wait out until competition does reach all these places with broadband services.

The problem I see with the bill is that it treats competitors like we are the problem when we really are the solution. And I think we have proven that where we compete now, and we are starting to raise more money and compete further.

I want to speak briefly about interLATA relief. The Bell Companies know exactly how to get interLATA relief. They know how to do it. Even SBC did it in Texas. If the Bell Companies comply with the checklist, they will get interLATA relief, and my company will be able to succeed.

We both want the same goals. We are not in the long distance business. I do not care if they provide long distance service, but I care if they comply with the checklist. And if they do, my company will succeed.

I have the same goals. I will come here. I will be the first to tell you they should be allowed to get into long distance, but they have not made it yet, and it is not in their business interest to meet it unless you make them, and unless the regulators that you rely on also make them.

I will just end by saying:

Congress, you created us. You created my company. You gave us the opportunity. You also have the power to destroy us. And I am worried about that. And I want you to know that we will be able to make it. We will be able to become a profitable industry and survive as long as you do not change the Act.

And I thank you for giving me this time, and I hope that we have the opportunity to discuss this further.

Thank you.

Mr. TAUZIN. Thank you, Ms. Schonhaut.

And now we welcome Mr. Len Cali, Vice President, Federal Government Affairs, for AT&T Corporation.

Mr. Cali?

STATEMENT OF LEONARD J. CALI

Mr. CALI. Mr. Chairman and members of the subcommittee, it is a pleasure to be with you today. Thank you for this opportunity to share AT&T's views.

H.R. 2420 raises an issue of profound interest. We all want broadband services deployed more quickly, more cheaply and more broadly.

The question is how best to achieve this outcome. For the reasons set forth in my written statement, we do not believe that H.R. 2420 is the right approach. As you consider this bill, we ask you to consider in particular the following five points.

First, the marketplace for broadband is working. It is generating unprecedented investment in new infrastructure and services, and giving millions of customers new choices, quality services and lower prices for broadband services.

Today, more than 3 million Americans subscribe to high speed data services up many fold from just 2 years ago.

Analysts estimate that high speed Internet access will be available to 54 percent of U.S. households by the end of this year, and more than 80 percent by 2002.

Dozens of competitive providers have blanketed the Nation with over one thousand high speed DS3 Internet points of presence, and nearly 95 percent of Americans now live within 50 miles of one of these competitively provided POPs.

The cable companies have invested more than $36 billion to date of private risk capital since 1996. And the CLECs have installed 1400 data switches and laid 162,000 route-miles of fiber.

This competition has spurred the incumbent local carriers finally to deploy their decade-old DSL technology. We now hear, for example, as we have heard earlier, that SBC will devote $6 billion to provide 80 percent of its customers with DSL service by 2002.

Verizon, formerly Bell Atlantic, will invest $1 billion per year until 2005 to develop its fiber network. And U.S. West will expand its DSL services to 30 new cities. And while deployment is expanding, prices are plummeting, at least where competition exists.

Bell Atlantic recently announced that it is lowering its DSL rates from $49.95 to $39.95. Other Bell companies have similarly slashed prices. In fact, in one instance, Pacific Bell was charging $89 a month in 1998; today it is charging $39.

And rural customers have not been forgotten. In addition to the efforts of the many competitors, satellite providers are racing to provide high speed Internet access on a national basis.

For example, Pegasus Communications Corporation has announced that, in conjunction with direct PC, it will begin to offer high speed Internet access by satellite to rural households in the fourth quarter of this year. Pegasus goes on to state that the service will enable consumers to obtain high speed Internet connections, "virtually anywhere in the Continental United States, no matter how remote."

There is no public reason to change the rules that have given rise to these benefits.

Second, these facts confirm that the Bell Companies do not need long distance relief in order to deploy broadband services.

Moreover, under the existing law, the Bell Companies hold the keys to any interLATA authority they desire. The FCC grant of long distance authority to Bell Atlantic in New York and SBC in Texas confirms that the requirements of the 1996 Act can be met if the Bell Company will take steps to open its market.

Third, the proposed interLATA relief would undermine prospects for local exchange competition by reducing the Bell Companies' incentives and some of their obligations to open their markets to competition. This is particularly significant because, notwithstanding the growth of broadband competition, the Bell Companies continue to dominate the provision of local exchange services, particularly for residential customers.

Passage of this legislation would particularly hurt consumers in the 47 jurisdictions where the Bell Companies have not yet obtained long distance authority.

If the legislation is enacted, the Bells in those states would have no incentive to open their markets. As a result, competitive investment dollars would flow toward New York and Texas and away from the remaining states where fewer opportunities would exist.

Fourth, the interLATA relief proposed in this bill would not necessarily enhance deployment of broadband in the Internet backbone or anywhere else.

As to the backbone, Bell Atlantic is already affiliated with GENUITY, SBC with Williams, and U.S. West and Bell South with Qwest, all of which are existing Internet backbone providers.

In addition, Bell Companies today can provide connections between their local exchanges and interexchange carriers who can then transport traffic across LATA boundaries.

In this regard, the problem is not the LATA boundaries, it is the inflated prices the Bells insist on charging for those access connections. Nothing in this legislation would change that.

Fifth, even if I am wrong on all of the points, this legislation is overbroad. It would gut the carefully considered incentive-based structure of the 1996 Act in order to enhance the extraordinary broadband deployment that is already occurring. If there is a problem with broadband deployment, the solution should be tailored to the problem.

The FCC has established an expedited process to target LATA boundary relief if a Bell Company can demonstrate that such a modification is appropriate for the deployment of advanced services. Yet, the FCC has not received any requests for LATA modifications under this process.

In short, we respectfully urge the subcommittee to promote continued deployment of broadband that is swift, widespread, and in a commercially reasonable manner by maintaining the competitive incentives provided under the 1996 Act.

Thank you.

[The prepared statement of Leonard J. Cali follows:]

PREPARED STATEMENT OF LEONARD J. CALI, VICE PRESIDENT-FEDERAL GOVERNMENT AFFAIRS, AT&T

Thank you, Mr. Chairman and Members of the Subcommittee, for inviting me here today to share AT&T's views on H.R. 2420, the Internet Freedom and Broadband Deployment Act of 1999. I think that most of us would agree that allowing the competitive marketplace to work is the best way to spur the widespread deployment of broadband facilities and services. As a result of the competition generated by the 1996 Act, we are witnessing unprecedented investment in new infrastructure and services that is giving millions of consumers new choices, quality services, and lower prices for broadband services. The success of these competitive market forces renders this legislation unnecessary. Indeed, the legislation would jeopardize this remarkable success by disrupting the careful balance of the 1996 Act, subverting its incentive-based framework, and undoing the reforms that made this progress possible.

The Broadband Marketplace Is Working

Taking advantage of the new opportunities created by the 1996 Act, and with increasing certainty about what the Act provides, industry participants have devoted tremendous resources and staggering investments to the development and deployment of advanced technologies and services. These participants include cable companies, competitive local exchange carriers, satellite providers, wireless providers, and the incumbent local phone companies. There is, in fact, a broadband race underway that is perhaps the most significant development resulting from the 1996 Act, and one that is having a very real impact on consumers. Prior to enactment of the 1996 Act, there were only a handful of potential local exchange competitors, and incumbent local companies only offered consumers access to the Internet via dial-up access or an expensive T-1 line. Today, as a result of the growth of investment and competitive activity during the last four years, many consumers can choose to access the Internet using competing and high-speed technologies, such as those offered by DSL, cable modems, satellite, and fixed wireless offerings.

The cable industry provides a particularly compelling illustration of how the 1996 Act and the marketplace is supposed to work—and how it is in fact working. Cable had long been viewed as a likely potential facilities-based competitor to local telephone monopolies, because of its widespread deployment of facilities to residential customers across America. Until the Act, however, cable companies evidenced little interest in competing with the local telephone monopolies (and the local telephone companies likewise seemed content to avoid competing in the video distribution business). Because of the 1996 Act, this is now changing rapidly, to the benefit of consumers. Led by AT&T's massive investments, cable facilities are being upgraded and the services offered over those facilities are expanding. Indeed, it is now safe to conclude that cable companies represent the single most promising hope for facilities-based competition in local telecommunications for residential users—precisely as Congress hoped and expected.

In particular, the cable industry has taken a leadership role in bringing broadband offerings to residential consumers and has more than 2 million cable modem subscribers today. Cable modems will be available to 54 percent of U.S. households by the end of this year, and more than 80 percent by 2002.[1] Cable modems provide Internet access at speeds up to 100 times faster than dial-up telephone modems. Since 1996, the cable industry has invested more than $31 billion—and the number is growing everyday—to enable this technology by rebuilding cable plant and making cable facilities two-way interactive systems through the use of hybrid fiber coax networks.[2] Analysts project that 7,500 high-speed cable modem service subscriptions are being added every day in North America, with an overwhelming majority of those in the United States.[3]

Fixed wireless providers, including companies such as AT&T, Winstar, Nextlink, and Teligent also are investing significant resources to develop technologies that will use radio frequency to transmit large amounts of data and permit American businesses and consumers to obtain high speed Internet access. Broadband satellite providers are also competing to provide high-speed Internet access. Gilat-To-Home, in partnership with EchoStar, will begin offering two-way broadband Internet serv-

[1] Morgan Stanley Dean Witter, *The Broadband Report,* May 1 2000, p. 8.

[2] Remarks of James Ewalt, Vice President of Public Affairs, National Cable Television Association, to the Economic Development Forum, Economic Development Administration and the U.S. Conference of Mayors, Albuquerque, New Mexico, June 1, 2000.

[3] C.E. Unterberg, Towbin, *Broadband Communications Providers,* June 14, 2000, p. 8.

ice later this year,[4] and DirecPC is working with a number of ISPs in providing high-speed Internet access service.[5] In fact, Pegasus Communications Corp. has announced that, in conjunction with DirecPC, it will begin "to offer high-speed Internet access by satellite to rural households in the fourth quarter" of this year, that the service will have "full two-way satellite Internet access" beginning in 2001, and that the service "will enable PC users to obtain high-speed Internet connections virtually anywhere in the continental United States, no matter how remote."[6]

In addition, competitive local exchange carriers that have come to be known as "data LECs" or "DLECs" are rapidly deploying DSL technology for high-speed Internet access. (See attached chart of annual investment in infrastructure.) As of June 2000, more than one million Americans subscribe to DSL services provided by competitive and incumbent local exchange carriers, and analysts project that number will exceed 2.1 million subscribers by year's end.[7] The analysts also tell us that DSL service should be available to over 36 percent of U.S. homes by year-end, and 65 percent in 2002.[8] As of the end of the first quarter of this year, three of the top eight DSL service providers are competitive carriers, representing 22 percent of DSL subscribers. Some of these companies, like Covad Communications, did not even exist prior to enactment of the 1996 Act.

All this investment in broadband facilities and services has served as a powerful competitive spur to the incumbent telephone companies, multiplying the benefits of the investment across platforms and services and driving down prices. DSL technology has existed for more than 10 years, but until recently the incumbent monopoly telephone companies had no incentive to deploy it. Spurred by growing broadband competition, however, the incumbent carriers have responded with their own burgeoning DSL deployment in the past 18 months. For example, SBC announced last October that it will devote $6 billion to provide 80 percent of its customers with DSL service by 2002. Bell Atlantic has also announced that it will invest $1 billion per year until 2005 to further develop its fiber network. And just last month, US West announced that it was expanding its DSL service to 30 new cities.[9]

Developing competition is not only driving the incumbent carriers to deploy DSL, but where competition exists, it is also forcing the incumbent carriers to reduce their DSL charges to consumers. Bell Atlantic, for instance, just announced that it is lowering its DSL rates from $49.95 to $39.95 per month. Other Bell companies have similarly slashed their charges, with one Bell company having been forced to reduce its monthly charge from $89 in 1998 to $49 in 1999 and again to $39 in 2000. (See attached chart of RBOCs DSL pricing changes.) While these companies might be commended for these efforts, it is only the growth of competition since 1996—and the prospect of greater competition—that is driving these aggressive rollout strategies and price reductions.

That kind of competitive marketplace response is good for consumers, good for the economy, and good for public policy. Unfortunately, the incumbents' response to this unprecedented competition has not all been to the good. The incumbent monopolies are leading the charge for new regulations that would free them from their market-opening obligations, hamstring new competitors, and otherwise delay or prevent the 1996 Act's promise of local telephone competition.

The bottom line is that market participants in all regions of the country have greatly increased their deployment of various broadband technologies. This competition means more choices and lower prices—clear evidence that the marketplace is meeting the very needs that this bill seeks to address. The deployment to date has required vast sums of capital that companies have been able to raise in the marketplace because of the growing regulatory certainty and framework provided by the 1996 Act. Congress should not jeopardize the further deployment of these technologies nor the competition that exists today by passing legislation that would reopen the 1996 Act and undercut its incentive-based framework.

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[4] Reuters, "EchoStar invests in satellite Net service," CNET News.com (April 10, 2000) <http://news.cnet.com>.

[5] Jim Hu, "AOL Speeds Towards Satellite Service," CNETNews.com (May 31, 2000) <http://news.cnet.com>; Erich Luening, "Juno, Hughes team on Net satellite service," CNETNews.com (July 12, 2000) <http://news.cnet.com>.

[6] "Pegasus to offer satellite internet access," (July 20, 2000) <http://www.direcpc.com/consumer/scoop/pr14.html.>

[7] Telechoice, *One Millionth DSL Customer!!!*, June 6, 2000; *see also* C.E. Unterberg, Towbin, Broadband Communications Providers, June 14, 2000, p. 7 (DSL Line Chart).

[8] Morgan Stanley Dean Witter, *The Broadband Report,* May 1 2000, p. 8.

[9] US West News Release, *US West Jumps Out of the Blocks in the Race to Speed Super-Fast Internet to Mass Market-30 New Cities, Hot Multi-Media Portal & World's Fastest Man,* June 19, 2000.

InterLATA Data Relief Is Not Necessary for the Deployment of Broadband Facilities and Services

Just as the market, under the auspices of the 1996 Act, is fostering competition in the deployment of broadband facilities , interLATA data relief is also not necessary to ensure adequate investment in broadband backbone facilities. There are ample backbone facilities throughout the United States and a wide variety of companies, including Qwest, Level 3, Williams, Cable and Wireless, Global Crossing, and NEXTLINK, that are currently adding fiber and deploying new transmission technologies to expand the capacity of existing networks. For example, Qwest recently announced that it had completed construction of an 18,500 mile fiber network connecting 150 cities in the United States.[10] Level 3's high-speed network has over 16,000 miles of fiber optic lines and connects 50 U.S. cities.[11] In 1999 alone, twelve new companies began providing national Internet backbone services, for a total of 46 providers in the United States.[12] There is no support for the claim that section 271 is somehow depriving the country of needed backbone capacity.

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 (as depicted in the attached maps of the United States). 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.

In all events, this legislation is unnecessary because, under current law, the BOCs themselves hold the key to obtaining the authority to provide any long distance service by opening their local markets to competitors. For example, in December, the FCC granted Bell Atlantic permission under Section—271 of the Act to provide interLATA service in New York. More recently, the FCC also granted SBC approval to provide interLATA service in Texas. 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 immediate interLATA data relief without regard to the development of local competition would harm the very competition that Congress is seeking to promote. As this Subcommittee 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 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 travelling 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 did not understand and intend for the interLATA restriction to extend to broadband or advanced data services. Even Section 271 itself acknowledges and accommodates concerns with Internet access. Specifically, Section 271(g)(2) of the Act carves out incidental interLATA services that may be provided by the BOCs without FCC approval, including "Internet services over dedicated facilities to or for elementary and secondary schools." These were the only Bell company Internet services that were exempted from the interLATA restrictions of Section—271. Other provisions of the Act, such as Sections—230 and 254(h)(2) and associated conference report language, also acknowledge and accommodate concerns relating to the "Internet" and "advanced services."

Too much remains to be done for Congress now to reopen the Act and remove or lessen the incentives provided by Section 271. The Bell companies and GTE continue to dominate the local exchange market, particularly 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, H.R. 2420 would substantially reduce the likelihood that this dominance will end.

In particular, passage of this legislation would harm consumers in the 47 jurisdictions where the Bell companies have not yet sufficiently opened their local markets

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

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

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

to obtain interLATA authority. Recent press reports indicate that other Section—271 applications may soon be filed.[13] 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.[14]

The bill's attempt to "limit" the interLATA relief to data transmissions would, moreover, be unavailing. With the growth of services like IP telephony, the functional distinctions between "voice" and "data" services will start to break down. From a practical standpoint, even if the distinction remained clear, there is no effective way to determine whether the BOCs are transmitting only interLATA data. The data "exception" 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.

Weakening the ILECs' Obligations to Provide Unbundling and Permit Resale Are Not Necessary to Encourage Them to Deploy Last Mile Broadband Facilities

The aggressive deployment of broadband facilities by a wide range of providers confirms that, notwithstanding their claims to the contrary, the Bell companies do not need regulatory relief to encourage them to deploy last mile broadband services. Under the spur of competition—indeed, only under the spur of competition—the Bell companies are already investing in broadband facilities and services. There is no evidence that the ILECs' obligations to provide unbundled network elements and permit resale of services has hindered the deployment of advanced facilities and services. To the contrary, full implementation and enforcement of Sections 251 and 252 are necessary to promote the widespread and rapid deployment of broadband services by competitive LECs. And there is no evidence that the 1996 Act or the regulatory structure built upon it has discouraged the ILECs from investing in broadband facilities. Indeed, as I detailed above and FCC reports confirm, the ILECs are investing substantial sums in broadband technologies in response to the competitive forces unleashed by the Act.

Significantly, under the FCC's existing rules, ILECs generally are not obligated to offer unbundled access to packet switching and advanced services equipment, including digital subscriber line access multiplexers ("DSLAMs") and routers used to provide DSL service. Although AT&T disagrees with the FCC's legal and policy determinations in this regard, it is clear that the FCC has provided the ILECs significant regulatory freedom in connection with advanced services and facilities. Extending such an exemption even further, to facilities that are used both to provide basic telecommunications and advanced services—as the bill would do—would permit ILECs to leverage their legacy market power in basic services to achieve dominance in the provision of advanced services, by denying competitive carriers access to these facilities. These are not hypothetical concerns. Pacific Bell has been required by an arbitration board in California to pay competitive DSL provider Covad Communications $27.2 million because the ILEC violated the Communications Act by failing to timely deliver collocation space and operable loops.[15] In Texas, another arbitration board ordered Southwestern Bell to begin processing Covad's and ACI's requests for DSL provisioning immediately and ultimately imposed a $850,000 fine on Southwestern Bell for abuse of the arbitration process.[16]

As written, the bill could ultimately exempt even the most basic network elements from the 1996 Act's market opening requirements, if these elements are used to provide high speed data services. Such a result would undermine one of the corner-

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[13] Communications Daily, *Bell Companies Predict Increase in Sec. 271 Applications,* July 10, 2000.

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

[15] Covad News Release, "Covad is Awarded $27.2 Million in Arbitration Against Pacific Bell," May 16, 2000.

[16] John Barland, "SBC Record Dump Draws Feds' Probe," CNETNews.com (November 8, 1999); Covad News Release, "Businesses and Consumers Win in Minnesota and Texas," December 2, 1999.

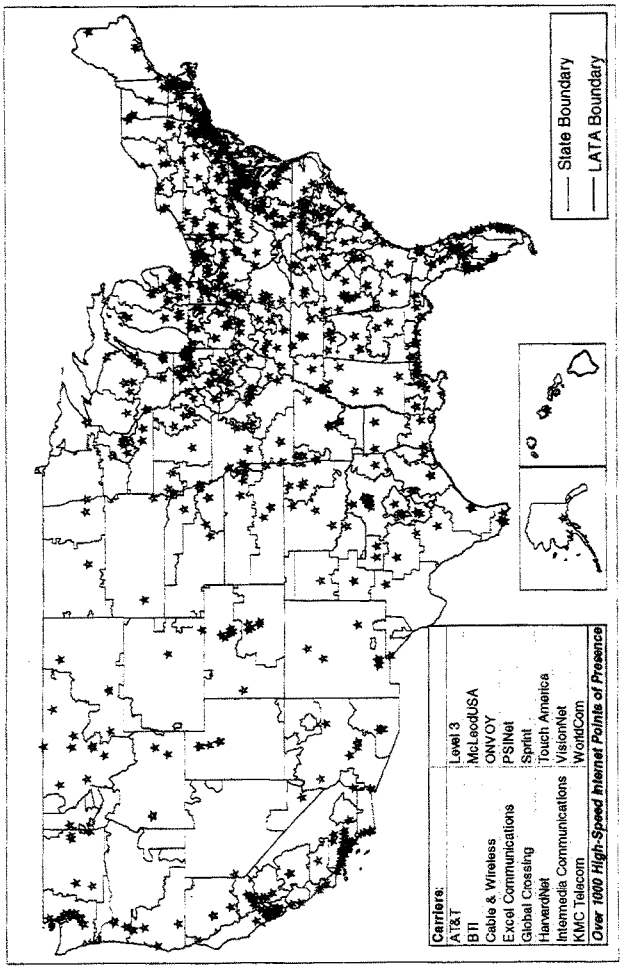
stones of the Act, by enabling incumbent carriers to avoid the fundamental obligation to open up their networks to competitors. Consumers should not, and as described earlier need not, be forced to pay such a high price for the deployment of advanced facilities and services.

Conclusion

The marketplace for broadband offerings is working. Increasingly, consumers throughout the Nation are enjoying the new technologies and lower prices for broadband services that competition provides. As a result, there is no need for this legislation. Moreover, because the Bell companies continue to dominate the provision of local exchange services, 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, and that have led to the burgeoning broadband competition that we are witnessing today. There is no public interest reason to do this. Rather than eliminate the most important incentive for the Bell companies to open their local markets, Congress should give the process that it established in the 1996 Act an opportunity to continue to work.

High Speed On-Ramps to the Internet

94.7% of Americans live within 50 miles of a High-Speed Internet Point of Presence

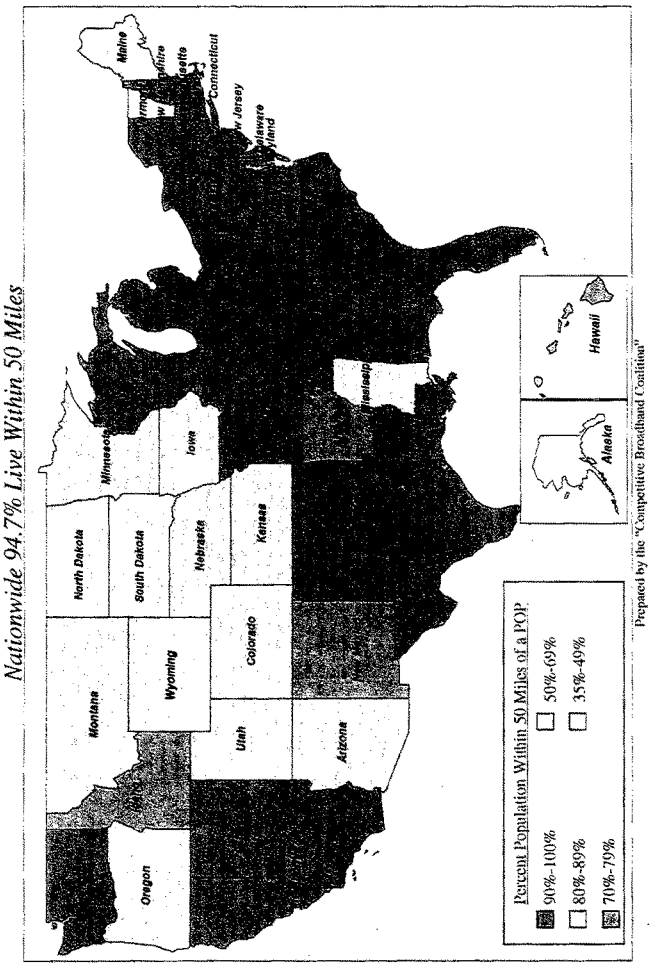


Prepared by the "Competitive Broadband Coalition"

June 15, 2000

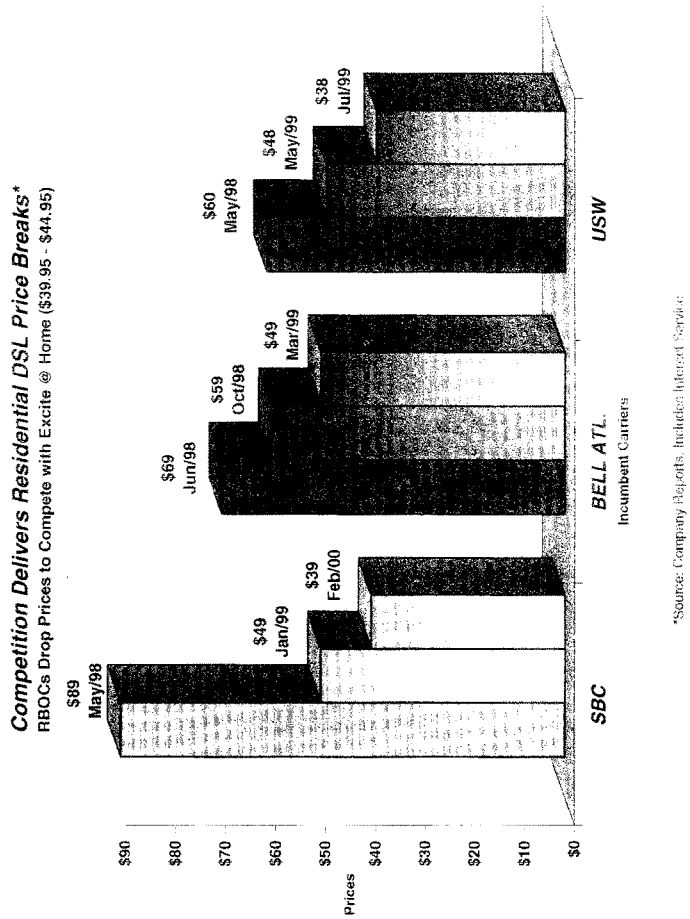
% of Population Within 50 Miles of a High-Speed Internet Point of Presence

Nationwide 94.7% Live Within 50 Miles



Prepared by the "Competitive Broadband Coalition"

June 15, 2000


Competition Delivers Residential DSL Price Breaks*
RBOCs Drop Prices to Compete with Excite @ Home ($39.95 - $44.95)
$89 May/98
$49 Jan/99
$39 Feb/00
$69 Jun/98
$59 Oct/98
$49 Mar/99
$60 May/98
$48 May/99
$38 Jul/99
$90
$80
$70
$60
$50
$40
$30
$20
$10
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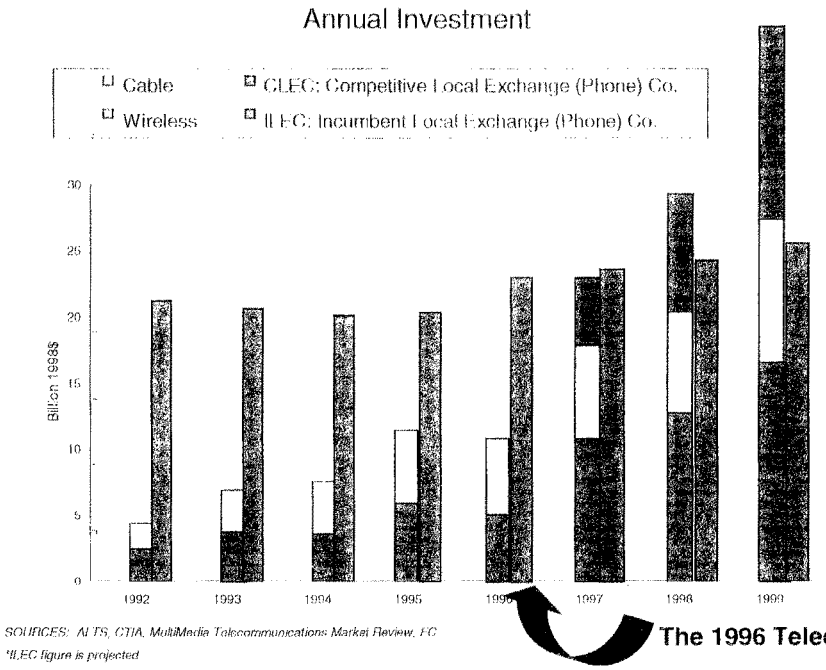
Prices
SBC
BELL ATL.
USW
Incumbent Carriers
*Source: Company Reports, Includes Internet Service

Competition Drives Infrastructure Investment



SOURCES: Al TS, CTIA, MultiMedia Telecommunications Market Review, FC

**ILEC figure is projected*

Mr. TAUZIN. Thank you very much, Mr. Cali.

And finally, Mr. Steve Pociask, Executive Vice President and Chief Economist of Joel Popkin & Company here in Washington, DC.

Mr. Pociask?

STATEMENT OF STEPHEN B. POCIASK

Mr. POCIASK. Mr. Chairman and members of the subcommittee, thank you for inviting me here today to give my views on the Internet market and broadband competition.

In our study, entitled "MCI WorldCom's Sprint Toward Monopoly" published by the Economic Policy Institute, Dr. Jack Rutner and I find InterLATA data restrictions to be a barrier to entry, in effect contributing to the concentration of the backbone market.

The first chart in my written testimony, over here to the side of the room, by various measures, show that much of the Internet is in the hands of a few backbone providers.

That is not due to the lack of desire among potential entrants. In general, barriers act to maintain market power, restrict supply, and increase market prices.

Our study finds evidence of anticompetitive effects in the Internet backbone, and I would direct you to my written testimony for examples of rejected orders of high speed circuits, degraded service quality, price discrimination and problems with cooperative interconnection.

These problems negatively effect small ISPs, rural ISPs, and ultimately their customers. Now, do not get me wrong. Big can be good.

And if you look at the second chart here.

[Charts shown.]

Mr. POCIASK. When increases in the volume of production lead to falling per-unit costs, large firms can be more efficient. This is commonly referred to as economies of scale.

However, as the next chart shows, the reality is that prices are upward sloping with respect to size, not downward sloping, as you would expect in a competitive market.

This is the result of network effects where dominant backbone providers have no incentive to cooperatively interconnect with smaller ISP networks.

Since large backbone providers see their networks as more valuable, they demand higher prices from smaller backbone providers and ISPs. Thus, large Internet backbone providers have an advantage, not from productive efficiencies and not from economies of scale, but from their ability to extract value from not interconnecting with smaller firms on equal terms.

These network effects lead to tipping whereby large firms stay large and small firms stay small. The interLATA restrictions contribute to this problem by limiting supplier choice.

The final piece of evidence that the market is not competitive is demonstrated on the last chart, which shows the super normal profits of the large three interstate backbone companies.

This chart shows that the earnings-to-assets ratio has been going up rapidly, compared to that of other non-financial corporations.

In economics, high profits normally attract entry and lower prices, but this is not the case of the interstate backbone market of voice and data where interLATA restrictions prevent market entry.

So I ask you, does this look like an industry that needs protection? H.R. 2420 will encourage the RBOCs to invest in backbone facilities and interstate points of presence.

Interestingly enough, what I see is that once these investments become sunk, the desire to leverage their presence beyond the local market into a full range of telecommunications services should increase.

Therefore, the RBOCs will urgently seek Section 271 approvals. After all, the $105 billion long distance market is a much greater prize in the smaller $6 billion wholesale broadband market that we see in the backbone.

As fast as the Internet market is growing, the market is big enough for all comers. As far as local competition is concerned, the State regulators still have Section 251 to open things up.

Consumers should have more choice. Having interLATA data relief gives customers choice, and that is why I support H.R. 2420. Permitting full ownership of investments will keep costs lower and lead to higher broadband penetration.

Let me explain to you why low regulatory costs are very important here.

Broadband services appear to be much more price-sensitive than telecom services, like local services. What that means is that small increases in taxes or regulatory costs will have large decreases in economic benefits. They can have very big impacts in reducing the number of subscribers.

On the other hand, reductions in regulations, such as those proposed in H.R. 2420, will have large stimulative effects and therefore huge economic benefits or consumer benefits.

You have seen the empirical evidence today. Regulations need to stop protecting competitors. Instead, they need to promote competition and the market will do the rest and consumers will benefit.

In closing, I support H.R. 2420.

Thank you.

[The prepared statement of Stephen B. Pociask follows:]

PREPARED STATEMENT OF STEPHEN B. POCIASK, EXECUTIVE VICE PRESIDENT AND CHIEF ECONOMIST, JOEL POPKIN AND COMPANY, WASHINGTON, DC

Mr. Chairman and members of the subcommittee, thank you for inviting me here today to give my views on the Internet market and broadband competition.

Strong Demand with Restricted Supply

The Internet economy is growing by some reports at 1000% per year, fueling economic expansion, job growth and productivity improvements. Internet Service Providers (ISPs) provide consumers with access to entertainment, communications and information in the form of data or news. The problem with the Internet does not stem from a lack of demand, but a problem with supply in the Internet backbone. Let me explain.

The current interLATA data restrictions on the RBOCs result in reduced market entry. In general, barriers to entry concentrate capacity in the hands of a fewer producers. This leads to supply shortages and usually results in price increases. This is exactly what Dr. Jack Rutner and I have observed with respect to the Internet backbone market, in our book entitled "MCI WorldCom's *Sprint* Toward Monopoly" and published by the Economic Policy Institute. Specifically, we find that interLATA data restrictions are, in effect, entry barriers that support the concentration in the

backbone market, maintain market power, lead to restricted supply, and likely higher prices to ISPs and ultimately consumers.

Besides higher prices, Internet consumers are not getting the quality services they desire. Estimates show that consumers are spending nearly one-third of their time waiting for computer screens to fill. Consumers are abandoning their online shopping carts, disconnecting, reconnecting and reloading screens. It's a little reminiscent of long lines in the old USSR. There's lots of demand, but supply is controlled and regulated.

Market Barriers Always Hurt Consumers

The justification for the barriers is not based on enhancing consumer benefits. It is based on protecting competitors. It is also not based upon normative economic evidence—there is no empirical evidence to support these regulatory barriers to entry. Instead, it originates from an archaic regulatory mindset that comes out of a consent decree placed upon AT&T eighteen years ago. That decree divested, most notably, AT&T's circuit switched voice telecommunications operations based on whether or not voice traffic remained within designated geographic boundaries. That distinction of local and long distance for circuit switched voice traffic is still in use today, at least in the U.S. Amazingly, the distinction is being used to justify the entry barriers for the RBOCs into new markets, while no restrictions apply to AT&T.

In general, an Internet online session does not require a telephone to call out. It does not require a circuit-based switch. It does not even require a called-party at the other end. Unlike toll, it does not result a billable conversation minute. It is not a toll service.

The result of interLATA data restrictions is evident in a highly concentrated Internet backbone market. The first chart shows the high concentration for frame relay services and for ATM services. These are services that are provided to predominantly large business enterprises. The chart also shows the high concentration in the Internet backbone market, as measured by the market share of ISP connections and backbone revenues. In short, by the various measures shown here, much of the Internet backbone is in the hands of a few providers. This is not due to a lack of desire among potential entrants. It is not market failure. It is the interLATA data restrictions that have contributed to the concentration in the Internet backbone market.

Chart 1: Internet and Data Market
Largest 3-Firm Concentration

	Percent Share
Frame Relay Revenue	93.3%
ATM Revenue	98.6
Backbone Connections	72.2
Backbone Revenues	64.6

DOJ estimates the Top-2 IBPs have 53% share

This market concentration is significant. By calculating industry concentration indexes and using the Department of Justice's (DOJ) Guidelines, we find the data backbone market to be highly concentrated, as defined by the DOJ. This conclusion reflects today's market conditions and is consistent with the DOJ's recent complaint regarding the MCI WorldCom proposal to merge with Sprint.

Concentration can lead to anti-competitive effects, particularly when entry barriers prevent the market from being contestable. High prices, restricted demand and increased profits are all symptomatic of anti-competitive effects.

There is mounting evidence that large Internet backbone providers place strict conditions for interconnection to smaller ISPs. Large Internet backbone providers charge smaller ISPs for interconnection, provide smaller ISPs with lower quality of service and price discriminate against smaller ISPs. In our study, we cite some of this evidence, including that large Internet backbone providers provide poor service quality, delay service repairs and reject orders for high-speed connections.

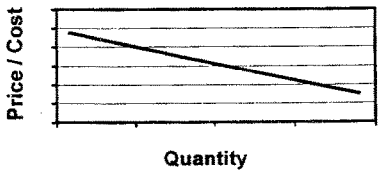
As for cooperative interconnection, we conclude that larger Internet backbone companies are reluctant to interconnect with smaller ISPs. While providing free-peering among themselves, large Internet backbone companies charge smaller ISPs for transit, and smaller ISPs who can't pay the transit must complete their traffic at congested public peering points. Those that pay transit charges often complain

about degraded services that sets them apart from the services provided by the Internet backbone provider's own ISP. In our study, we quote a Yankee Group report that one ISP claimed to have 50% of its DS3 orders rejected and another ISP cited delays in OC-3 orders that exceed three-months.[1] In short, congested Internet service, higher circuit costs and lack of capacity, keep smaller ISPs small. Furthermore, rural customers are less likely to have access to high-speed hubs and their ISPs tend to pay more for connections to the Internet.

Are Large ISPs Just More Efficient?

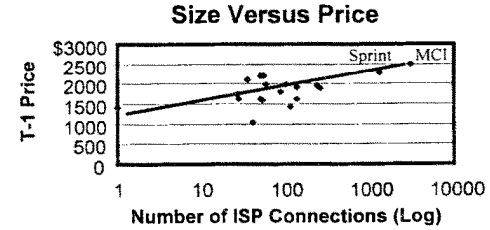
Let's take a look at Chart 2. When increases in the volume of production lead to falling per unit costs, large firms can be more efficient. This second chart shows what is commonly referred to as economies of scale. In this case, Internet backbone firms that connect more ISPs to the Internet can have lower costs per connection. If this were the case and if the market were sufficiently competitive as some claim, then prices should be normally aligned with costs. Therefore, we should expect to see larger firms with some price advantage, which would possibly explain how these large backbone providers continue to hold onto their market share.

Chart 2: Economies of Scale Should Lead To Lower Costs and Prices



However, as Chart 3 shows, the reality is that prices are upward sloping with respect to size, and not downward sloping, as we would expect in a competitive market. This is the result of "network effects" where dominant backbone providers have no incentive to cooperatively interconnect with smaller ISP networks. Since large backbone providers see their network as more valuable, they demand higher prices from smaller backbone providers and ISPs. Thus, large Internet backbone providers have a cost advantage not based on productive efficiencies and not based on economies of scale, but the ability of dominant firms to extract value by not interconnecting with smaller firms on equal terms. These network effects lead to "tipping" whereby large firms stay large, and small firms stay small. Thus, larger Internet backbone providers can charge ISPs more for Internet connections and not worry about losing market share. This is market dominance. The interLATA data restrictions contribute to this problem.

Chart 3: Network Effects Are a Significant Barrier to Entry

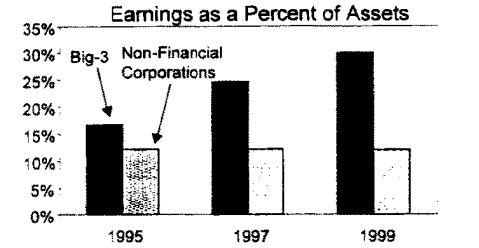


The final piece of evidence that the market is not competitive is demonstrated in the last chart, which shows the supernormal profits of the largest three interstate backbone companies. We show earnings (measured in what Wall Street analysts call EBITA—earnings before interest, taxes depreciation and amortization) on tangible

[1] *MCI WorldCom's Sprint Toward Monopoly,* Stephen Pociask and Jack Rutner, Economic Policy Institute, Washington, DC, 2000, p. 27.

assets compared to non-financial corporations. Chart 4 shows that the earnings-to-assets ratio has been going up rapidly compared to that of other non-financial corporations, whose rates of return have been essentially flat in the same period. In economics, profits attract new entrants and should result in lower prices that bring returns toward normal levels. But this is not the case for the interstate backbone market (voice and data), where interLATA restrictions prevent market entry.

Chart 4: Big-3 Have Increased ROAs Relative To Other Corporations



H.R. 2420 provides for interLATA data relief. The passage of the bill will encourage the RBOCs to invest in backbone facilities and interstate points of presence. Interestingly enough, once an RBOC invests, its costs become sunk, and so the desire to leverage its presence beyond the local market and into a full range of telecommunications services should increase. If that is true, then the RBOCs will want Section 271 approvals more urgently than before, rather than less urgently. After all, a $105B long distance market is a much greater prize than a smaller $6B wholesale backbone market. In any case, as far as local competition is concerned, state regulators will use Section 251 to keep the RBOCs firmly moving toward open markets, regardless of their investment decisions.

What's the Worse that Can Happen?

Let's say, hypothetically, that the RBOCs turn out to be miserable failures as an Internet backbone provider. Then, there is no harm done to consumer or existing producers. So there is no risk to the market if the RBOCs are inefficient, have high costs or provide low quality of service. In the end, the market will determine the efficient quantity and price.

Let's examine the other extreme. Let's say the RBOCs are wildly successful and consumers demand their services. The result would be a dramatic increase in consumer benefits. This can only happen if the existing firms currently charge higher prices or have poor service quality. Why protect the inefficient at the expense of consumers?

The fact is that the demand for Internet service is growing at 1000% per year by some accounts. So the existing backbone companies will have plenty of opportunity to win over customers, regardless of how the RBOCs ultimately fare. Keep in mind that the RBOCs have 0% market share in the Internet backbone market and pose little threat to efficient providers. At this growth rate, the market is big enough for them all.

In Summary, Put Consumers First

Total consumer welfare can only increase when competition increases by natural market forces. Consumers should have more choice. Having interLATA data relief gives customers choice and that is why I support H.R. 2420. Regulations need to stop protecting competitors. Instead they need to promote competition. The market will do the rest and consumers will benefit.

In closing, I favor competition for determining market share and production decisions, and I oppose rules that preordain winners and losers. Therefore, I support H.R. 2420.

Mr. TAUZIN. Thank Mr. Pociask.

The Chair recognizes himself and members in order for 5 minutes.

Let me first of all make the argument, Mr. Pociask, the opponents of 2420 made.

And that is, even though the bill specifically retains the requirements on the Bell Companies that they open up their markets in order to get into the long-distance market, which as you point out is worth $105 billion, even though the incentives are still in the bill to open up the market to get to this $105 billion long distance market, they argue that if we give interLATA data relief through this bill that somehow this $6 billion wholesale backbone market is going to eliminate the incentive for the Bell companies to continue their progress on 271 petitions and open up their local markets.

You say that is poppycock.

Mr. POCIASK. In fact the opposite may be true because——

Mr. TAUZIN. Could you pull the mike a little closer, Mr. Pociask, so we can hear you?

Mr. POCIASK. In fact, the opposite may be true because once you begin building out interstate facilities and points of presence, the want to provide the full range of services increases. So to that extent it may be an incentive to build out.

Mr. TAUZIN. Your argument is that once they have sunk all the money they have to sink into building Internet backbone facilities for the broadband market that currently is worth considerably less than the long distance voice market, that they will be incentivized to maximize profits from that investment by completing their efforts to get 271 relief?

Mr. POCIASK. That is exactly right.

Mr. TAUZIN. And therefore the bill will actually serve as an incentive for the Bell companies to continue opening up their local markets.

Is that right?

Mr. POCIASK. That is right.

Even if it is not the case, 251 is still there to make sure Mr. TAUZIN. It is still there.

You make a heck of an analogy in your written statement. I want to read it.

You indicate that fully one-third of the customers today are spending fully one-third of their time, rather, waiting for computer screens to fill because they are at low speed and cannot get high speed services.

And you make a point that customers are abandoning their online shopping carts, they are disconnecting, reconnecting and reloading screens. It is a little reminiscent of the long lines in the old USSR. Lots of demand but supply is controlled and regulated. Big lines at the supermarkets but no cabbage or potatoes in the store.

Mr. POCIASK. Thirty-one billion dollars of lost time is taken up on the Internet.

Mr. TAUZIN. And you also conclude, in your economic review, that the current interLATA data restrictions are entry barriers that support the concentration of ownership in the backbone, which you point out is very high.

They maintain market power in those concentrations and they lead to restricted supply, likely higher prices to ISBs, and therefore ultimately to consumers.

Do you conclude that this bill is very definitely pro-consumer?

Mr. POCIASK. Absolutely.

Mr. TAUZIN. Let me turn to you, Mr. Cali, to questions submitted by a colleague who cannot be here, and he asked me to ask it of you:

In your testimony, you argue in favor of each of the regulatory requirements, including the interLATA data restrictions that currently exist in the law this bill would repeal. You argue that the ILECs should continue to face them until they finally get 271 relief.

The question is. As the industry increasingly converges around similar products and services, you, AT&T, are in fact providing many of the same services to your own customers by cable modem but you are not saddled with the same regulatory burdens.

And the question is. If you do believe that the presence of these regulations is essential for the Bell companies, why wouldn't you want those same regulations applied to your company when you provide the very same services?

Mr. CALI. Okay. Let's look at why the regulations were applied.

But if I may, first, so we are careful not to overstate the regulatory burden on the Bell companies, let me make clear that the FCC has been very careful to ensure that there is some flexibility for the Bell companies when providing advanced facilities and services.

Consequently, packet switching and data facilities, such as the D-SLAM, are not subject to the unbundling obligation. And when a Bell company provides advanced services through a separate subsidiary, it is treated like a CLEC in terms of obligations.

With that said, you are quite correct. There are a number of obligations imposed on the Bell Company designed to open their local telephone markets to competition. Those obligations were imposed in an effort to erode a near century old, very resilient monopoly, one that persists to this day; that is, a good public policy goal.

The long distance restriction, in particular, was needed to provide incentive to the Bell companies to give up this monopoly, to provide them some reward for opening their markets. These are good goals.

In addition, when on recognizes, as Verizon has done in New York and SBC has done in Texas, that the path to parity, or the keys to long distance relief lay with the RBOCs, and that those keys will also unlock the local telephone markets to competition, there is good public policy reason to pursue those goals.

Mr. TAUZIN. And so you think they still ought to be applied to the Bell companies but not to AT&T when it provides the same service.

I just want to make a point because my time is up.

Mr. CALI. Sure.

Mr. TAUZIN. I had this conversation with FCC officials just recently.

I think we can each draw our own conclusions from the New York and Texas experiences. It is possible, as Chairman Bliley did, to conclude that finally the Bell Company in New York and Texas opened up their markets enough for the competitors to really go after the residential customers finally, and therefore they are doing it today.

It is equally possible to conclude that competitors who could have gone after the residential customer withheld doing so until they had to, until it was very clear that the Bell Company was going to get its relief in Texas and in New York. And therefore this question arises, and I will just leave it as a rhetorical question for the record, because my time has expired.

If in fact, when 271 relief is finally granted on voice, which is a bigger market as Mr. Pociask points out, the competition really heats up at that point.

If I am right in my conclusion, and if the FCC speeded up the process of 271, we would already have healthy competition for residential customers going on right now, because you guys would have to be competing in all markets.

I think Mr. Pociask is equally correct, that if we are smart enough to pass this bill, we are going to get more incentives for full blown competition, not less, because that is the nature of removing barriers to entry.

Mr. Pociask, I think you put your finger on it. Entry barriers protect competitors, they do not protect consumers. There is no case I can make for keeping stores out of my town in an effort to protect my consumers. I can make a huge case for bringing more stores and more competition into my town. But I find it very difficult to argue in preserving restrictions on one competitor, helping my consumers get a better deal. That is the problem with the current law.

And I finally want to say, if, in fact, we are really going to get 271 relief over the next 12 months to 18 months for everybody in America, as the FCC is now saying is possible, if that really is going to happen, then it is time for us to cut this thing lose and let competition flow.

The Chair will yield to the gentleman from Texas, Mr. Green, for a round of questions.

Mr. GREEN. Thank you, Mr. Chairman.

I was surprised I was the only Democrat left here.

Mr. TAUZIN. Let me again say, I want to recognize again that we have excused members to attend that memorial service. And I want to apologize to any members who had to leave and could not hear this testimony but we were obliged to do so because we have some witnesses who have schedule arrangements, and I wish you would convey that to any member who might have been offended by our decision.

Mr. GREEN. No problem, Mr. Chairman. In fact, for our colleague on our committee, Bart Stupak, there is a memorial service, although I was actually on the floor on the rule a few minutes ago, and I appreciate the forbearance of our panel.

Mr. Ellis, first I want to congratulate you on SBC's 271 application and hopefully your approval will be used as an example for future 271 applications and allow the FCC to expedite what so far has been a very laborious approval process.

And I know the committee shares that desire, having watched that experience.

In reference to your 271 approval in Texas, if H.R. 2420 had passed say to 2 years ago, and you were given the ability to cross the interLATA boundaries, would you have still gone ahead with your 271 application?

Mr. ELLIS. Absolutely, Congressman.

I think it has been discussed here that we have no choice under the law but to open our networks. But beyond that we have a tremendous incentive to pursue the voice market, not just because in and of itself there is $100 billion there in revenues, but it is an essential to our ability to market our full range of services to offer the complete package, the one-stop shop. That is what is driving our industry.

Mr. GREEN. That takes care of my next question. And while we are on that topic of long distance, are consumers currently able to purchase software that allows them to make long distance calls through their personal computer?

Mr. ELLIS. Yes, they are, they do, and of course they bypass the whole regimen of access charges, and that is a reality today.

Mr. GREEN. I know Chairman Kennard recently stated this ability to make these long distance calls over the Internet is one of the main reasons not to give interLATA relief.

What is your response to Chairman Kennard's solution?

Mr. ELLIS. Well, my response is that with respect to the world of data and data high speed advance services, there is no bottleneck. It was not contemplated under the Act. The CLECs are seeking to take an unfair competitive advantage of the Act that did not contemplate DSL, did not contemplate the growth in the Internet, and that ultimately the high speed access is something that is going to happen, and the question really is whether particularly the rural areas are going to be denied that benefit for some period of time, or whether they are going to enjoy the same benefits that the urban and less rural areas are.

Mr. GREEN. Thank you.

Mr. Young, I know my staff Mr. Chairman, I understand we had a difference on the pronunciation of the new Bell Atlantic, but at least in my area of Texas, GTE is now Verizon? Is that correct, Mr. Chairman, how we pronounce it?

Mr. TAUZIN. We have got several variations here if you want to play with it.

Mr. GREEN. Okay.

Mr. TAUZIN. Verizon is correct.

Mr. GREEN. Verizon, okay. Sounds pretty good until our colleague the ranking member comes back. In Massachusetts, I have always had trouble with some of their pronunciations.

And my California folks have trouble with mine.

To date, the FCC has approved the two 271 applications, taking into account the length of time the FCC has needed to complete their reviews, do you believe that the FCC is capable of completing more than one 271 each year?

And again, coming from the Bell Atlantic arm of Verizon?

Mr. YOUNG. Yes. I believe they are capable of handling more than one application at a time. Otherwise it would take about 9 years to get through, literally, if they were to handle one right after the other in the statutory period.

Mr. GREEN. And then it would be time for us to do another Telecom reform act.

Mr. YOUNG. Well, there's be the Internet 3 or something at that point.

I do believe that they have the ability to do that and that is why I am confident that the 271 process will go forward for voice.

It is a large market, $100 billion plus. Our customers require us to be full service providers. That is, to offer local, long distance, wireless, and data all in one convenient form for them to use and to be billed for.

So there is a tremendous incentive to continue the 271 process. We believe that the template has been identified. We have two examples of it. New York and Texas. We are going to be filing in Massachusetts and Connecticut this year, and then we will be able to roll that template along into other states.

So I am quite confident that the 271 process will continue.

Mr. GREEN. Thank you. Mr. Chairman, I yield back my time.

Mr. TAUZIN. I thank the gentleman.

The gentleman from Florida, Mr. Stearns, is recognized for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. Khanna and Ms. Schonhaut, this question is for you.

When we passed the Telecom Act, we talked about the 14 points that the Bell Operating Companies would have to comply with before they get into long distance.

And over the years, they found that the FCC has increased these points beyond the 14 and, depending on which State you go in, the public service commission has made additional requirements.

So what would you say to the argument that they are having trouble complying with the 14 original points in the Telecom Act because the FCC has made it more difficult for them and so they are at a disadvantage?

Ms. SCHONHAUT. I think I would say to that that that is a superficial view, frankly.

Mr. STEARNS. That is a what?

Ms. SCHONHAUT. A superficial view of how the 271 process works. In each State and this happened in New York and Texas the competitors and the Bell Companies attend what is called workshops, which are really cooperative processes of discussing——

Mr. STEARNS. Can you keep this real short. I have got about three or four questions here.

Ms. SCHONHAUT. Okay. I think my point is Ms. STEARNS. Because I understand.

Ms. SCHONHAUT is that the states work with the RBOCs. The RBOCs are very involved in how the 271s are granted, and they influence the process and it is a compromise process.

Mr. STEARNS. Okay.

Ms. SCHONHAUT. And so I do not think that you could say that it is unfair.

Mr. STEARNS. You just do not agree?

Ms. SCHONHAUT. No, I do not.

Mr. STEARNS. Okay.

Mr. Khanna?

Mr. KHANNA. Well, I think it is very simple.

They ought to have implemented the Act on non-discriminatory terms. That was one of the checklist items. So they should have given me cageless co-location. They should given me line-sharing. I should not have had to go to the FCC to get it.

They have gotten the 271s. I would have supported them 6 months ago or, you know, 3 years ago, had they given me what I had asked for.

Mr. STEARNS. Okay. And Mr. Young, would you like to reply? I mean, you obviously agree with what I said, I assume?

Mr. YOUNG. Yes. The process at the State level has been very thorough. A lot of what is in the act came out of the New York regulatory process before the Act was introduced.

The collaborative process gives companies an opportunity to present their views and have them taken into account. It is quite unprecedented but it has worked successfully.

Mr. STEARNS. Okay.

Mr. Cali of AT&T had mentioned the waiver process.

Let me ask, Mr. Ellis, have you taken advantage of the waiver process for the long distance data for the rural locations?

Mr. ELLIS. We have joined in a Mr. STEARNS. Just answer yes or no.

Mr. ELLIS. Yes. We joined in a 706 petition. Bell Atlantic filed for a specific waiver and the FCC applied a set of rules that make it virtually impossible. You can only get a waiver to provide a cross LATA if you show there is no other long distance interLATA carrier in that LATA, and it is impossible; you cannot. That is not a solution to this problem.

Mr. STEARNS. Okay, Mr. Pociask, let's talk about the investment that these other folks have made. You have supported the bill but what happens to this investment, in your opinion, in the event that this bill is passed? Wouldn't all these folks be hurt?

Mr. POCIASK. No, not really, because by various accounts you have the Internet doubling every few months and others have said Mr. STEARNS. So Covad has an investment of $4- or $5 billion in one area like that Mr. POCIASK. I think there is plenty of growth.

Mr. STEARNS and you think that that would not affect their business at all?

Mr. POCIASK. Only to the extent that when the backbone operates as a cartel, that there is umbrella pricing.

But I think the more important thing here is that we have competitive prices. I do not think we need to inflate those prices or protect them. And if that is the case, in their business cases I do not know, but I think what we really need is competitive prices. And am sure that backbone is not going to go to waste, believe me.

Mr. STEARNS. Okay. Mr. Khanna, do you think your company would be affected financially if this bill is passed?

Mr. KHANNA. Absolutely. We would be denied the cageless co- location. We would be denied line sharing. We would not be able to compete for consumers.

Mr. STEARNS. Okay. Ms. Schonhaut?

Ms. SCHONHAUT. The way I look at it is that when the elephants dance, the mice get crushed. I saw three large companies up on the board when Mr. Pociask talked. There are two of the RBOCs here. We are little mice, and if one relies on competition from all those companies, we will really be destroyed.

Mr. STEARNS. Okay. In New York, they have approved your company going in. I was just curious, Mr. Young, how that is going? I mean, are you happy with how that is going? Is it going quickly

enough? Are you excited about it? Because you are the bellwether here.

Mr. YOUNG. Well, actually it has been quite successful. We are ahead of projections in getting long distance customers. One of the main reasons is we are targeting a market that has been largely ignored, and that is the sort of low-volume consumers that usually get stuck with the minimum usage fees.

We eliminated minimum usage fees for them. We have given them flat rate pricing so they see exactly what it is they are paying, and it has been quite a bit hit in New York.

Mr. STEARNS. There have been some claims here on this panel that the RBOCs had violations and committed these violations with the intent here, and I would certainly want to have you have the opportunity to respond because you used the word "fraud," and I thought that you should have every right to respond to that.

Would you like to comment?

Mr. YOUNG. I do not believe Mr. Khanna was referring to Verizon.

Mr. STEARNS. No, I know he was not but I mean he was saying, in a vernacular sense, that they have had a very difficult time implementing and getting agreements and once they have, they have found it difficult because the lines are being shifted and being transferred and so forth like that, so I was curious if you would like to comment?

Mr. YOUNG. I think that given the enormous number of transactions that are being handled on a daily basis, it is tens of thousands in New York, inevitably claims arise.

I did not hear Mr. Khanna say that there was a lack of forums that he could go to to have his claims considered. And I think that he will make his claims, and in some cases he will be victorious, in other cases others will win.

But the point is, and I want to hammer this home, the requirements of Section 251 will exist after this bill has passed and there will be recourse at the FCC and appropriate Federal district courts, in the event that people believe that they have been wronged and that markets are not open.

In addition, both SBC and Verizon, under our merger conditions, have to file regular reports to demonstrate that our markets are open. So you combine the enforcement activities that the FCC engages in under Section 251, you combine the availability of reports that can demonstrate that our markets are open. You combine the market incentives to continue to get 271 relief.

I think that these are all going to benefit consumers, and that the bill can only be positive.

Mr. STEARNS. Mr. Chairman, could I have unanimous consent just to ask one more question?

Mr. TAUZIN. The gentleman's time has expired. Without objection, the gentleman asked for an additional minute, and without objection.

Mr. STEARNS. Mr. Cali, you know what the RBOCs are saying, they have all this regulation and the other folks do not. Isn't that a legitimate argument of how can they compete if they are trying to compete with cable, Direct Television, people like Covad and yet they have all this burdensome onerous regulation.

Isn't that a valid argument?

Mr. CALI. When set in context, it is not.

Mr. STEARNS. Say again?

Mr. CALI. Set in context. Let's look at the history.

These are broadband services they did not deploy. They did not deploy them until competition spurred them into deploying them. Now that they feel the spur of competition, they are deploying quite well, and they are competing quite vigorously.

And again, we have to look at the other public policy concern here that the rules of the 1996 Act were designed to open the local exchange market's competition, something that remains unachieved, undone.

Mr. STEARNS. Mr. Ellis, is there anything you would like to comment to that?

Mr. ELLIS. Yes, I sure would. Thank you, Mr. Congressman.

Just so everyone is clear, there are two sets of wires that go into most residences, cable and telephone. The cable people provide the exact same kind of advanced service over their pair of wires. They do it with their own network, completely independent of our facilities.

At the same time, we want to provide the exact type service over our pair of wires, and what we have now is a system of asymmetric regulation. We are totally regulated and they are unregulated and we are in the same market.

And what is important I think as a public policy matter for the future, they are permitted to absolutely discriminate, to refuse to interconnect, and they do.

Mr. STEARNS. Who is "they"?

Mr. ELLIS. They being the cable companies and in particular AT&T.

They also have the right to refuse to provide open access. They have the right to acquire content. If you want to see in the future and have access to instant messaging to talk about AOL, for a minute, AOL and Time Warner merge.

If you want access under instant messaging from Time Warner, they have the right whether they do it or not is another question they have the right to tell you, as a subscriber, the only way you get access is if you take our cable modem access as opposed to the telephone company's. They have the right, in other words, to leverage content over transmission and transmission over content. That is something we do not have.

Our position is simply this. In a competitive market, there should not be government intervention over the rates, terms, and conditions. But if you are going to have regulation, then it ought to apply equally to all providers in that market specifically; the cable people and the DSL people and the wireless people and the satellite people, either regulate us the same or do not regulate anybody.

Mr. TAUZIN. The gentleman's time has expired.

Anyone else who wishes to respond may certainly do so.

Ms. SCHONHAUT. Again, the elephants are yelling at each other, and I am a mouse here. I will say that my company will volunteer to be regulated exactly as the RBOCs are. I will unbundle, I will

interconnect, I will do telework, whatever it is, if that is what it takes to keep the Act the way it is.

Mr. TAUZIN. Without passing of the bill?

Ms. SCHONHAUT. Yes.

Mr. CALI. May I make one point? I think it is particularly telling that some of the most vocal proponents for forced access to cable systems or regulating the systems are the incumbent local carriers.

And one has to ask why is that? What benefit do they gain? They are, by and large, not ISPs. Why are they doing this?

The reason they are doing this is the cable industry is investing tens of billions of dollars of capital at risk to create local telephone competition. To the extent they can create costs, impose delay, and otherwise create marketplace uncertainty, they will slow the cable industry down. And right now the cable industry, as far as residential local telephone service is concerned, is the greatest hope that consumers will have that facilities-based choice for telephone service.

Mr. TAUZIN. Anybody else who would like to throw any invectives at anybody else?

Mr. HAYNES. If I may——

Mr. TAUZIN. The gentleman's time Mr. Haynes might respond, and Mr. Pociask. We will let you both respond, and then the gentlelady from California.

Mr. Hayes first, and then Mr. Pociask.

Mr. HAYNES. Mr. Chairman, are you still restricting 251 or can I say something about line sharing?

Mr. TAUZIN. Please do.

Mr. HAYNES. The line sharing issue, when I listen to Covad worrying about being a small company, sort of gets my attention. Our equity is somewhere between 2 and 5 percent of the equity of Covad and we are a privately held company.

Most of that money came from competitive enterprises since 1983, when we started getting involved in cellular. We provide our own loops everywhere we provide service. We intend to provide our own loops wherever we go. The line sharing is devastating to existing customers and I just do not get this I'm-too-small-at-their-size argument.

Mr. TAUZIN. Mr. Pociask, we will have to wrap this up. I need to go to the gentlelady from California.

Mr. POCIASK. Just two short things.

One, we should point out that it was the FCC that initially denied video dial tone which was the ADSL. So when we say who came first, it was I believe Bell Atlantic that had to go to the Supreme Court to have a right to provide video content over an ADSL line.

So that is one thing we should point out.

The last thing is back to the initial question. We should point out that if you look at the 3 days before the 271 approval in New York to the 3 days after, to see how the stock market reacted to the business cases, the CLECs had over a 5-percent increase in growth over that period, whereas the long distance and local incumbents were negative on average.

So I would say that the market will not blink. There is plenty of growth out there.

Thank you.

Mr. TAUZIN. The Chair now yields to the gentlelady from California, Ms. Eshoo, and I will be as generous with time as I can be.

Ms. ESHOO. Thank you, Mr. Chairman, and good afternoon to you, my colleagues and to everyone that is here to testify.

First I am assuming that you have done a unanimous consent. There has been a request, a unanimous consent request for statements to be placed in the record. And I will place my full statement in that record.

Mr. TAUZIN. Without objection.

Ms. ESHOO. Mr. Chairman, I want to thank you for holding this hearing. It is a very important issue.

I know, or I am sensing that there was some apparent confusion today and some last minute changes regarding this legislative hearing.

Many of us were at St. Peter's for the memorial mass for B.J. Stupak.

For the witnesses that are at the table, Art Stupak is a member of this committee and he and his wife lost one of their sons, so we joined together over there.

I feel like I am diving into the ocean instead of, you know, one of the feeders for this.

So if I am asking questions that have been asked before, I do not think very many people really came to this. We were going to take a break to accommodate.

What I am after is another legislative hearing on this issue when we come back.

Mr. TAUZIN. Will the gentlelady yield?

Ms. ESHOO. I would be glad to.

Mr. TAUZIN. Again, let me apologize to the gentlelady. Our problems basically were compounded when we had to start 40 some odd minutes late. We have witnesses who have commitments to and time slots at the airport. I could not do anything but move on. I apologize for that.

Ms. ESHOO. I understand that.

Mr. TAUZIN. The gentlelady is recognized.

Ms. ESHOO. Everyone is wondering what the two of us are talking about. We had a lovely chat yesterday on the floor and there was going to be a break taken "lunch" in quotes, while we went over for the mass. But at any rate, thank you, Mr. Chairman, and I look forward to a continuation of this legislative hearing on this very important issue.

Now let me get to my questions.

To Verizon and whomever else would like to jump in, it is my understanding or view from the information that I have gathered that the 271 process is working. SBC in Texas and in New York and that this can indeed work nationwide.

Now that the two applications have been approved, would you comment on what you think what we will have in terms of a national blueprint in this area?

Let me get another question down because I used quite a bit of time on my conversation with the Chairman.

I would like to ask Mr. Khanna from Covad about the court cases. I do not know whether this has been touched on but I want to get some of this down for the record.

Both Pac Bell and SBC have been found guilty of bad acts.

Are you still facing co-location problems and what is the status of these antitrust cases and what forced you to file them?

If you could comment on that.

And then I have another question but let's see if we can get to these first.

Mr. YOUNG. Okay. I do believe that there is a pattern, a blueprint, a road map, if you will, for other companies to get 271s approved, and you know, the aspects involve some sort of testing of your systems to demonstrate that they do operate in a non-discriminatory way, and that they can handle the volume of orders placed by competitors over your systems.

Both SBC in Texas and Verizon in New York have demonstrated that.

I am pleased to report that we plan on filing additional applications this year in Massachusetts and Connecticut based on the same blueprint, if you will, that was successful in Texas. And it is for that reason that I believe that, you know, initially when the Act was passed, you sort of had the incentive for Bell's companies to get into long distance, was open up your markets.

What we are seeing now is we are opening up our markets anyway, and that we now have the blueprint for the 271. But there is this additional benefit that could be realized if we had interLATA data relief, and that is is that we could bring advanced high speed services closer to the local communities, provide more capacity, and you can do that without sacrificing the incentive that is inherent in the 271 process.

And that is why I was emphasizing the market is $100 billion market. The Internet backbone business, if you will, is only a $6 billion market.

So what we are trying to do here is preserve the incentives to open up the local markets, which is happening, while at the same time providing Internet access to others.

One additional point, but SBC and Verizon have been through mergers. As a result of those merger conditions, we also have additional incentives to open up the marketplace.

Mr. Chairman, I did want to clarify a comment I made earlier. I misspoke when I said that part of our merger——

Ms. ESHOO. I do not want you to use my time clarifying. You can do that after. Maybe the Chairman can ask you what you want to clarify, because I think that I am getting close to running out of time.

Let me just ask you, since you are just finishing up on that, how does the elimination of line sharing accomplish the purposes of the legislation?

Mr. YOUNG. Well, one of the challenges, when you are deploying high speed services, is there is a lot of innovation involved. There is a lot of investment in equipment involved, and one of the challenges for companies that want to deploy this new technology, as well as for regulators in trying to make sure that things are deployed in an evenhanded way, is how do you permit companies to

benefit from their innovation and from their commitment to investment while, at the same time, making sure that markets are open?

Ms. ESHOO. I think you are giving me a response and not an answer, but we will get to that another time, because we are going to have another legislative hearing on this gigantic issue.

Mr. Khanna, can you address yourself to the issue I raised?

Mr. KHANNA. Thank you. I would be pleased to.

With respect to our court cases, we have several arbitration proceedings pending with the SBC Company, Pacific Bell.

In the first instance, they were found to have engaged in pervasive and fundamental bad faith in addressing our co-location and other issues.

There was a subsequent award of $27.5 million, that is excluding attorneys' fees and costs that we were awarded.

Our antitrust case is currently pending and is set for trial for September of next year. Our case is against Bell Atlantic. We filed an antitrust case which has continued to proceed toward trial. Their counter lawsuit against us on patent infringement was dismissed on a summary basis.

So at this point, it is fair to say that we have won 100 percent of our actions against the phone companies.

Ms. ESHOO. What forced you to file these cases?

Mr. KHANNA. It was a pattern of behavior that we saw, for example, excluding us from central offices on the grounds that there was no space when in fact we were aware that there was space in those central offices.

So when we do not have access to a central office, we are unable to provide service to anybody served by that central office.

Similarly, we were put in a position of a price squeeze with respect to the denial of line-sharing, which we now have. That line-sharing does not require any innovation. It is simply a physical division of the frequencies on the use of a copper wire. It is plain old copper wire that has been in the ground for about a hundred years.

And we were denied line-sharing until the FCC expressly ordered it, and that has allowed us to serve consumers and bring competition for consumers and really brings Covad into the consumer space in a big way.

Ms. ESHOO. Thank you.

And thank you, Mr. Chairman, for your commitment to have a further hearing on the issue. I appreciate it. And this is, I mean, we are where we are on these issues. Some members really have not made up their minds on what you are offering legislatively, but I think that we all benefit when many of us are here.

We have some very lively it is always lively at your side of the table because we have excellent witnesses but we need more members engaged in this and I appreciate your commitment.

Mr. TAUZIN. I thank the gentlelady. And I would respond that of course we did have a hearing on the issue. It was much more widely attended, and we had some interesting give-and-take in that hearing.

This is not over yet, but we are certainly well on our way I think to building consensus around it.

I thank the gentlelady.

The Chair recognizes the vice chairman of the committee, Mr. Oxley, for a round of questions.

Mr. OXLEY. Thank you, Mr. Chairman.

Mr. Khanna, is this your map? Is this part of your testimony, the map of Ohio, showing the services of SBC and non-SBC Ameritech?

Mr. KHANNA. I believe it is.

Mr. OXLEY. And I am not quite sure exactly where this is, but it is my understanding that this map indicates that the Bell companies do not serve areas like my home county of Hancock. But I have seen the articles in the paper that Ameritech serves Findlay and our neighboring communities, many of them rural.

And in fact, Ameritech is installing DSLAMs in order to provide DSL service this year.

Was your testimony prepared before that was the case?

Mr. KHANNA. I am not exactly certain as to when Ameritech was rolling its or SBC were rolling out their DSLAMs in those central offices. But I do know that in most markets, we have been first to market, prior to the incumbent offering their DSL services from those central offices.

Mr. OXLEY. Well, as you know, Findlay and Springfield in Ohio are separated by an interLATA barrier. And with the passage of this legislation, Ameritech would be able to combine high speed services and equipment in Findlay, and also be able to provide new services in Springfield, which is probably about 65 or 70 miles south of Findlay.

And if, indeed, Ameritech were able to do that, wouldn't that open up the market then for Covad to provide DSL competitive services in Findlay and Springfield?

Mr. KHANNA. I believe the markets are currently already open to Covad. The markets would be open to the incumbents as soon as soon as they comply with the 271 process which is frankly an area where we would like to see them comply.

And it is a disappointment frankly to us that only two of the incumbents have in fact complied and have demonstrated compliance with the Telecom Act. We would frankly like to see more of them do that.

Mr. OXLEY. What kind of service do you have in those regions I mentioned?

Mr. KHANNA. My understanding of our standard configuration for our DSLAM service is to afford at least five versions of DSL service. We offer not only ADSL, we also offer SDSL services, which is a symmetric DSL service so we offer our customers a menu of DSL services that is far more rich than the range of services afforded and offered by the incumbents.

Mr. OXLEY. And where are those services available?

Mr. KHANNA. I do not have a detailed list in front of me. That list is being revised every day. We were opening up new central offices.

My belief is that we are today offering service in terms of in Columbus, Cincinnati, Cleveland, and Akron. Those are definitely——

Mr. OXLEY. Those are all urban areas?

Mr. KHANNA. We provide service both in the urban areas, as well as the suburbs and going into what we sometimes call rural areas.

In fact, we have an IDSL service which allows us to serve our customers that are served by long loops.

In rural areas, for example, you will typically have a customer——

Mr. OXLEY. Where would you, in these rural areas that are apparently the white parts of the map, what part of those, particularly in northwestern Ohio do you serve?

Mr. KHANNA. It would depend on which point in time we are talking.

Currently, for example——

Mr. OXLEY. I am talking about right now. This reminds me of a story. People asked Yogi Berra what time it was and he said, do you mean right now?

That is a fair comment. Our business is changing. We are expanding very, very quickly, but at this point in time, I am aware that we are offering service in Columbia, Cincinnati, Cleveland, Akron, both in the urban and suburban areas.

Mr. OXLEY. Okay. Well, that is pretty urban and suburban. And this issue is rural, of course.

Let me turn to Mr. Cali.

Mr. Cali, by your estimation, by how long did the litigation that followed passage of the 1996 Act set back the process of opening local and long distance markets to competition?

Mr. CALI. It is difficult to estimate and it is continuing to set back, to some extent, local competition. There was an Eighth Circuit order recently concerning the pricing methodology.

And that is one of the problems. The marketplace needs certainty to invest. There was extensive litigation following passage of the Act.

We have started to move beyond that. As I said, there is a recent Eighth Circuit decision which introduces more uncertainty and more concern currently.

Mr. OXLEY. But you say there is still some vestiges of that litigation still hanging out there?

Mr. CALI. Right. It is being resolved as we move forward, but there is still some vestige.

Mr. OXLEY. Mr. Young, GTE was never subject to the long distance restriction, as you know, under the MFJ or Section 271.

In the wake of your company's merger with GTE, Verizon now serves a substantial portion of my district including Marion, Wyandot, and Hancock Counties. As a matter of fact, GTE has a substantial presence in Marion, as you know.

What steps has or is or will the newly merged company be taking to offer high speed data service in those areas?

Mr. YOUNG. Well, we have a DSL offering underway in those areas.

We have signed, despite the fact that there is no 271 requirement hanging over GTE, GTE has signed over 1400 interconnection agreements nationwide. So the point is that our markets are open.

Mr. Khanna was able to use them to get in first, as he so noted.

Mr. OXLEY. But precisely because we do not have that concern Mr. YOUNG. Right.

Mr. OXLEY my question was specifically to those areas, and it seems to me that despite the litigation and all of the stuff that

went on, you lost a lot of time in providing high speed Internet access service to those particular areas, did you not?

Mr. YOUNG. Yes, we did.

Mr. OXLEY. And you are trying to play catch-up now?

Mr. YOUNG. That is correct.

Mr. OXLEY. Hopefully?

Mr. YOUNG. Yes.

Mr. OXLEY. Thank you. I yield back.

Mr. TAUZIN. I thank the gentleman.

The Chair will recognize himself for another round and I believe Mr. Dingell is on his way down, and I know he wants to engage you all as well, so we will keep this going a little longer.

Let me turn to the question of capacity of the broadband networks, and Mr. Cali, I want to talk with you just a second about that.

Two studies done by AT&T's own engineers entitled "Internet Growth: Is There Moore's Law for Data Traffic?" which we are done July 11 the preliminary version came out in July 11, 2000 points up the need for indeed a great deal more backbone capacity simply to make sure we do not face a serious backup.

And this is the observation your own studies made.

"The conventional wisdom is that the exploding increase in Internet traffic is the main driver of the expansion of the networks, backbone networks.

"It also seems to be implied that the ever increasing capacities of WDM, wave length division multiplexing systems, both in terms of the number of channels and individual channel rates, coupled with the forecasted fiberglut will result in the national networks being easily able to accommodate whatever growth rate the Internet throws at it.

"We do not think the carrying capacity of the network, at least the long-haul national backbone networks, can or will grow to accommodate arbitrary traffic growth rates." And here is the real kicker.

"In fact, we believe that if traffic grows by factors of more than 2 or 3 times a year for any sustained period, the transport backbones are likely to become a serious bottleneck." The point again is that with the ever-increasing growth rate of broadband usage that is predicted, if in fact we have this explosive growth once Americans feel the full capability of backbone, once broadband, once in fact video becomes part, as it appears to be real soon to be a part of the broadband Internet systems, your own studies indicate we are going to be in trouble. We are going to have real problems with capacity.

And your own studies seem to indicate that the more players out there investing in backbone, the more likely the whole systems are going to work better, yours as well as the systems that your competitors in this marketplace will need in order to give all Americans full access to full backbone marketplaces.

What is your comment about again your own studies in that regard?

Mr. CALI. Let me say this, and I am unfamiliar with the specifics of those studies. But we do know that there are more than 40 Internet backbone providers.

This year and next, six new networks are coming on line that represent an $18 billion investment. Capital has been pouring into the industry, and the reason it has been pouring into the industry, and the Congress should be very proud of this, is because of the framework and certainty provided by the Act.

We believe the growth will continue if we have the marketplace certainty we need and we rely on the competitive market to drive investment.

And the final point I would make is the point I made in my opening statement, that we should recall that the Bell companies are currently affiliated with Internet backbone providers and it is not at all clear that this Act would drive more deployment than those affiliates are currently providing.

Mr. TAUZIN. We also see in these studies an indication that while there are controversies about how many POPs exist and how many of these POPs are fully capable at high speeds, and depending upon whose definition of what high speed is, and we all hear different definitions of it, we are told that there are an average of 17 router HOPs on Internet connections today.

That is an indication that the so-called POPs, if they are out there, they are not as connected to as many ISP backbones and they are not as certainly as close to where the users live.

What is your comment about that statement?

Mr. CALI. Well the point, and the point we make with our map of the more than a thousand POPs being deployed is what is relevant for a customer to access a high speed node that would deliver and traffic, its data, to the Internet at high speed. And that seems to be the most relevant measure to whether customers dispersed across the country can get access to the Internet at high speed.

Mr. TAUZIN. Well the point the studies made, the point we are seeing here, is that capacity supposedly widely available is in fact strained. And that, ironically, your own studies seem to back that up.

And let me turn quickly to Mr. Pociask.

If that is correct, if AT&T's studies about capacity being strained, if the reports we have of router HOPs and strained conditions and lack of interconnections to those POPs are true, and yet the demand is there for these services, are we facing a problem for consumers where a few companies own the only backbone that is available and the backbone ain't enough to get around?

Mr. POCIASK. What the observation that there are shortages is typical of is what you would see in something that is a cartel or an oligopoly, in the sense where you have limited supply and higher prices as a result.

I should direct you to a PR News December 6 news report that AT&T announced an agreement with three telecom companies to construct 16,500 miles of fiber to an existing 30 cities. It would not be there, they would not be building this if there was not a shortage.

I think what we are seeing is that there is a lot of demand out there, and it is important that we get some supply.

Mr. TAUZIN. As a final question, Mr. Ellis, would you like to respond to Congresswoman Eshoo's concerns with the Pac Bell and SBC problems?

Mr. ELLIS. Thank you, Mr. Chairman, I would.

I would point out that SBC has well over 2000 interconnection agreements across the country with hundreds, literally hundreds of carriers.

And the almost 5 years since the Act has passed, we have this single arbitration decision in California that was adverse to us. That is on appeal. We are in the courts challenging it. I am hopeful that it will be set aside.

But I believe, when you look at our record of the thousands of transactions that have taken place with countless carriers in Texas alone, for instance, we have almost 400 carriers, interconnection agreements, interactions all the time.

We have a record we are proud of in meeting our obligations under the Act. I regret deeply that the arbitrators reached a different conclusion. We are on appeal, and I am hopeful that we will eventually prevail.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Ellis.

The Chair yields to the ranking minority member, Mr. Markey, for a round of questions.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. Ellis, do you believe that Mr. Tauzin's bill is a bill of attainder?

We are going to check from now on.

The last time SBC testified, they were encouraging us to pass the bill, then they sued on it.

So it is a bill of attainder?

No?

Mr. ELLIS. Unfortunately, we lost that one.

Mr. MARKEY. That is what I am saying. That is what I am wondering about. I mean, how many——

Mr. ELLIS. The Chairman is a bill of attainder. Good question, Mr. Markey.

Mr. MARKEY. Mr. Ellis, I see that both of you have statements in your testimony on the first page that I would like to read and ask you a question about to get to the heart of your philosophy.

Mr. Ellis, on the first page of your testimony, you say. All service providers should be subject to symmetric regulatory requirements.

And Mr. Young, you state, however, that policymakers must avoid applying old regulatory models to an entirely new, competitive technology.

So my question to you guys is, is how these statements reflect on whether there should be per minute charges, access charges on Internet telephone calls, IP telephony.

Should we treat everyone the same and apply such charges to Internet calls forbear from applying them to a new, competitive technology, or take the opportunity to revamp the old, bloated access charge regime that today exists, and deregulate charges and drive out historic subsidies.

Which way would you go on that?

Mr. ELLIS. Well, Congressman, the first point I would say our basic position is in competitive markets there shouldn't be any regulation by government rates, terms and conditions. That is the threshold point.

But to get to your point——

Mr. MARKEY. So you would agree to get rid of those subsidies, then? No longer would the government be able to protect?

Mr. ELLIS. No. My position is the government can have it either way. Either you can have a deregulatory regime and that is fine.

If you are going to have pervasive regulation, the fact is there are subsidies that are reflected in those access charges that are not reflected in local rates.

In Texas, our local rate, after 110 years, is less than ten dollars. No one would contend the local rate, the cost is ten dollars. It is 20, 30, we could argue about it, but it is substantial. The difference between the ten dollar rate and the $30 of cost in round numbers in our jurisdiction in Massachusetts, everywhere, there are different levels of subsidy.

It is not something that we dreamed up, it was a public policy.

Mr. MARKEY. So you would keep the old access charges.

Would you have access charges for IP too?

Mr. ELLIS. No. I am saying I am comfortable, let's go to a deregulatory model. Fine. Let's do it.

Mr. MARKEY. So you get rid of the old access charges?

Mr. ELLIS. That is fine, get rid of them.

Mr. MARKEY. It will not be so low, but they are you are being subsidized. Would you get rid of all those subsidies coming from the competitive companies?

Mr. ELLIS. The system that you all put in place was supposed to get rid of those subsidies, called a universal service. We have been waiting for five, almost 5 years for that to happen.

We are not here to argue for subsidy. What we are here to say, let's have deregulation, but what I submit the country's not ready for is to have a local rate in my State of Texas to go from $9.85, which is on average Mr. MARKEY. Will you help us to get rid of those subsidies, though, that are built into the system for the local companies?

Mr. ELLIS. The FCC was charged by——

Mr. MARKEY. So you would support us in that, getting rid of subsidies?

Mr. ELLIS. I would support, I would support the rationalization of the subsidies, absolutely.

Mr. MARKEY. That is important.

Let me ask one final question.

I am sorry, Mr. Young.

I do not want to take up too much time.

But there is a lot of emphasis being placed in the debate on getting broadband services to rural America, something on which I am not as familiar as I am with urban and suburban America.

The Telecom Act is working quite well in fact in urban and suburban America. I do not think there is any debate about that. It does work there.

But critics of the Telecom Act allege that competition and high speed capability lag in rural communities.

My question is how much of this alleged problem is that the Bell companies have not been permitted long distance carriage to and from those rural communities?

How much of it is due to a national time line for growing competitive alternatives to grow out into rural America?

And how much is due to the fact that the Telecom Act largely exempted rural communities from competition at the request of the rural members here in Congress?

That is something that I acquiesced to because that was a request made to me.

Mr. Young?

Mr. YOUNG. Well, the issue of service to rural America has historical roots in how companies chose to deploy services based on the ability to recover those costs, and obviously there has been a system of subsidies that is designed to make sure that rural America has had voice grade telephone service.

Now the question arises, as we get to high speed data services, how should we make sure that rural America is connected.

And the interesting thing here is that this bill helps because the local companies already have those little inner office facilities that are needed; the State roads, the on-ramps, the access roads. They are already in place to serve to provide local service, so it is just a question of turning them on to cross the line of boundaries to provide high speed data service.

Let me give you an example. Charleston, West Virginia, there was no high speed POP. Customers in West Virginia came to us and said, can you provide the service. Well, Pittsburgh is the nearest high speed Internet facility, so we asked the FCC for permission to cross the line of boundary to go to Pittsburgh to haul a facility back into Charleston. That was a 706 request that you all authorized us to ask.

What happened at the end of this situation is that, faced with this request, suddenly where no inter-exchange character had in the past offered to provide the service, suddenly one appeared and the FCC said, oh, well there is someone here to do it, and so they denied our petition.

Now the fact of the matter is, if that is the way we are going to deploy high speed data or data services in rural America, I think that is unacceptable that we have to wait for someone to come in and provide it when in fact we have the facilities already in place and can do it much cheaply.

So I think that the time is now. I think that in the context of this bill, it is appropriate to make that narrow exception to allow us to do it.

Mr. MARKEY. Okay, Mr. Khanna, could you just respond to the same question?

Mr. KHANNA. I am itching to respond.

If the rural area is served by a Bell company, I have no problem because I can go in there and compete with them. So just as we have brought competition to urban and suburban areas within the Bell operating companies, we will do that. So I submit to you that this bill has it backwards, which is this bill should eliminate the exemption for rural carriers because you can rely on competition.

And we have demonstrated, I stand on our record; 40 percent today, 50 percent by the end of this year, 75 percent by the end of next year, and on thereon.

So my point is competition and the Telecom Act will bring competition to the Bell operating areas that include the rural areas, but will not reach the areas from which I am excluded which are the areas that are exempt under the existing law.

Mr. TAUZIN. Thank the gentleman.

The Chair recognizes the gentleman from Michigan, the ranking minority member of the full committee for a round of questions.

Mr. DINGELL. Thank you, Mr. Chairman.

This question is to Mr. Cali, yes or no.

Your company, AT&T, provides high speed Internet services using cable modems?

Mr. CALI. Yes, sir.

Mr. DINGELL. Mr. Ellis, your company, SBC, provides high speed Internet or DSL service using telephone wires, yes or no?

Mr. ELLIS. Yes.

Mr. DINGELL. And Mr. Young is that true in your case?

Mr. YOUNG. Yes.

Mr. DINGELL. Now, Mr. Ellis, this again is a yes or no. I understand that there may be differences in the relative technologies but these are functionally equivalent services, are they not?

Mr. ELLIS. Yes.

Mr. DINGELL. Mr. Young?

Mr. YOUNG. Yes, they are.

Mr. DINGELL. How about you, Mr. Cali, yes or no?

Mr. CALI. I hesitate to answer yes or no, only because I know that many of the Bells, or at least one of the Bells is currently in an ad campaign competing with cable modem service pointing at the differences.

Mr. DINGELL. Can't you just give me a yes or no answer?

Mr. CALI. They do both provide high speed internet access.

Mr. DINGELL. Pardon?

Mr. CALI. They do both provide high speed Internet access, yes.

Mr. DINGELL. Okay, and you do too?

Mr. CALI. Yes, yes.

Mr. DINGELL. Functionally equivalent?

Mr. CALI. To my knowledge. I hesitate to say functionally equivalent, we are a shared medium, they are not a shared medium.

Mr. DINGELL. Functionally equivalent.

Mr. CALI. It is high speed Internet access.

Mr. DINGELL. The same services the same people.

Can you tell me a reason why AT&T has such great difficulty in answering a question yes or no?

Mr. CALI. Because I am unsure of the meaning of functionally identical.

Mr. DINGELL. I see.

Mr. Pociask, do you agree?

Mr. POCIASK. I think they are a functional equivalent.

Mr. DINGELL. Thank you.

Now, let's look at the regulatory situation here.

Mr. Ellis, your company is subject to interconnection obligations with competitors when it provides high speed Internet service, yes or no?

Mr. ELLIS. Yes.

Mr. DINGELL. Is that true with regard to you, Mr. Young?

Mr. YOUNG. Yes, it is.
Mr. DINGELL. Okay.
Now how about you, Mr. Cali? Is that true with regard to you?
Mr. CALI. Yes.
Mr. DINGELL. It is?
Mr. CALI. I am sorry, can you repeat the question?
Mr. DINGELL. The question is, your company, AT&T, let me say your company is subject to interconnection obligations with competitors?
Mr. CALI. I am sorry. No.
Mr. DINGELL. It is not.
So then, yes or no again, AT&T is subject to the same obligations to interconnect with competitors when it provides high speed Internet service using cable modems?
Mr. CALI. No.
Mr. DINGELL. No.
So I guess I am coming to the conclusion that you are treated differently than these other two companies. Is that right?
Mr. CALI. That is correct.
Mr. DINGELL. I see.
Now, Mr. Ellis, is DSL required to be sold to competitors at wholesale rates that are determined by the FCC?
Mr. ELLIS. Yes.
Mr. DINGELL. Mr. Young, are you subject to the same burdens?
Mr. YOUNG. Yes, we are.
Mr. DINGELL. Mr. Cali, are you subject to those burdens at AT&T?
Mr. CALI. No, we are not.
Mr. DINGELL. Ah.
Mr. Cali, is AT&T required to sell its cable modem service to competitors at wholesale prices, or does the free market dictate your company's choices in this regard?
Mr. CALI. It is free market.
Mr. DINGELL. Free market.
Mr. Ellis, are Bell companies required to unbundle their networks and lease out pieces or parts to competitors at cost-based rates for the purpose of providing high speed Internet service?
Mr. ELLIS. Yes.
Mr. DINGELL. Is that true with your company, Mr. Young?
Mr. YOUNG. Yes, it is.
Mr. DINGELL. Mr. Cali, AT&T is not subject to similar obligations under the law, is it?
Mr. CALI. That is correct.
Mr. DINGELL. Now, Mr. Cali, H.R. 2420 would provide a level playing field between telephone and cable companies by deregulating high speed Internet services offered by both types of companies.
Is that correct?
Mr. CALI. No, I do not believe if it, sir.
Mr. DINGELL. You don't.
Well, I guess AT&T is incapable again of a simple yes or no answer.
What is the answer to that, Mr. Pociask?

Mr. POCIASK. H.R. 2420 will put the different services on the same playing field.

Mr. DINGELL. Put them on the same playing field.

Do you agree with that, Mr. Cali? Yes or no?

Mr. CALI. The reason I am not going to give you a yes or no is we have different facilities, different context——

Mr. DINGELL. Please. I have limited time and I want to help you because you have great difficulty answering my questions.

And what I am trying to find out is, would H.R. 2420 put AT&T and the former baby Bells on a level playing field?

Mr. CALI. My concern is that we are comparing different networks, different histories, and I do not believe it would be a level playing field.

Mr. DINGELL. But you are providing identical service?

Mr. CALI. We are both providing high speed Internet access. Other carriers are also providing high speed Internet access.

Mr. DINGELL. Functionally, functionally identical services?

Mr. CALI. Congressman, the issue is this Mr. DINGELL. Functionally identical services? We have already agreed on that.

Mr. CALI. The point I made earlier was that the Bell companies——

Mr. DINGELL. Mr. Cali, I think you are a fine fellow, but is it impossible for you to just answer these questions simply, rather than obfuscating the matters?

Mr. CALI. I think it is more complex, Congressman, and that is my concern. There were two points I made earlier that were worth noting.

Mr. DINGELL. I am sure it is, but if you do not mind, I will ask the questions.

Now, Mr. Cali, do you think that existing regulatory mandates on telephone companies are necessary to ensure competitive roll out of broadband services to consumers?

Mr. CALI. Yes.

Mr. DINGELL. You do.

Now, if regulation of high speed Internet services results in these benefits, would not the same benefits flow to the public if these regulations are also applied to cable companies offering similar services?

Mr. CALI. They would not because of the different history and different context.

Mr. DINGELL. Now why do you say that? What is the difference between telephone and cable? And what is the difference between AT&T when they offer a service and the service that is offered by Mr. Ellis' and Mr. Young's companies?

Mr. CALI. There are a couple of bases for the difference, sir.

Mr. DINGELL. Well, one of them is clear to me. And that is that it gives your company an economic advantage. I am sure you wish to hold on to that.

But what are the other differences?

Mr. CALI. In implementing the Act, the FCC has gone to great lengths to ensure that the Bell companies, when providing advanced services and facilities——

Mr. DINGELL. You are having great difficulty——

Mr. CALI. [continuing] enjoy the same flexibility as other carriers providing those same advanced services.

Mr. DINGELL. You are having great difficulties giving me a simple yes or no answer, or a simple explanation.

Mr. CALI. I am because I believe the issue is more complex.

Mr. DINGELL. I am sure that you are happy to make it so. But to me, you have a service which is offered by AT&T, one which is offered by SBC, one which is offered by Verizon. They are the same systems.

Mr. YOUNG. "Va-rey-zun."

Mr. DINGELL. They are the same——

Mr. TAUZIN. We went through——

Mr. DINGELL. They are also——

Mr. TAUZIN. Would the gentleman yield? Would the gentleman yield for a second?

We went through an extensive——

Mr. DINGELL. I appreciate that, Mr. Chairman. It is always difficult to function in the face of obfuscation.

Mr. TAUZIN. I was just saying that even before any of that had begun, we had trouble with Verizon, so we just wanted to make the gentleman aware that we agreed on the pronunciation as Verizon.

Mr. DINGELL. I am not a defender of anybody, nor am I a defender of obfuscation.

Mr. TAUZIN. Let me ask unanimous consent here. The gentleman's time has expired.

Does the gentleman which to proceed?

Mr. DINGELL. I would. I would ask 2 minutes to assist Mr. Cali who is having great difficulty.

Mr. TAUZIN. Is there any objection?

[No response.]

Mr. TAUZIN. The gentleman is recognized for 2 additional minutes.

Mr. DINGELL. Now, Mr. Cali, what is the argument for giving different treatment to SBC, Verizon, and AT&T?

Mr. CALI. Okay, the argument is this.

Mr. DINGELL. Why shouldn't the same service to the consuming public be priced the same way to all of the above?

Mr. CALI. Four years ago the Congress imposed certain obligations on incumbent carriers in an effort to erode their monopoly, a near century-old resilient monopoly that persists till today.

The FCC, in implementing those rules, has attempted to reduce the regulation where it relates to advanced services and facilities while it has continued to adhere to the requirements of the Act in an effort to open the local markets to competition.

That is an important public policy goal that is worth adhering to.

Mr. DINGELL. Mr. Cali, I have only got 2 minutes and you have used a lot of it.

You do have essentially a monopoly on cable, do you not, in this country?

Mr. CALI. No, we do not. We do not agree with that.

Mr. DINGELL. In the markets you serve, you do, don't you?

Mr. CALI. In the markets we serve, there is a strong public policy to introduce competition for cable and I would submit that public policy is far more advanced than for local telephone service.

Mr. DINGELL. What is your market share for cable in the markets you serve?

Mr. CALI. In the markets I serve, I do not know. I could give you an overall——

Mr. DINGELL. It is on the order of 100 percent. It is on the order of 100 percent.

Mr. CALI. No, that is incorrect. The satellite industry has taken 15 to 20 percent of the multi-channel video market.

Mr. DINGELL. So 85 percent then?

Mr. CALI. That is correct. And the satellite industry is winning 2 out of 3 customers.

Mr. DINGELL. My 2 minutes is rushing toward expiration.

Mr. Pociask, you are a man of enormous patience, and you are sitting next to that nice Mr. Cali, and I know you and I both want to help him.

We have this awkward problem that Mr. Cali is offering an identical service to that which is offered by Mr. Ellis and Mr. Young, and also by cable people in other parts of the country, and also by other carriers.

Is there any reason why these all ought not be treated the same way for regulatory purposes?

Mr. POCIASK. As I pointed out in my oral testimony today, because of the price sensitivity, if you impose a cost on these services, you will have a big drop off in subscribership, so it is no surprise that Cable Modem service commands almost 90 percent of the market today.

I think the answer is to have a level playing field, to have these services go head-to-head. I really hope Cable Modem service does well.

Mr. DINGELL. The consumer benefits from this, doesn't he?

Mr. POCIASK. Absolutely.

Mr. DINGELL. And if the playing field is slanted a little bit toward Mr. Cali, Mr. Cali has a huge benefit, doesn't he?

Mr. POCIASK. That is right.

Mr. DINGELL. And that comes at the expense of Mr. Ellis and Mr. Young and at the expense of the consumers. Isn't that right?

Mr. POCIASK. My concern is consumers, that is right.

Mr. DINGELL. Yes. So therefore it is plain why Mr. Cali likes this situation so well: that he and his company are deriving an immense benefit at the expense of consumers and at the expense of their competitors, isn't that right.

Mr. POCIASK. I cannot speculate for his motives, but——

Mr. TAUZIN. The gentleman's time has expired again.

Mr. DINGELL. I thank you, Mr. Chairman.

And thank you, Mr. Cali.

Mr. TAUZIN. Thank you.

The Chair would ask any of the members who would like a second round. Let me first ask the gentleman from Texas. Would you request a second round, Mr. Green?

Mr. GREEN. [Nods in the negative.]

Mr. TAUZIN. The gentlelady from California.

Ms. ESHOO. Thank you, Mr. Chairman.

I want to go back to some of the things that our colleague, Mr. Markey, was exploring. I just flipped this switch to have my microphone go on.

Let's just pretend that we flipped the switch and the legislation that is on the table is law right now.

Let me ask the Bell people, what is your plan for rural America, and when would it be implemented?

Mr. ELLIS. We have a plan that by 2002 we will have service to 80 percent of our customers. If this legislation passes——

Ms. ESHOO. I am talking, when you say customers, who are they? Identify them?

Mr. ELLIS. Well our customers are in rural and urban and——

Ms. ESHOO. I am not talking about urban and I am not talking about suburban.

See the reason that I raise this, and this is one of the things that I have grappled with in this whole discussion of broadband, is that when anyone comes to the Congress and says, do I have a deal for you, your constituents in rural America and there are many Members of Congress that have totally rural districts or some parts of their district are rural that you are automatically going to get their ear because of course they want their constituents to enjoy the best of what another Congressional district already has.

And so it kind of puts a hook in them. And every American goes for open versus closed. So these are very powerful words that are used relative to this whole argument.

I don't think this argument is really about the Internet because believe it or not the worldwide web was up and we knew an awful lot about the Internet when we passed the Telecom Act.

But very specifically. We have flipped the switch.

What do you have for rural America?

What are you going to do?

What is the plan?

Mr. ELLIS. The plan is, NTIA has a study that says 5 percent of the rural population has access to high speed advanced services, cabel modem or ours.

Ms. ESHOO. I want to know what you are going to bring to them. Because remember we have flipped the switch now. This legislation is law, and the promise of this legislation is to bring something to rural America because they are not getting it.

Tell us what you are going to deliver and by when.

Mr. ELLIS. What we will do is take the $6 billion investment that we are making and use that money more efficiently to expand to go into areas that we cannot afford to do it, it does not make financial sense to cover that other 24 percent.

Ms. ESHOO. If you cannot afford to deliver it today, why is it that you can deliver it because we just flipped a switch?

Mr. ELLIS. I will give you a specific example.

Congressman Oxley was mentioning Ohio. There are eight LATAs in Ohio, eight. That means we cannot combine demand across those LATA boundaries. Today, under our plan, under the law, we would have to put eight switches, eight ATM switches, eight internet hubs in each LATA. Each one would have to have one.

If you pass this piece of legislation, we will be able to follow conventional networking plans, the same that our cable competitors can plan, and probably get by in Ohio with maybe two by doing conventional engineering.

That saves money, lets us build out, lets us close that gap, then give to the customers that, in our areas, the opportunity to have not slow speed but high speed.

Ms. ESHOO. Excuse me. Let me just excuse me.

Can you give to us, to members of this committee, your plan for rural America, the rural communities, so that we have, we can see how the promise will be kept.

Because you know, being at this side of the table, I am very sensitive about advertising, about marketing. We are in the marketing and in the communications business at this side of the dias as well.

And I want to really pull back the layers on onion skin here. I want to test what the promise is from your part. If you can convince members that you are really going to do what you are promising to do, then it becomes something else.

I am not convinced of it, I really am not. And when you say "rural," I am not talking about the businesses, I am talking about the homes that are way out in the middle of nowhere.

I mean, what do you have for Turlock, California and Tulare, and the back waters of Bakersfield? I mean, I would really like to know that. I am just naming off some communities in California.

I am not convinced of that. I think that this is under the guise of something else, myself, because you have not, you did not even do what you were supposed to do, what you signed off with in the Telecommunications Act. That is where you lose me. That is where you lose me.

There was a checklist. You all came to town. You lobbied for God knows how long, and you never and as soon as the ink was dry, you sued on what you agreed to.

Now I do not know where your competition is in the local market with what you promised before you get into the long distance. You didn't even do that.

Mr. ELLIS. May I tell you?

Ms. ESHOO. Well I do not know. I think my time is running out. I see a red light. You have time to talk, I don't, so yes, you can respond to that. But I really want to press on this rural business——

Mr. TAUZIN. Would the gentlelady yield for a second?

Ms. ESHOO because I do not see it and there are veiled references to it. And yet, that is what the advertisement to the bill is.

Mr. TAUZIN. The Chair would ask the gentlelady to yield just a second. I am going to extend the time to the gentlelady because I would like everybody have a chance to respond who wants to.

We are going to have some problems with witnesses having to make plane connections, and I want to let you all know, that if you have to leave, kind of raise your hand and let me know. I do not want any of you to miss that.

The gentlelady has asked if anyone else wants to respond.

Mr. Haynes, please?

Mr. HAYNES. Mr. Chairman, thank you.

Congresswoman Eshoo, I would like to tell you want we plan to do in Merced County.

We intend to compete with Pacific Bell/SBC with high speed wireless to residences initially starting with businesses with closer-in; new businesses don't startup immediately but we have a county-wide license. We are a CLEC in the State of Washington. We provide high speed data services in the State of Washington.

I have built a network that I could show any member of the committee how line-sharing could devastate incumbent customers who do not use high speed data, and I can show you, ma'am, how we can provide competitive high speed data services.

Two things are going to happen if H.R. 2420 passes. The Internet will become more valuable. I have a cable modem on my desk at my office, a DSL in my home, and I still get bogged down because of the State and the county links that do not work. This improves the State and county links.

And the rest of us, my 800 and some peers, as small companies are itching to get the competitive ball further rolling. We have already started it.

And I thank you for the opportunity to comment.

Mr. TAUZIN. Anyone else?

Mr. Young? Mr. Cali?

Mr. YOUNG. There are 2 phases or 2 parts to the rural issue.

As I mentioned before, all of our offices today are interconnected with fiber, but we have to artificially constrain traffic across LATA boundaries so the day that you flip the switch and we have the legislation, we can flip the switch and end those constraints, so that that provides more high speed data, more interconnectivity.

So day one, there is a benefit when this bill passes.

Then my colleague, Mr. Ellis, points out the other piece.

And by the way, Verizon has more rural customers than any other local telephone company, so this is a very real problem for us, is we can now do the sort of regional planning.

Congressman Markey mentioned New England Tel. Well, that is an operational entity that historically has planned its services as a regional group.

So for example, there might be a hub in Massachusetts. There might be a hub in Maine or New Hampshire, that is used to serve the whole region.

Again, because of the interLATA restrictions, we cannot engage in that sort of regional engineering that historically we have been able to do for local telephone service.

In Charleston, West Virginia, which now we have to go to Pittsburgh, it is an interLATA link, in order to provide high speed service. We could provide those kinds of services.

So there's sort of two pieces. what we can do today and then what we could do as a result of the planning that we could now do without the interLATA restrictions.

Mr. TAUZIN. Mr. Khanna wanted to respond.

Mr. KHANNA. The first point I would like to make is that the SBC $6 billion investment has to do with remote terminals.

This is in an area between the central office and the customer premise. This has nothing to do with ATM switching, which is what Mr. Ellis was talking about.

I also want to talk about what Covad is doing today. Our IDSL service goes the distance. It goes five miles, six miles beyond that. So we are able to provide service to customers in Half Moon Bay, in Santa Cruz, people who are commuting into Santa Clara, who software developers out in Half Moon Bay in Santa Cruz, regardless of the distance there from the central office, and they are able to get IDSL service from Covad today.

None of the incumbents, rural or urban or suburban, none of the Bells, not GTE, offers IDSL service in combination with our high speed service. That is an innovation that Covad has brought to the marketplace. Other CLECs have copied us but we have brought that innovation to people who live in remote locations who are not close to the central offices today.

Ms. ESHOO. Mr. Chairman, could I just ask one quick follow-up question?

Mr. TAUZIN. The gentlelady certainly may.

Would you like to let all the witnesses respond first to your first question, or?

Ms. ESHOO. I am dying to ask this one.

Mr. TAUZIN. Go ahead.

Ms. ESHOO. Now what happens to what you just described if, again, we flip the switch, if this bill becomes law. What happens to you and what you just described?

Mr. KHANNA. Two things happen.

One, our ability to co-locate in central offices in rural areas rapidly diminishes because the cost of cageless co-location is much lower than the cost of caged co-location.

Second, we would lose line-sharing. Line-sharing is nothing but unadulterated 100 percent consumer benefit. There is no negative impact to any consumer from line sharing, because if there were, the incumbents would not have deployed it themselves.

The consequence of denying us, taking line-sharing away from us, which is a consumer benefit we are providing today, would be to adversely affect consumers in urban, suburban, and rural America.

Ms. ESHOO. So, Mr. Ellis, why do you want to snuff him out?

Mr. ELLIS. That is absolutely not the case.

Ms. ESHOO. Well I mean that is what he is suggesting, right?

Mr. ELLIS. Well, he is wrong.

Ms. ESHOO. I am just paraphrasing.

Mr. ELLIS. He is wrong.

Let me address line-sharing for just a minute so everyone understands.

First of all, our position on line-sharing is simply this. For a long time, Covad and every other carrier can take the loop from the local company, put voice and data on it, just like we do. They have had that right and nothing here is going to change that. This piece of legislation does not change it.

What Covad and other companies do not want to do, they do not want to offer the voice piece, the less attractive piece. So when they talk about line-sharing, it's they want to take the line that we provide the voice on, and while we provide the voice, in my example, the $9.85 voice line in Texas, the one that is subsidized, they want

to then put their data on it. That is what they mean by line-sharing.

Our position on that is, as far as we are concerned, they can continue to do line-sharing. We are committed to that, and we will let them keep doing line-sharing regardless of what happens with this piece of legislation.

Mr. TAUZIN. We are going to run out of time because we have a vote on the floor.

Let me recognize the gentleman from Massachusetts for closing comments.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

First of all, I want to congratulate SBC and Bell Atlantic for their success in Texas and in New York. Much like George Bush and Al Gore, you are both going where the Electoral College piles up the most credit for industry and for Presidential candidates.

And I expect that by this time next year, we will see a lot more success in those delegate-rich electoral states.

I think that it is most likely that at the end of the day, we will come back here in a year and we really will have a rural issue, because you each have a stake in solving the large State issues.

Like Presidential candidates, you just do not tend to spend as much money in those smaller states if you are going to try to maximize your dollar.

So we will have that left over.

We have, I think, something that will be viewed a success, but there will be a rural kind of anomaly that is partially driven by the exemption which we were requested to build into the Act, which as an urban American, I had very little ability to analyze in terms of its impact upon those residents.

And with regard to again the cable industry, I do believe that the Telecom Act quite specifically said that all telecommunications services should be treated and regulated identically, and I do believe that Internet access is a telecommunications service.

So my goal is now and continues to be, you know, attempting to reach that point in which everyone is doing everything and ultimately we can just pull the Federal Government out of this whole area and let the free market determine what is in the best interest of the consumers.

I thank you all for the fabulous hearing today.

I yield back the balance.

Mr. TAUZIN. I thank the gentleman.

Let me first, for the record, on behalf of Mr. Dingell, introduce a comparison of regulatory requirements, as he went through the list with the witnesses, prepared by SBC communications into the record.

[The information follows:]

DSL V. CABLE MODEM SERVICE

The regulatory disparity between ILECs and cable operators when providing functionally equivalent services is most graphically shown when the regulatory requirements of DSL services are compared to functionally equivalent cable modem services.

	DSL Service (an interstate telecommunications service)	Cable Modem Service (a cable service)
Common Carrier Duty	Every common carrier must furnish communications services upon request and establish physical connections § 201(a).	No Comparable Requirement
Discrimination and Preferences.	It shall be unlawful for any common carrier to make any unjust or unreasonable charges, practices or classification § 202(a).	No Comparable Requirement—Local franchise authority only regulates basic cable television rates and equipment; no rate regulation of cable modem service
Tariffs	Every common carrier must file with the FCC schedules showing all charges for services provided § 203(b)—FCC limiting tariffing to dominant carriers.	No Comparable Requirement-Cable operator must file rates for basic tier and equipment with local franchise authority
Extension of Lines	No carrier shall construct a new line nor terminate an existing line without FCC approval § 214(a).	No Comparable Requirement—Local franchise authority negotiates build-out requirements with cable operator
Annual Reports	The FCC is authorized to require carriers to file annual reports.	No Comparable Requirement
Depreciation	The FCC may prescribe depreciation charges § 220(b).	No Comparable Requirement
Accounts	The FCC may prescribe the forms for any and all accounts and establish a uniform system of accounts § 220(a).	No Comparable Requirement
Subscriber List Information.	A telecommunications carrier shall provide subscriber list information available on an unbundled and nondiscriminatory basis § 222(e).	No Comparable Requirement
Interconnection	Incumbent Local Exchange Carriers (ILECs) have a duty to interconnect with the facility and equipment of any requesting telecommunications carriers § 251(c)(1).	No Comparable Requirement
Resale	ILEC must offer its telecommunications services at wholesale rates 251(c)(4).	No Comparable Requirement—Leased access obligations—10-15% based on channel capacity
Number Portability	Local exchange carriers (LECs) must provide number portability to the extent technically feasible § 251(b)(2).	No Comparable Requirement
Dialing Parity	LEC must provide dialing parity to competing providers § 251(b)(3).	No Comparable Requirement
Reciprocal Compensation.	LECs have the duty to establish reciprocal compensation arrangements § 251(b)(5).	No Comparable Requirement
Duty to Negotiate	ILECs have the duty to negotiate access to their networks with any requesting telecommunications carrier.	No Comparable Requirement
Unbundled Access	ILECs have the duty to provide any requesting telecommunications carrier with non-discriminatory access to network elements on an unbundled basis § 251(c)(3).	No Comparable Requirement
Collocation	ILECs have a duty to provide physical collocation of equipment necessary for interconnection or unbundled access § 251(c)(6).	No Comparable Requirement
Universal Service	All telecommunications carriers shall provide schools, libraries, and health care providers access to services at discounted rates § 254(h).	No Comparable Requirement
InterLATA	No Bell operating company may provide interLATA DSL services without prior FCC approval and competitive checklist compliance § 271.	No Comparable Requirement
Separate Subsidiaries	BOC InterLATA telecommunications and information services must be provided through a separate affiliate § 272(a)(2).	No Comparable Requirement
Electronic Publishing	BOCs may provide electronic publishing only through a separate affiliate § 274.	No Comparable Requirement
Alarm Monitoring	BOCs cannot provide alarm monitoring until 2001.	No Comparable Requirement

	DSL Service (an interstate telecommunications service)	Cable Modem Service (a cable service)
Computer III/ONA	BOC/GTE required to provide access and unbundling for ESPs (ISPs).	No Comparable Requirement

Mr. TAUZIN. Let me also, by Mr. Blunt's request, introduce a similar comparison that we I think talked about at our previous hearing into the record that was prepared by I think the United States Telephone Association.

[The information follows:]

Is there Regulatory Parity Between DSL and Cable? No.

Regulatory Requirement	Applies to DSL Service	Applies to Cable Modem Service?
Common carrier duty	Yes	No
Prohibition against discriminatory treatment	Yes	No
Required to file tariffs	Yes	No
FCC approval to extend lines	Yes	No
Annual reports	Yes	No
Prescribed depreciation charges	Yes	No
Prescribed uniform system of accounts and accounting forms	Yes	No
Duty to provide subscriber list information	Yes	No
Duty to interconnect	Yes	No
Duty to offer resale	Yes	No
Duty to provide number portablilty	Yes	No
Duty to provide dialing parity	Yes	No
Duty to establish reciprocal compensation	Yes	No
Duty to negotiate access to network	Yes	No
Duty to provide unbundled access	Yes	No
Duty to grant physical collocation	Yes	No
Duty to support universal service	Yes	No
Approval to provide interLATA DSL services	Yes	No
Requirement to use separate subsidiaries for interLATA telecommunications	Yes	No
Requirement to use separate affiliate for electronic publishing	Yes	No
Prohibition against alarm monitoring until 2001	Yes	No
Duty to unbundle for ISPs	Yes	No

Like services should be subject to like regulation. Support S. 877.

Mr. TAUZIN. And let me also say a few words in conclusion with a great deal of thanks to our witnesses. I know you have to move. We too.

Let me point out that the Department of Justice findings in the Court challenge to the WorldCom/Sprint merger give us I think a very important view as we go into legislative action on this piece of legislation.

It basically said about the backbone, the most important part of this whole system we are discussing, that it is dominated by several key players.

In fact, in paragraph 32 of the June 28 filing, it says UUNET is by far the largest here one. By any relevant measure, it is approaching a dominant position in the backbone market.

It is critical, I believe, as Mr. Pociask has pointed out to us, that we have more competition, as your own studies I think point out, Mr. Cali. More competition in creating the backbones, more competition in creating the infrastructures.

And I would say to my friends who are concerned about what kind of proposals are going to be made for rural America, rural America is always unfortunately going to be the last to be served.

But where there is fiber in the ground, and where there are systems prepared to deliver services to rural America, it is insane for us to retain Federal restrictions that prevent the use of that fiber to bring those Americans into the loop.

And what we are suggesting is that if over the next 12 and 18 months, 271 relief is finally going to come to places like Louisiana and Wyoming, which are not delegate-rich states and have to wait in the back of the line before we can join the high speed world of commerce, that the sooner we can pass legislation to introduce, as many of my consumers in Louisiana and in Wyoming and in other western states to this high speed commerce world and in fact to this new economy, then the better. That is why this legislation is and remains so important.

Again, I want to thank you for your contributions today. I want to thank my friends who have joined in the spirited debate and the hearing must unfortunately be adjourned.

[Whereupon, at 2:15 p.m., Thursday, July 27, 2000, the hearing was adjourned.]

[Additional material submitted for the record follows:]

PREPARED STATEMENT OF HON. WILLIAM E. KENNARD, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Thank you Mr. Chairman and Members of the Committee. I appreciate the opportunity to testify before the Committee this morning.

I would like to state at the outset that I agree wholeheartedly with the objective of speeding deployment of broadband services to all Americans regardless of where they live. Nobody should be left behind in the broadband revolution.

Despite the old saying, however, sometimes you do have to look a gift horse in the mouth, particularly if it is a Trojan Horse. I am afraid that is what this legislation is. It appears to be a gift horse to competition, but it is really just the opposite.

The genius of the Telecommunications Act of 1996 (1996 Act) is the delicate balance it strikes between regulation and deregulation to achieve competition in all forms of communications, and to deploy the fruits of that competition to all of the American people. The process has worked well, and consumers are better off as a result.

I am sure that increased competition is the well-meant intention of the proposed legislation. Inadvertently, however, I believe this legislation will not only upset the balance struck by the 1996 Act, but it actually would reverse the progress attained by the 1996 Act. In an effort to move us forward, this bill mistakenly moves us backward.

The 1996 Act Is A Model For the World

Recently, the European Commission (EC) issued a bold package of proposed legislation and directives aimed at bringing the Internet revolution to Europe. It is no coincidence that the EC's initiative looks like a close cousin of our Telecommunications Act of 1996. The European Commissioners have concluded that in order to chart a course towards American-style Internet growth they must build a vessel not unlike the 1996 Act. This course includes such staple items included in our Act as local loop unbundling and collocation.

We are setting the example for the rest of the world. Changing course midstream by diminishing the Bell Operating Companies' (BOCs) incentives to open the local markets would not only be detrimental to American consumers, but would also put at risk the leadership role the United States has played in the global telecommunications market.

A Fabric

The 1996 Act is a fabric, with the thread of each part connected to every other part. Unravel one thread, and you risk unraveling the entire fabric.

Pull the thread of data traffic, and the seams of the Section 271 provisions are weakened. Pull the thread of data traffic, and the threads of telephony, video transport, and wireless transmissions will fray. As I tell regulators from other nations, you cannot cherry-pick the 1996 Act. In this age of convergence, no network is an island, and the conduit and content of each is entwined with every other.

Under our system, the 1996 Act had to be carried out in three stages: rules had to be written, the rules were tested in court, and now the rules are being implemented. Now that implementation is fully underway it would be tragic to change directions.

My message to you today is simple: the Telecommunications Act of 1996 is working. Because of years of litigation, competition did not take hold as quickly as some had hoped. The fact, however, that it is now working is undeniable. Local markets are being opened, broadband services are being deployed, and competition, including broadband competition, is taking root.

The Commission has a long history of fostering innovation and investment in new technologies, such as the Internet. Specifically, we have consistently refused to impose legacy telecommunication regulations on providers entering new markets. For example, in 1983 the Commission declined to subject information service providers to access charges, concluding that such regulation is unnecessary and would be harmful to the development of the industry. More recently, in order not to stand in the way of successful advanced services deployment, we declined to require incumbent LECs to unbundle packet switched and other advanced services equipment. The Commission found that in a dynamic and evolving market, regulatory restraint was the best way to further the Act's goal of encouraging facilities based investment and innovation. Similarly, as I discuss later, we have thus far refused to impose legacy telecommunications regulation on cable broadband service providers.

Rapid Growth of Broadband Deployment

The Commission's faithful implementation of the Act has resulted in an explosion of broadband deployment. As of the beginning of the year 2000, we estimate there were 2.8 million actual subscribers to broadband, high-speed telecommunications services at speeds of at least 200 kbps in one direction. About 2 million of those lines were serving residential subscribers.

The DSL business is growing so fast that the BOCs are struggling to keep up with demand. The Wall Street Journal reported that SBC is installing about 3,500 DSL lines each day. At the end of the first quarter of 2000 there were approximately 800,000 DSL lines in service in the United States. About 75 percent of those lines are provided by incumbent LECs and 25 percent by competitive carriers. These numbers are growing. For example, Verizon (formerly Bell Atlantic) alone reported on July 21, 2000, that it has already reached 221,000 DSL customers at the end of the second quarter of this year.

These trends show no sign of slowing down. Analysts project that deployment of DSL will increase by 300 to 500 percent over the next year. Analysts also estimate that subscribership to cable broadband services will at least double by the end of this year, and by the end of 2005 will have 20 million subscribers. Incumbent LECs and cable operators are predicted to invest over 25 billion dollars in infrastructure improvements over the next four years to bring broadband services to their customers.

The market-opening 1996 Act sparked infrastructure investment in telecommunications facilities by incumbent LECs as well as competing carriers. For example:

- Incumbent LEC investment in infrastructure was flat or declining until the passage of the 1996 Act;
- After the 1996 Act, incumbent LEC investment jumped approximately 20 percent;
- Aggregate industry investment subsequent to passage of the Act, including both incumbent LECs and competing carriers, nearly doubled, increasing from 30 billion dollars to 60 billion dollars.

These statistics do not paint a picture of incumbent companies prevented by legal requirements from deploying new services to consumers.

The vision of the Act and the vision shared by the FCC—that consumers will have a choice of providers offering a choice of pipes into the home or workplace—is being realized. It is being realized through the opening of markets required by Congress in the 1996 Act. The rapid growth of broadband services is tangible proof that the market-opening requirements of the Act are working.

The Section 271 Incentives to Open Local Markets

The opening of local markets is absolutely critical for accelerating broadband deployment. Exempting data traffic from Section 271 would eliminate a crucial incentive for the incumbent BOCs to open their local monopoly markets. This is not an insignificant exemption. In fact, as I discuss below, data traffic has already surpassed voice traffic on long haul networks.

Simply stated, the Act requires the BOCs to open their local markets to competitors. Section 251 states the rules of the game and Section 271 provides a structured incentive for BOCs to play by the rules. At its core, Section 271 is a simple yet clev-

er proposition: in exchange for opening their local facilities to competitors, the 1996 Act provides the BOCs with the substantial reward of the long distance "carrot." Altering this balance by exempting data traffic from the restrictions in Section 271 would inhibit, rather than further, the Act's goal of fostering robust broadband deployment.

As local markets are opened, broadband deployment is both stimulated and accelerated. Specifically, it is the opening of those local markets that is driving broadband deployment and innovation. This is true because nondiscriminatory access to the "last mile" and the ability to collocate—both components of the competitive checklist—are critical inputs for the provision of DSL service.

Unfortunately, the first three years of the implementation of the 1996 Act were characterized not by cooperation but by confrontation. Litigation instead of collaboration. The result was uncertainty, confusion, and delay. We lost valuable time. Then, in January of 1999, the Supreme Court largely affirmed the Commission's implementation of the market-opening provisions of the Act. Once the smoke cleared, we began to witness a sea change. Finally, the battles began to move out of the courtroom and into the marketplace.

Within approximately the last six months, the Commission has unanimously approved Section 271 applications for both New York and Texas. We need only review the state of competition in New York and Texas to know the Act is working. More activity is on the horizon. The BOCs have indicated that they intend to file applications for numerous states across the nation within the next six to nine months. The Commission welcomes, and looks forward to, these filings.

As I have stated before, opening markets can be difficult work, and establishing competition is not easy or fast. But both Verizon and Southwestern Bell have shown that it is well within the grasp and control of the BOCs. I commend both of these companies, and the New York and Texas Commissions, for their dedication and hard work in ensuring that the fruits of competition are enjoyed by local and long distance consumers in Texas and New York.

As envisioned by the 1996 Act, the Section 271 carrot has fueled the growth of local and long distance competition. Because Verizon and Southwestern Bell opened their local facilities to competitors in New York and Texas as required by the Act, competition in the local telephone market has flourished in those states. One analyst estimates that competitors will serve about 20 percent of the local lines (approximately 3 million lines) in New York by the end of this year. That is a substantial increase from the 7 percent of the local lines that competitors served in New York at the end of 1999 (approximately 1 million lines). Verizon is completing over 270,000 local orders each month for competitors in New York. Local competition is thriving in Texas as well. The Department of Justice estimated that competitors served over 800,000 lines in Texas at the end of last year. That is about an 8 percent market share. Competitors' customer base, however, has been steadily increasing. For example, in May—the most recent month for which we have data—competitors added over 170,000 new lines in Texas. And, I am happy to report, that a large portion of the increase in local competition in these states since Section 271 authorization has been in the residential and small business markets.

The hard work of satisfying Section 271 has not only benefited New York and Texas consumers of *local* services. In the first six months after gaining Section 271 approval, Verizon captured nearly 900,000 *long distance* customers in New York. Analysts estimate that Verizon will take as many as 1.5 million long distance lines in its first year alone (about 10% of the market)—well ahead of the 1 million lines Verizon set as its goal for the year. Verizon expects to capture 25 to 30 percent of the long distance market within 5 years. Analysts predict that they will meet this goal easily. Many predict that Southwestern Bell will have similar success in Texas. This is no small prize. Texas alone represents about 10 percent of the nation's long distance voice and data market.

The opening of local markets drives competition, innovation, and produces a breadth of offerings. Although DSL technology has been available for years, it was not until the passage of the Act that competitive providers—called data LECs or DLECs—specializing in DSL deployment were born and began offering DSL service to consumers. Competitors need to collocate their equipment in BOC central offices and require conditioned local loops before they can even offer facilities-based DSL services. Then, to be competitive, DLECs require timely and cost-based loops and collocation. Once the DLECs had access to the inputs necessary to offer their DSL products to consumers, the threat of such competition spurred the BOCs to develop their own DSL products. Competition from the incumbent monopolies, in turn, is spurring the DLECs to develop even more new and innovative broadband products, services, packages, and prices. It is precisely this sort of competitive cycle that will accelerate the availability of broadband technology for all Americans.

Of course, competition among technologies as well as providers is also driving this investment. Wireless technologies—both terrestrial and satellite—are also on the scene. High-speed Internet service via satellite is available today virtually everywhere in the United States, including rural areas. Analysts project that wireless technologies will have 6 to 12 percent of the broadband market by 2004. Analysts also project that DSL will overtake cable as the overall leading technology for delivery of broadband services as early as 2002, with cable retaining its dominance amongst residential and small business customers until 2004, when cable and DSL will have equal market shares.

I am proud of the FCC's record in holding firm on the requirements of Section 271. As our experiences with New York and Texas have shown, there is no substitute for the hard work of compliance. The rewards of Section 271 compliance are plentiful. For the first time in history consumers are able to choose their local service provider and take advantage of increased competition for their long distance calls as a strong new competitor enters the market. The rewards do not end there. Competitive markets are also bringing consumers new choices in technology for the 21st Century.

Removing Incentives By Exempting Data

The great competitive success stories we have been witnessing as a result of the incentive structure established by Section 271 would be few and far between if the proposed legislation becomes law. As currently written, Sections 251 and 271 do not draw a regulatory distinction between voice and data services. Carving out interLATA data traffic from the prohibitions in Section 271 would remove a potent incentive from the 1996 Act.

Currently, the majority of traffic travelling over long haul networks is data—as opposed to voice traffic. Indeed, analysts expect that data traffic will comprise approximately 90 percent of all traffic within four years. The wholesale data service market is expected to generate 41.3 billion dollars in 2005, up from 9.9 billion in 1999. In a world where data is experiencing explosive growth and is rapidly outpacing voice traffic, allowing the BOCs to carry long distance data traffic before they have satisfied the requirements of Section 271 would severely undermine the BOCs' incentive to open their markets.

Changing the rules of the game at this juncture would also undercut the substantial infrastructure investment being made by competitive telecommunications providers. For example, competing carriers have invested 30 billion dollars in new networks since the passage of the Act and are now investing over 1 billion dollars every month in their networks. In 1999, competing carriers have spent over 15 billion dollars on overall capital expenditures, up from about 9 billion the year before. Investors will cut off the spigot when competitors are forced to try to compete with monopoly incumbent providers without full and fair access to the BOC's bottleneck facilities.

I disagree with the notion that further deregulation is the only way to enable incumbent LEC deployment of broadband services in rural and high cost areas. The BOCs simply do not need to provide access the entire way from the customer to the Internet backbone in order to provide broadband access to their rural customers. Rather, they can provide such broadband services to those customers the same way they serve their urban and suburban customers—by handing data traffic that is headed out of the LATA off to another provider who can carry it across the LATA boundary. That provider then carries the traffic to the Internet backbone.

Is this the most efficient way to provide service to customers? No. Is it the most cost effective? Certainly not. Does it preserve the incentives of the BOCs to open their local monopoly markets to competitors faster than they otherwise might? Absolutely.

The simple reason why rural customers, and other customers in unserved and underserved areas, are not yet being served as robustly as we would like is not caused by legal impediments. Rather it is largely about simple economics. Providing customers with sophisticated services in areas of low density is an expensive undertaking. . As such, we are mindful that some rural customers face more limited competitive choices for broadband services at this time. Accordingly, to the extent that there may be instances where a LATA boundary is standing in the way of consumers getting broadband services from BOCs, the Commission has set up a LATA boundary modification process. For example:

- A BOC that provides advanced services to customers within a state may demonstrate that it cannot obtain an interLATA provider to connect its in-state network to the Internet and request a LATA modification to allow it to connect its network to the nearest out-of-state Network Access Point;

- A BOC could also request a LATA boundary modification to allow it to serve a particular customer, such as a hospital or university, where the customer cannot obtain an interLATA connection for its network; or
- A BOC may also demonstrate that it would not be able to deploy xDSL service to a LATA within a multi-LATA state unless the BOC is allowed to aggregate traffic from one LATA to another, or may be the advanced services provider of last resort for residential customers within a particular state. The BOC may then argue that it is uneconomical to deploy advanced services to such customers without a LATA boundary modification.

Notably, we have not received any requests for LATA modification since adopting this procedure in February 2000, and have received no requests to refile prior petitions. It is difficult to understand how LATA boundaries are a barrier to broadband deployment when no BOCs have even attempted to obtain such relief in the past five months. The Commission has stated its commitment to reviewing, in an expeditious manner, all LATA boundary modification requests that would provide consumers with advanced services.

Conclusion

In conclusion, the 1996 Act is working. The explosive growth in the deployment of broadband services and the vigorous local competition in New York and Texas prove that the Act is working. Passage of the proposed legislation at this critical juncture would disrupt the Act's delicate balance between regulation and deregulation, postpone the benefits of competition to consumers by creating uncertainty and litigation, curtail the flow of investment into new markets, and inhibit the Act's goal of fostering broadband deployment. For all of these reasons, I urge you let the Act continue to work.