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INTERNET FREEDOM AND BROADBAND DEPLOYMENT ACT OF 2001

MAY 24, 2001.—Ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1542]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1542) to deregulate the Internet and high speed data services, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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89–006

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Internet Freedom and Broadband Deployment Act of 2001".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Internet access services are inherently interstate and international in nature, and should therefore not be subject to regulation by the States.

(2) The imposition of regulations by the Federal Communications Commission and the States has impeded the rapid delivery of high speed Internet access services and Internet backbone services to the public, thereby reducing consumer choice and welfare.

(3) The Telecommunications Act of 1996 represented a careful balance between the need to open up local telecommunications markets to competition and the need to increase competition in the provision of interLATA voice telecommunications services.

(4) In enacting the prohibition on Bell operating company provision of interLATA services, Congress recognized that certain telecommunications services have characteristics that render them incompatible with the prohibition on Bell operating company provision of interLATA services, and exempted such services from the interLATA prohibition.

(5) High speed data services and Internet backbone services constitute unique markets that are likewise incompatible with the prohibition on Bell operating company provision of interLATA services.

(6) Since the enactment of the Telecommunications Act of 1996, the Federal Communications Commission has construed the prohibition on Bell operating company provision of interLATA services in a manner that has impeded the development of advanced telecommunications services, thereby limiting consumer choice and welfare.

(7) Internet users should have choice among competing Internet service providers.

(8) Internet service providers should have the right to interconnect with high speed data networks in order to provide service to Internet users.

(b) PURPOSES.—It is therefore the purpose of this Act to provide market incentives for the rapid delivery of advanced telecommunications services—

(1) by deregulating high speed data services, Internet backbone services, and Internet access services;

(2) by clarifying that the prohibition on Bell operating company provision of interLATA services does not extend to the provision of high speed data services and Internet backbone services;

(3) by ensuring that consumers can choose among competing Internet service providers; and

(4) by ensuring that Internet service providers can interconnect with competitive high speed data networks in order to provide Internet access service to the public.

SEC. 3. DEFINITIONS.

(a) AMENDMENTS.—Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended—

(1) by redesignating paragraph (20) as paragraph (21);

(2) by redesignating paragraphs (21) through (52) as paragraphs (26) through (57), respectively;

(3) by inserting after paragraph (19) the following new paragraph:

"(20) HIGH SPEED DATA SERVICE.—The term 'high speed data service' means any service that consists of or includes the offering of a capability to transmit, using a packet-switched or successor technology, information at a rate that is generally not less than 384 kilobits per second in at least one direction. Such term does not include special access service offered through dedicated transport links between a customer's premises and an interexchange carrier's switch or point of presence.";

(4) by inserting after paragraph (21) the following new paragraphs:

"(22) INTERNET.—The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any prede-

cessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

"(23) INTERNET ACCESS SERVICE.—The term 'Internet access service' means a service that combines computer processing, information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services.

"(24) INTERNET BACKBONE.—The term 'Internet backbone' means a network that carries Internet traffic over high-capacity long-haul transmission facilities and that is interconnected with other such networks via private peering relationships.

"(25) INTERNET BACKBONE SERVICE.—The term 'Internet backbone service' means any interLATA service that consists of or includes the transmission by means of an Internet backbone of any packets, and shall include related local connectivity.".

(b) CONFORMING AMENDMENTS.—

(1) Section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(2) Section 223(h)(2) of such Act (47 U.S.C. 223(h)(2)) is amended by striking "230(f)(2)" and inserting "230(f)(1)".

SEC. 4. LIMITATION ON AUTHORITY TO REGULATE HIGH SPEED DATA SERVICES.

(a) IN GENERAL.—Part I of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

"SEC. 232. PROVISION OF HIGH SPEED DATA SERVICES.

"(a) FREEDOM FROM REGULATION.—Except to the extent that high speed data service, Internet backbone service, and Internet access service are expressly referred to in this Act, neither the Commission, nor any State, shall have authority to regulate the rates, charges, terms, or conditions for, or entry into the provision of, any high speed data service, Internet backbone service, or Internet access service, or to regulate any network element to the extent it is used in the provision of any such service; nor shall the Commission impose or require the collection of any fees, taxes, charges, or tariffs upon such service.

"(b) SAVINGS PROVISION.—Nothing in this section shall be construed to limit or affect the authority of any State to regulate circuit-switched telephone exchange services, nor affect the rights of cable franchise authorities to establish requirements that are otherwise consistent with this Act.

"(c) CONTINUED ENFORCEMENT OF ESP EXEMPTION, UNIVERSAL SERVICE RULES PERMITTED.—Nothing in this section shall affect the ability of the Commission to retain or modify—

"(1) the exemption from interstate access charges for enhanced service providers under Part 69 of the Commission's regulations, and the requirements of the MTS/WATS Market Structure Order (97 FCC 2d 682, 715 (1983)); or

"(2) rules issued pursuant to section 254.".

(b) CONFORMING AMENDMENT.—Section 251 of the Communications Act of 1934 (47 U.S.C. 251) is amended by adding at the end thereof the following new subsection:

"(j) EXEMPTION.—

"(1) ACCESS TO NETWORK ELEMENTS FOR HIGH SPEED DATA SERVICE.—

"(A) LIMITATION.—Subject to subparagraphs (B), (C), and (D) of this paragraph, neither the Commission nor any State shall require an incumbent local exchange carrier to provide unbundled access to any network element for the provision of any high speed data service.

"(B) PRESERVATION OF REGULATIONS AND LINE SHARING ORDER.—Notwithstanding subparagraph (A), the Commission shall, to the extent consistent with subsections (c)(3) and (d)(2), require the provision of unbundled access to those network elements described in section 51.319 of the Commission's regulations (47 C.F.R. 51.319), as—

"(i) in effect on January 1, 1999; and

"(ii) subject to subparagraphs (C) and (D), as modified by the Commission's Line Sharing Order.

"(C) EXCEPTIONS TO PRESERVATION OF LINE SHARING ORDER.—

"(i) UNBUNDLED ACCESS TO REMOTE TERMINAL NOT REQUIRED.—An incumbent local exchange carrier shall not be required to provide unbundled access to the high frequency portion of the loop at a remote terminal.

"(ii) CHARGES FOR ACCESS TO HIGH FREQUENCY PORTION.—The Commission and the States shall permit an incumbent local exchange carrier to charge requesting carriers for the high frequency portion of a loop an amount equal to which such incumbent local exchange carrier imputes to its own high speed data service.

"(D) LIMITATIONS ON REINTERPRETATION OF LINE SHARING ORDER.—Neither the Commission nor any State Commission shall construe, interpret, or reinterpret the Commission's Line Sharing Order in such manner as would expand an incumbent local exchange carrier's obligation to provide access to any network element for the purpose of line sharing.

"(E) AUTHORITY TO REDUCE ELEMENTS SUBJECT TO REQUIREMENT.—This paragraph shall not prohibit the Commission from modifying the regulation referred to in subparagraph (B) to reduce the number of network elements subject to the unbundling requirement, or to forbear from enforcing any portion of that regulation in accordance with the Commission's authority under section 706 of the Telecommunications Act of 1996, notwithstanding any limitation on that authority in section 10 of this Act.

"(F) PROHIBITION ON DISCRIMINATORY SUBSIDIES.—Any network element used in the provision of high speed data service that is not subject to the requirements of subsection (c) shall not be entitled to any subsidy, including any subsidy pursuant to section 254, that is not provided on a nondiscriminatory basis to all providers of high speed data service and Internet access service. This prohibition on discriminatory subsidies shall not be interpreted to authorize or require the extension of any subsidy to any provider of high speed data service or Internet access service.

"(2) RESALE.—For a period of three years after the enactment of this subsection, an incumbent local exchange carrier that provides high speed data service shall have a duty to offer for resale any such service at wholesale rates in accordance with subsection (c)(4). After such three-year period, such carrier shall offer such services for resale pursuant to subsection (b)(1).

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) the 'Commission's Line Sharing Order' means the Third Report and Order in CC Docket No. 98–147 and the Fourth Report and Order in CC Docket 96–98 (FCC 99–355), as adopted November 18, 1999, and without regard to any clarification or interpretation in the further notice of proposed rulemaking in such Dockets adopted January 19, 2001 (FCC 01–26); and

"(B) the term 'remote terminal' means an accessible terminal located outside of the central office to which analog signals are carried from customer premises, in which such signals are converted to digital, and from which such signals are carried, generally over fiber, to the central office.".

(c) PRESERVATION OF EXISTING INTERCONNECTION AGREEMENTS.—Nothing in the amendments made by this section—

(1) shall be construed to permit or require the abrogation or modification of any interconnection agreement in effect on the date of enactment of this section during the term of such agreement, except that this paragraph shall not apply to any interconnection agreement beyond the expiration date of the existing current term contained in such agreement on the date of enactment of this section, without regard to any extension or renewal of such agreement; or

(2) affects the implementation of any change of law provision in any such agreement.

SEC. 5. INTERNET CONSUMERS FREEDOM OF CHOICE.

Part I of title II of the Communications Act of 1934, as amended by section 4, is amended by adding at the end the following new section:

"SEC. 233. INTERNET CONSUMERS FREEDOM OF CHOICE.

"(a) PURPOSE.—It is the purpose of this section to ensure that Internet users have freedom of choice of Internet service provider.

"(b) OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.—Each incumbent local exchange carrier has the duty to provide—

"(1) Internet users with the ability to subscribe to and have access to any Internet service provider that interconnects with such carrier's high speed data service;

"(2) any Internet service provider with the right to acquire the facilities and services necessary to interconnect with such carrier's high speed data service for the provision of Internet access service;

"(3) any Internet service provider with the ability to collocate equipment in accordance with the provisions of section 251, to the extent necessary to achieve the objectives of paragraphs (1) and (2) of this subsection; and

"(4) any provider of high speed data services, Internet backbone service, or Internet access service with special access for the provision of Internet access service within a period no longer than the period in which such incumbent local exchange carrier provides special access to itself or any affiliate for the provision of such service.

"(c) DEFINITIONS.—As used in this section—

"(1) INTERNET SERVICE PROVIDER.—The term 'Internet service provider' means any provider of Internet access service.

"(2) INCUMBENT LOCAL EXCHANGE CARRIER.—The term 'incumbent local exchange carrier' has the same meaning as provided in section 251(h).

"(3) SPECIAL ACCESS SERVICE.—The term 'special access service' means the provision of dedicated transport links between a customer's premises and the switch or point of presence of a high speed data service provider, Internet backbone service provider, or Internet service provider.".

SEC. 6. INCIDENTAL INTERLATA PROVISION OF HIGH SPEED DATA AND INTERNET BACKBONE SERVICES.

(a) INCIDENTAL INTERLATA SERVICE PERMITTED.—Section 271(g) of the Communications Act of 1934 (47 U.S.C. 271(g)) is amended—

(1) by striking "or" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(7) of high speed data service or Internet backbone service.".

(b) PROHIBITION ON PROVISION OF VOICE TELEPHONE SERVICES.—Section 271 of such Act is amended by adding at the end thereof the following new subsection:

"(k) PROHIBITION ON PROVISION OF VOICE TELEPHONE SERVICES.—Until the date on which a Bell operating company is authorized to offer interLATA services originating in an in-region State in accordance with the provisions of this section, such Bell operating company offering any high speed data service or Internet backbone service pursuant to the provisions of paragraph (7) of subsection (g) may not, in such in-region State provide interLATA voice telecommunications service, regardless of whether there is a charge for such service, by means of the high speed data service or Internet backbone service provided by such company.".

(c) CONFORMING AMENDMENTS.—

(1) Section 272(a)(2)(B)(i) of such Act is amended to read as follows:

"(i) incidental interLATA services described in paragraphs (1), (2), (3), (5), (6), and (7) of section 271(g);".

(2) Section 272(a)(2)(C) of such Act is repealed.

SEC. 7. DEPLOYMENT OF BROADBAND SERVICES.

Part III of title II of the Communications Act of 1934 is amended by inserting after section 276 (47 U.S.C. 276) the following new section:

"SEC. 277. DEPLOYMENT OF BROADBAND SERVICES.

"(a) DEPLOYMENT REQUIRED.—Each Bell operating company and its affiliates shall deploy high speed data services in each State in which such company or affiliate is an incumbent local exchange carrier (as such term is defined in section 251(h)) in accordance with the requirements of this section.

"(b) DEPLOYMENT REQUIREMENTS.—

"(1) MILEPOSTS FOR DEPLOYMENT.—A Bell operating company or its affiliate shall deploy high speed data services by attaining high speed data capability in its central offices in each State to which subsection (a) applies. Such company or affiliate shall attain such capability in accordance with the following schedule:

"(A) Within one year after the date of enactment of this section, such company or affiliate shall attain high speed data capability in not less than 20 percent of such central offices in such State.

"(B) Within 2 years after the date of enactment of this section, such company or affiliate shall attain high speed data capability in not less than 40 percent of such central offices in such State.

"(C) Within 3 years after the date of enactment of this section, such company or affiliate shall attain high speed data capability in not less than 70 percent of such central offices in such State.

"(D) Within 5 years after the date of enactment of this section, such company or affiliate shall attain high speed data capability in not less than 100 percent of such central offices in such State.

"(2) HIGH SPEED DATA CAPABILITY.—For purposes of paragraph (1), a central office shall be considered to have attained high speed capability if—

"(A)(i) such central office is equipped with high speed data multiplexing capability; and

"(ii) each upgradeable customer loop that originates or terminates in such central office is upgraded promptly upon receipt of a customer request for such upgrading, as necessary to permit transmission of high speed data service (including any conditioning of the loop);

"(B) each customer served by such central office (without regard to the upgradeability or length of the customer's loop) is able to obtain the provision of high speed data service from such Bell operating company or its affiliate by means of an alternative technology that does not involve the use of the customer's loop; or

"(C) each such customer is able to obtain the provision of high speed data service by one or the other of the means described in subparagraphs (A) and (B).

"(3) UPGRADEABLE LOOPS.—For purposes of paragraph (2), a customer loop is upgradeable if—

"(A) such loop is less than 15,000 feet in length (from the central office to the customer's premises along the line); and

"(B) such loop can, with or without conditioning, transmit high speed data services without such transmission on such loop causing significant degradation of voice service.

"(c) AVAILABILITY OF REMEDIES.—

"(1) FORFEITURE PENALTIES.—A Bell operating company or its affiliate that fails to comply with this section shall be subject to the penalties provided in section 503(b)(2). In determining whether to impose a forfeiture penalty, and in determining the amount of any forfeiture penalty under section 503(b)(2)(D), the Commission shall take into consideration the extent to which the requirements of this section are technically infeasible.

"(2) JURISDICTION.—The Commission shall have exclusive jurisdiction to enforce the requirements of this section, except that any State commission may file a complaint with the Commission seeking the imposition of penalties as provided in paragraph (1).

"(d) ANNUAL REPORT ON DEPLOYMENT.—

"(1) ANALYSIS REQUIRED.—The Commission shall include in each of its annual reports submitted no more than 18 months after the date of enactment of this section an analysis of the deployment of high speed data service to underserved areas. Such report shall include—

"(A) a statistical analysis of the extent to which high speed data service has been deployed to central offices and customer loops, or is available using different technologies, as compared with the extent of such deployment and availability prior to such date and in prior reports under this subsection;

"(B) a breakdown of the delivery of high speed data service by type of technology and class or category of provider;

"(C) an identification of impediments to such deployment and availability, and developments in overcoming such impediments during the intervening period between such reports; and

"(D) recommendations of the Commission, after consultation with the National Telecommunications and Information Administration, for further extending such deployment and availability and overcoming such impediments.

"(2) DEFINITION OF UNDERSERVED AREA.—For purposes of paragraph (1), the term 'underserved areas' means areas that—

"(A) are high cost areas that are eligible for services under subpart D of part 54 of the Commission's regulations (47 C.F.R. 54.301 et seq.); or

"(B) are within or comprised of any census tract—

"(i) the poverty level of which is at least 30 percent (based on the most recent census data); or

"(ii) the median family income of which does not exceed—

"(I) in the case of a census tract located in a metropolitan statistical area, 70 percent of the greater of the metropolitan area median family income or the statewide median family income; and

"(II) in the case of a census tract located in a nonmetropolitan statistical area, 70 percent of the nonmetropolitan statewide median family income.

"(3) DESIGNATION OF CENSUS TRACTS.—The Commission shall, not later than 90 days after the date of the enactment of this section, designate and publish those census tracts meeting the criteria described in paragraph (2)(B).".

SEC. 8. COMMISSION AUTHORIZED TO PRESCRIBE JUST AND REASONABLE CHARGES.

The Federal Communications Commission may impose penalties under section 503 of the Communications Act of 1934 not to exceed $1,000,000 for any violation of provisions contained in, or amended by, section 5, 6, or 7 (or any combination thereof) of this Act. Each distinct violation shall be a separate offense, and in the case of a continuing violation, each day shall be deemed a separate offense, except that the amount assessed for any continuing violation shall not exceed a total of $10,000,000 for any single act or failure to act described in section 5, 6, or 7 (or any combination thereof) of this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 1542, the Internet Freedom and Broadband Deployment Act of 2001, is to deregulate the provision of high speed data, Internet backbone, and Internet access services, while ensuring that the regulation of telephone exchange services is not disturbed. The Internet has drastically changed the dynamics of the communications industry and created new markets that can be entered by any company willing to make the investment and take the risk necessary to thrive.

H.R. 1542 ensures that these new markets will not be subject to the types of regulations imposed upon markets in which entry is much more difficult. New markets thrive in the absence of regulation, and H.R. 1542 will make the markets for high speed data, Internet backbone, and Internet access services vibrant and competitive. The bill will facilitate that competition by implementing a deregulatory framework for the provision of high speed data, Internet backbone, and Internet access services, and by ensuring that all providers of such services are allowed to compete on an equal footing, regardless of the technology or platform they use to provide such services.

H.R. 1542 has three main components. First, the bill broadly preempts, with certain narrow exceptions, State and federal regulation of high speed data service, Internet backbone service, and Internet access service. Second, the bill clarifies that Internet backbone and high speed data services are not subject to the interLATA restriction in section 271 of the Telecommunications Act of 1996. Third, the bill ensures freedom of choice to Internet users by requiring each incumbent local exchange carrier (ILEC) to allow Internet service providers to interconnect with the ILEC's high speed data service for the provision of Internet access service.

BACKGROUND AND NEED FOR LEGISLATION

Until five years ago, telephone exchange service in the United States was largely a regulated monopoly governed by the antitrust laws. In each local service area, a single telephone company (the ILEC) was the dominant, if not the sole, provider of service. State regulators treated that company as a public utility—requiring it, for example, to provide basic local service to residential customers at relatively low rates. This system resulted in ILECs providing the overwhelming share of telephone exchange service in each local service area. Due to concerns relating to the potential for discrimination by these providers of local service, the largest of them—the Bell operating companies ("BOCs") that had been divested from AT&T in 1984 pursuant to the Modification of Final Judgment (MFJ)—were precluded from, among other things, providing most interLATA services.

The Telecommunications Act of 1996 (47 U.S.C. 151 et seq.) dramatically changed this regulation-by-antitrust paradigm. Congress replaced it with a pro-competitive, deregulatory framework for the provision of local and long-distance telephone service. The overriding premise of the 1996 Act was that competition, not regulation under antitrust law, was best suited to ensure low prices and improved services. The 1996 Act thus preempted all state and local barriers to the provision of telephone exchange service, including exclusive franchises, and allowed new entrants to compete with incumbents in the local exchange. At the same time, however, Congress recognized that local voice competition would not arise overnight, and that competitors might initially need to obtain some facilities and capabilities from the incumbent carriers. To spur competition, Congress imposed certain affirmative duties on ILECs to assist new entrants in the local voice market. These duties included, among others, the right to lease, on an "unbundled" basis, discrete network elements that are necessary to provide telephone exchange service.

The Telecommunications Act thus sought to foster facilities-based competition for voice and video services among the carriers that dominated their respective markets, as well as permit new carriers to enter these markets. The Telecommunications Act took telecommunications policy out of the Federal courts and the MFJ, and put telecommunications policy back where it belonged: in the marketplace, or, to enforce the rules of engagement, at the Federal Communications Commission (Commission) and State commissions. In doing so, however, Congress was careful not to infringe on the antitrust laws themselves. Current section 601(b)(1) of the Telecommunications Act (47 U.S.C. 152 nt) expressly maintained the applicability of the antitrust laws, which the courts have clearly recognized. See, e.g., *Goldwasser* v. *Ameritech Corp.,* 222 F.3d 390, 394 (7th Cir. 2000).

The Telecommunications Act's major shortcoming is in its pardonable failure to anticipate the impact of the Internet and the commercialization of technology that would enable millions of consumers to obtain fast, seamless access to information from around the world. The Internet was in its infancy when the Telecommunications Act was debated and initially passed by the House and the Senate in 1995, as well as in February of 1996, when the legislation was signed into law. H.R. 1542 is a direct response to the advent of the Internet.

H.R. 1542 expands the deregulatory principles underlying the Telecommunications Act to the Internet and the provision of Internet-related services. Like any new medium or service, the Internet cannot thrive if it is stifled. Applying legacy telephone regulations to the Internet and the provision of Internet services will prevent consumers from realizing the true potential of the Internet. The legislation, by contrast, ensures that the Internet is permitted to flourish free from the types of regulations that apply to telephone services and equipment. As a result, consumers will reap the benefits that flow when the market, rather than government, dictates the rules of competition.

The Commission has interpreted the Telecommunications Act in a way that stifles competition and innovation. First, the Commission has interpreted section 251 of the 1996 Act—which sets out

the affirmative steps ILECs must take to assist new entrants to enter the local exchange market—to apply not just to local voice service, but to high-speed data services as well. Second, the Commission has interpreted the 1996 Act's restriction of BOC-provision of interLATA services to apply not just to interLATA voice services, but to high-speed data and Internet backbone services as well. Both of these actions are flatly inconsistent with the pro-competitive, deregulatory scheme that Congress intended would govern new communications markets.

The pace of the deployment of high speed data services is inextricably linked with the manner in which such services are regulated. High speed data service providers are regulated differently. High-speed cable-modem services, offered by cable companies, are not subject to regulation by the Commission. However, as mentioned above, high speed data services offered by ILECs are regulated in the same manner as telephone services offered by such carriers. These regulations require ILECs to provide competitive local exchange carriers (CLECs) access to their networks on a piece-by-piece basis, including access to new facilities not essential to basic telephone service. These regulations also require ILECs to resell their services to competitors at wholesale rates, and prevent the Bell companies from offering long-distance data services.

The regulations imposed upon ILECs were designed to facilitate competition for local telephone service. These rules were necessary because of the difficulty in reconstructing a national telephone network, but the characteristics of the high speed data service market are much different than those of the local telephone market. High speed data is a nascent market, largely because of the outdated rules that apply to its deployment.

The unnecessary application of these legacy telephone rules to high speed data and Internet backbone services provided by ILECs has stifled the deployment of such services. Indeed, cable companies control 75 percent of the high speed data market in the United States, with the ILECs controlling less than 25 percent, hardly a level that justifies the application of telephone regulations designed for dominant carriers. ILECs have less of an incentive to deploy new facilities because they have to share such facilities with CLECs, while their cable competitors do not. In addition, because current rules prevent a Bell company from offering long-distance high speed data and Internet backbone services in an in-region State before the FCC approves an application to provide interLATA services in accordance with Section 271 of the Communications Act, the Bells cannot gain the efficiencies associated with the ability to offer end-to-end services.

Cable companies have used their unregulated status in the high speed data market to garner three-quarters of the subscribers. If ILECs were able to offer high speed data services in the same unregulated framework as cable companies, ILECs would maximize their ability to recover their costs as quickly as possible, which would provide the ILECs with a stronger incentive to deploy high speed data and Internet backbone services, even in areas in which costs can be spread over fewer customers. As a result, deregulating high speed data, Internet backbone, and Internet access services offered by ILECs will speed the deployment of these services and level the playing field among providers of these services.

While the Telecommunications Act was a landmark legislative achievement, it failed to provide a framework in which new services and new facilities offered over the nation's telephone networks would be regulated differently than basic telephone service. The blistering growth in usage of the Internet demonstrated the Telecommunications Act's shortcoming within just a few years of its enactment. H.R. 1542 is not a wholesale change of the Telecommunications Act. H.R. 1542 merely ensures that new services and facilities will not be saddled with rules that apply to a one-hundred-year-old telephone network. H.R. 1542 takes the deregulatory goal of the Telecommunications Act and ensures the same goal is applied to new communications markets.

At the same time, consistent with the underlying Telecommunications Act, the legislation does nothing to diminish the force and effect of the antitrust laws. The legislation does not diminish or amend the savings clause set forth in current section 601(b) of the Telecommunications Act, nor does it otherwise, directly or even indirectly, amend the antitrust laws. RBOCs engaged in the deployment of high speed data services will remain subject to all applicable antitrust laws.

HEARINGS

The full Energy and Commerce Committee held a legislative hearing on H.R. 1542 on April 25, 2001. The Committee received testimony from: Douglas Ashton, Managing Director of Bear Stearns, Inc.; James Cicconi, General Counsel of ATT; Joseph Gregori, CEO of InfoHighway Communications; James Henry, Managing General Partner of Greenfield Hill Capital LLP; Gordon Hill, Executive Director of Economic Opportunity Program of Elmira, New York; Paul Mancini, Vice President and Assistant General Counsel of SBC Communications; Clark McLeod, Chairman of McLeod USA; Charles McMinn, Chairman of Covad Communications; Peter Pitsch, Director of Communications Policy for Intel, Inc.; Tim Regan, Senior Vice President of Corning, Inc.; and Tom Tauke, Senior Vice President of Verizon Communications.

COMMITTEE CONSIDERATION

On Thursday, April 26, 2001, the Subcommittee on Telecommunications and the Internet met in open markup session and approved H.R. 1542, as amended, by a roll call vote of 19 yeas and 14 nays for Full Committee consideration, a quorum being present. On Wednesday, May 9, 2001, the Full Committee met in open markup session and ordered H.R. 1542 favorably reported to the House, as amended, by a roll call vote of 32 to 23, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The following are the recorded votes on the motion to report H.R. 1542 and on amendments offered to the measure, including the names of those Members voting for and against.

COMMITTEE ON ENERGY AND COMMERCE—107TH CONGRESS

ROLLCALL VOTE 1

Bill: H.R. 1542, Internet Freedom and Broadband Deployment Act of 2001.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Stupak, No. 1b, (1) to require Bell operating companies to meet certain milestones regarding broadband deployment; (2) would require Bell operating companies to install digital switches in central offices and service any customer with a loop of 150,00 feet or less within statutorily-defined time frames; and (3) would impose penalties for a failure to meet the deployment milestones, and the FCC would have had the authority to suspend the deregulation provided by the Internet Freedom and Broadband Deployment Act if the milestones were not met.

Disposition: Not Agreed to, by a rollcall vote of 17 yeas to 37 nays.

Representative	Yeas	Nays	Representative	Yeas	Nays
Mr. Tauzin		X	Mr. Dingell		X
Mr. Bilirakis		X	Mr. Waxman	X	
Mr. Barton		X	Mr. Markey	X	
Mr. Upton		X	Mr. Hall		X
Mr. Stearns		X	Mr. Boucher		X
Mr. Gillmor			Mr. Towns		X
Mr. Greenwood		X	Mr. Pallone	X	
Mr. Cox		X	Mr. Brown	X	
Mr. Deal		X	Mr. Gordon		X
Mr. Largent	X		Mr. Deutsch		X
Mr. Burr		X	Mr. Rush		X
Mr. Whitfield		X	Ms. Eshoo	X	
Mr. Ganske		X	Mr. Stupak	X	
Mr. Norwood		X	Mr. Engel		X
Mrs. Cubin			Mr. Sawyer		X
Mr. Shimkus		X	Mr. Wynn		X
Mrs. Wilson		X	Mr. Green		X
Mr. Shadegg		X	Ms. McCarthy	X	
Mr. Pickering	X		Mr. Strickland	X	
Mr. Fossella		X	Ms. DeGette	X	
Mr. Blunt		X	Mr. Barrett	X	
Mr. Davis	X		Mr. Luther	X	
Mr. Bryant		X	Mrs. Capps	X	
Mr. Ehrlich		X	Mr. Doyle	X	
Mr. Buyer			Mr. John		X
Mr. Radanovich		X	Ms. Harman		X
Mr. Bass		X			
Mr. Pitts	X				
Mrs. Bono		X			
Mr. Walden		X			
Mr. Terry		X			

ROLLCALL VOTE 2

Bill: H.R. 1542, Internet Freedom and Broadband Deployment Act of 2001.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Davis, No. 1d, to change the definition of high speed data service so that such service only includes services that are transmitted at a rate not less than 1.5 megabits per

second downstream to the subscriber and not less than 128 kilobits per second upstream to the provider.

Disposition: Not agreed to, by a rollcall vote of 18 yeas to 36 nays.

Representative	Yeas	Nays	Representative	Yeas	Nays
Mr. Tauzin		X	Mr. Dingell		X
Mr. Bilirakis		X	Mr. Waxman	X	
Mr. Barton		X	Mr. Markey	X	
Mr. Upton		X	Mr. Hall		X
Mr. Stearns		X	Mr. Boucher		X
Mr. Gillmor	X		Mr. Towns		X
Mr. Greenwood		X	Mr. Pallone	X	
Mr. Cox		X	Mr. Brown	X	
Mr. Deal		X	Mr. Gordon	X	
Mr. Largent	X		Mr. Deutsch		X
Mr. Burr	X		Mr. Rush		X
Mr. Whitfield		X	Ms. Eshoo	X	
Mr. Ganske		X	Mr. Stupak	X	
Mr. Norwood		X	Mr. Engel		X
Mrs. Cubin			Mr. Sawyer		X
Mr. Shimkus		X	Mr. Wynn		X
Mrs. Wilson	X		Mr. Green		X
Mr. Shadegg		X	Ms. McCarthy		
Mr. Pickering	X		Mr. Strickland	X	
Mr. Fossella		X	Ms. DeGette	X	
Mr. Blunt		X	Mr. Barrett		X
Mr. Davis	X		Mr. Luther	X	
Mr. Bryant		X	Mrs. Capps	X	
Mr. Ehrlich	X		Mr. Doyle		X
Mr. Buyer			Mr. John		X
Mr. Radanovich		X	Ms. Harman	X	
Mr. Bass		X			
Mr. Pitts		X			
Mrs. Bono		X			
Mr. Walden		X			
Mr. Terry		X			

ROLLCALL VOTE 3

Bill: H.R. 1542, Internet Freedom and Broadband Deployment Act of 2001.

Amendment: An amendment to the amendment in the nature of a substitute offered by Ms. Eshoo, No. 1h, to prevent the FCC from forbearing from requiring any carrier engaged in the provision of high speed data or Internet access services to file certain service quality reporting information unless that carrier provided local exchange service to fewer than 60 percent of the access lines in a region.

Disposition: Not agreed to, by a rollcall vote of 18 yeas to 28 nays.

Representative	Yeas	Nays	Representative	Yeas	Nays
Mr. Tauzin		X	Mr. Dingell		X
Mr. Bilirakis		X	Mr. Waxman		
Mr. Barton		X	Mr. Markey		
Mr. Upton		X	Mr. Hall		
Mr. Stearns		X	Mr. Boucher		X
Mr. Gillmor		X	Mr. Towns	X	
Mr. Greenwood		X	Mr. Pallone		
Mr. Cox		X	Mr. Brown	X	
Mr. Deal		X	Mr. Gordon	X	
Mr. Largent			Mr. Deutsch		X
Mr. Burr		X	Mr. Rush		

Representative	Yeas	Nays	Representative	Yeas	Nays
Mr. Whitfield		X	Ms. Eshoo	X	
Mr. Ganske			Mr. Stupak	X	
Mr. Norwood			Mr. Engel	X	
Mrs. Cubin			Mr. Sawyer	X	
Mr. Shimkus		X	Mr. Wynn	X	
Mrs. Wilson	X		Mr. Green		X
Mr. Shadegg		X	Ms. McCarthy	X	
Mr. Pickering		X	Mr. Strickland	X	
Mr. Fossella		X	Ms. DeGette	X	
Mr. Blunt		X	Mr. Barrett	X	
Mr. Davis	X		Mr. Luther	X	
Mr. Bryant		X	Mrs. Capps	X	
Mr. Ehrlich		X	Mr. Doyle	X	
Mr. Buyer			Mr. John		X
Mr. Radanovich		X	Ms. Harman	X	
Mr. Bass		X			
Mr. Pitts		X			
Mrs. Bono		X			
Mr. Walden					
Mr. Terry		X			

ROLLCALL VOTE 4

Bill: H.R. 1542, Internet Freedom and Broadband Deployment Act of 2001.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Luther, No. 1i, to enable the FCC and the States to require ILECs to provide unbundled access to any network element (current or future), notwithstanding the bill's design to prevent the FCC and the States from regulating the provision of high speed data services or network elements to the extent that those elements are used in the provision of high speed data services.

Disposition: Not agreed to, by a rollcall vote of 27 yeas to 27 nays.

Representative	Yeas	Nays	Representative	Yeas	Nays
Mr. Tauzin		X	Mr. Dingell		X
Mr. Bilirakis		X	Mr. Waxman	X	
Mr. Barton		X	Mr. Markey	X	
Mr. Upton		X	Mr. Hall	X	
Mr. Stearns		X	Mr. Boucher		X
Mr. Gillmor		X	Mr. Towns	X	
Mr. Greenwood		X	Mr. Pallone	X	
Mr. Cox	X		Mr. Brown	X	
Mr. Deal		X	Mr. Gordon	X	
Mr. Largent	X		Mr. Deutsch	X	
Mr. Burr		X	Mr. Rush		X
Mr. Whitfield		X	Ms. Eshoo	X	
Mr. Ganske		X	Mr. Stupak	X	
Mr. Norwood	X		Mr. Engel		X
Mrs. Cubin			Mr. Sawyer		X
Mr. Shimkus		X	Mr. Wynn		X
Mrs. Wilson	X		Mr. Green		X
Mr. Shadegg	X		Ms. McCarthy	X	
Mr. Pickering	X		Mr. Strickland	X	
Mr. Fossella		X	Ms. DeGette	X	
Mr. Blunt		X	Mr. Barrett	X	
Mr. Davis	X		Mr. Luther	X	
Mr. Bryant		X	Mrs. Capps	X	
Mr. Ehrlich	X		Mr. Doyle	X	
Mr. Buyer			Mr. John		X
Mr. Radanovich		X	Ms. Harman	X	

Representative	Yeas	Nays	Representative	Yeas	Nays
Mr. Bass		X			
Mr. Pitts	X				
Mrs. Bono		X			
Mr. Walden					
Mr. Terry		X			

ROLLCALL VOTE 5

Bill: H.R. 1542, Internet Freedom and Broadband Deployment Act of 2001.

Motion: Motion by Mr. Tauzin to order H.R. 1542 reported to the House, amended.

Disposition: Agreed to, by a roll call vote of 32 yeas to 23 nays.

Representative	Yeas	Nays	Representative	Yeas	Nays
Mr. Tauzin	X		Mr. Dingell	X	
Mr. Bilirakis	X		Mr. Waxman		X
Mr. Barton	X		Mr. Markey		X
Mr. Upton	X		Mr. Hall	X	
Mr. Stearns	X		Mr. Boucher	X	
Mr. Gillmor	X		Mr. Towns	X	
Mr. Greenwood	X		Mr. Pallone		X
Mr. Cox		X	Mr. Brown		X
Mr. Deal	X		Mr. Gordon	X	
Mr. Largent		X	Mr. Deutsch		X
Mr. Burr	X		Mr. Rush	X	
Mr. Whitfield	X		Ms. Eshoo		X
Mr. Ganske	X		Mr. Stupak		X
Mr. Norwood	X		Mr. Engel	X	
Mrs. Cubin			Mr. Sawyer	X	
Mr. Shimkus	X		Mr. Wynn	X	
Mrs. Wilson		X	Mr. Green	X	
Mr. Shadegg		X	Ms. McCarthy		X
Mr. Pickering		X	Mr. Strickland		X
Mr. Fossella	X		Ms. DeGette		X
Mr. Blunt	X		Mr. Barrett		X
Mr. Davis		X	Mr. Luther		X
Mr. Bryant	X		Mrs. Capps		X
Mr. Ehrlich		X	Mr. Doyle		X
Mr. Buyer			Mr. John	X	
Mr. Radanovich	X		Ms. Harman		X
Mr. Bass	X				
Mr. Pitts		X			
Mrs. Bono	X				
Mr. Walden	X				
Mr. Terry	X				

VOICE VOTES

Bill: H.R. 1542, Internet Freedom and Broadband Deployment Act of 2001.

Amendment: An amendment in the nature of a substitute offered by Mr. Tauzin, No. 1, (1) creating a new definition for Internet Backbone Service so that such service is not included in the definition of Internet Access Service, but is still deregulated; (2) clarifying that the prohibition on federal and state regulation of network elements only applies to the extent that those elements are used in the provision of high speed data services, Internet backbone services, or Internet access services; (3) reinstating the FCC's line-sharing order that requires ILECs to provide the high frequency portion of a copper loop on a unbundled basis to requesting

carriers, with two exceptions; (4) preventing the FCC and the States from expanding the line-sharing obligation; and (5) requiring ILECs to resell high speed data services at wholesale rates to competitors for three years, after which the ILEC still has a duty to resell such services to competitors, but only on a reasonable and nondiscriminatory basis.

Disposition: Agreed to by a voice vote.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Stearns, No. 1a, to prevent the abrogation or modification of existing interconnection agreements, although the amendment would not affect any change of law provisions in such agreements, nor permit an agreement to remain in effect longer than its existing term.

Disposition: Agreed to by a voice vote.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Sawyer, No. 1c, requiring the Bell operating companies to meet the following broadband deployment milestones: 20 percent of a company's central offices in a State will have to be high speed data capable within the first year after enactment; 40 percent will have to be high speed data capable within two years; 70 percent within three years; and 100 percent within five years. High speed data capability is defined as (1) a central office being equipped with high speed data multiplexing capability and (2) each customer being able to obtain high speed data service over an upgradeable loop or through the use of an alternative technology. An upgradeable loop is defined as a loop that is less than 15,000 feet from a central office over which high speed data service can be provided without causing a degradation of voice service. The amendment also requires the FCC to conduct a study and report to Congress regarding the deployment of high speed data services to underserved areas. Penalties may be imposed if the deployment milestones are not met.

Disposition: Agreed to by a voice vote.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Stearns, No. 1e, to change the definition of high speed data service so that the definition did not include any service that consists of or includes the offering of a capability to transmit information between or among switching offices.

Disposition: Withdrawn.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Boucher, No. 1f, to ensure that an ISP could purchase facilities and services for the provision of Internet access service from ILECs on nondiscriminatory rates, terms, and conditions.

Disposition: Withdrawn.

Amendment: An en bloc amendment to the amendment in the nature of a substitute offered by Mr. Davis, No. 1g, to require the FCC to promulgate rules for new ILEC reporting requirements on provisioning issues and for performance standards for nondiscriminatory provisioning, and impose penalties on all ILECs for violations of new sections 232 and 233 of the Communications Act, and different, more onerous penalties on Bell operating companies for violations of new sections 232, 233, and 271k of the Communications Act.

Disposition: Not agreed to by a voice vote.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Davis, No. 1j, to require an ILEC to provide special access to any provider of high speed data, Internet backbone, or Internet access services within the same period of time that an ILEC provided special access to itself or an affiliate.

Disposition: Withdrawn.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mrs. Wilson, No. 1k, to provide a compensation methodology for rights-of-way granted by a Federal, State, or local government agency based upon the actual costs incurred in managing the rights-of-way and the amount of public rights-of-way actually used by a particular telecommunications carrier.

Disposition: Withdrawn.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Largent, No. 1l, to prevent any modification of interconnection agreement provisions related to the rates, terms, and conditions for access to network elements.

Disposition: Ruled as non-germane.

Amendment: An amendment to the amendment in the nature of a substitute offered by Mr. Davis, No. 1m, to require an ILEC to provide special access for the provision of Internet access service to any provider of high speed data, Internet backbone, or Internet access services within the same period of time that an ILEC provided special access to itself or an affiliate for the provision of Internet access service.

Disposition: Agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 1542 is to accelerate the deployment of high speed data services.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1542, the Internet Freedom and Broadband Deployment Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by

the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 24, 2001.

Hon. W.J. "BILLY" TAUZIN,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1542, the Internet Freedom and Broadband Deployment Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Ken Johnson (for federal spending), Erin Whitaker (for revenues), Shelley Finlayson (for the state and local impact), and Philip Webre (for the private-sector impact).

Sincerely,

STEVEN M. LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1542—Internet Freedom and Broadband Deployment Act of 2001

Summary: H.R. 1542 would prohibit the Federal Communications Commission (FCC) and state governments from regulating the provision of Internet access or high-speed data services, with certain exceptions. H.R. 1542 also would allow the FCC to impose penalties for violations of certain provisions of the bill, including requirements that certain telecommunications carriers give consumers the freedom to choose their Internet service providers. Under the bill, the FCC also could assess penalties against Bell telephone companies that offer voice telecommunication services using telephone lines for data transmission without the agency's permission.

CBO estimates that implementing H.R. 1542 would have a negligible net impact on spending by the FCC. The increase in gross spending would be about $1 million in 2002, subject to the availability of appropriated funds. Any such increase would be offset by fees collected by the FCC.

Pay-as-you-go procedures would apply to this bill, for two reasons. First, the bill would create new penalties, which are accounted for in the budget as governmental receipts (revenues). CBO estimates that the bill's provisions would increase collection of FCC penalties by less than $500,000 a year. Also, enacting H.R. 1542 could affect the cash flows of the Universal Service Fund (USF). The USF seeks to provide universal access to telecommunications services through various charges to some telephone companies (which are accounted for in the budget as revenues) and payments to others (which may be spent without further appropriation). CBO cannot estimate the bill's gross impact on the revenues and spending associated with the USF; however, the net impact would be negligible in each year.

H.R. 1542 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would pre-

empt the ability of states to regulate high-speed data services. While data are very limited, CBO estimates that the costs of complying with this mandate would not exceed the threshold established by the Act ($56 million in 2001, adjusted annually for inflation).

The bill would impose private-sector mandates as defined by UMRA on the Bell operating companies and other incumbent local exchange companies providing broadband service. The bill also would benefit the Bell operating companies by relaxing restrictions that currently preclude them from entering long-distance data services and by relaxing some of the obligations placed on them to share their network facilities with their competitors. CBO estimates that a strict interpretation of the mandates would result in a total mandate cost (even with offsets from savings in the bill) that would exceed the annual threshold established in UMRA ($113 million in 2001, adjusted annually for inflation) in at least one of the first five years that the mandates are in effect.

Estimated cost to the Federal Government: Based on information from the FCC, CBO estimates that implementing H.R. 1542 would cost $1 million in 2002, assuming the appropriation of the necessary amounts. These funds would pay for additional staff to develop new regulations necessary to implement the bill's provisions. Under current law, the FCC is authorized to collect fees from the telecommunications industry sufficient to offset the cost of its regulatory programs. CBO assumes that the additional costs of implementing H.R. 1542 would be offset by an increase in collections credited to the FCC's annual appropriations. Therefore, H.R. 1542 would not have a significant net impact on the cost of the FCC's operations.

H.R. 1542 would authorize the FCC to impose penalties for violations of certain provisions in H.R. 1542. These provisions include requirements that incumbent telephone carriers give consumers the freedom to choose Internet service providers, and provisions that would prevent the Bell telephone companies from offering voice telecommunication services using telephone data lines unless authorized to do so by the FCC. Violations would be subject to a maximum penalty of $1 million per incident, or $10 million for a continuing violation. H.R. 1542 also would allow the FCC to impose penalties on the Bell telephone companies for failure to provide customer access to high-speed data services on a schedule specified in the bill. Based on information from the FCC and telecommunications firms, CBO estimates that enacting the bill would increase collections of such penalties by less than $500,000 a year.

Finally, H.R. 1542 could affect the size of the USF, which was established by the Telecommunications Act of 1996 to provide universal access to telecommunications service throughout the nation. The fund assesses charges against telecommunications services and distributes the amounts collected to high-cost areas, low-income consumers, schools and libraries, and others to defray some of the costs of telephone and Internet service. Because H.R. 1542 could affect the telecommunications market in non-rural, high-cost areas of the country, enacting the bill may cause the FCC to change the amount of money that would be provided from the USF to companies that serve those areas. USF outlays are mandatory and occur without further appropriation. Any change in the level of payments

from the USF would cause a commensurate change in the amount of money collected by the USF, which is considered a revenue in the budget. CBO cannot estimate the magnitude or the direction of these changes in revenues and direct spending; however, their net effect would be negligible.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 1542 would affect penalties (receipts) by an insignificant amount each year. The bill could also affect receipts and spending associated with the Universal Service Fund, however, CBO cannot estimate the magnitude or direction of any change. Any change to USF receipts and spending would result in a negligible net impact in each year.

Estimated impact on state, local, and tribal governments: H.R. 1542 contains an intergovernmental mandate as defined in UMRA because it would preempt the ability of states to regulate high-speed data services. While data are very limited, CBO estimates that the costs of complying with this mandate would not exceed the threshold established by the Act ($56 million in 2001, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 1542 would impose private-sector mandates on local telephone companies, primarily those companies that were part of the pre-1982 telephone service monopoly—the so-called Bell operating companies—but also on other telephone companies that enjoyed a monopoly position in local telephone service—referred to as non-Bell incumbent local exchange carriers. At the same time, the bill would benefit the Bell operating companies by relaxing restrictions that currently preclude them from entering long-distance data services. The bill also would benefit the Bell operating companies by relaxing some of the obligations placed on them under current law to share their network facilities with competing telecommunications companies. CBO estimates that the total direct costs of those mandates (offset by savings from the bill) would exceed the annual threshold established in UMRA ($113 million in 2001, adjusted annually for inflation), assuming a strict interpretation of those mandates. If the FCC and the courts adopt a loser interpretation of the requirements, the total direct costs would not exceed the threshold.

Section 5 of H.R. 1542 would require all incumbent local exchange providers to provide their customers the ability to subscribe to the Internet service providers of their choice. This would be a new requirement for the non-Bell incumbent local exchange carriers, although it is currently a requirement for the Bell operating companies. Current industry practice is such that nearly all of the carriers specified in the bill already comply with this requirement. Consequently, CBO estimates that the incremental cost to the industry to comply with this mandate would be small.

Section 8 would require the Bell operating companies to deploy high-speed data services—or broadband services as they are often called—in each state in which the company or one of its affiliates is an incumbent local exchange carrier. The bill defines high-speed data service as the capability to transmit information (using certain technology) at a rate greater than or equal to 384 kilobits per second in at least one direction. The bill also specifies targets for

accomplishing this goal over five years. The bill would require the Bell operating companies to upgrade 20 percent of their central offices to have high-speed data capabilities within one year of enactment, 40 percent within two years, 70 percent within three years, and 100 percent within five years.

Under the bill, a Bell operating company could meet the deployment requirements in either of two ways. First, the Bell operating company could upgrade both the equipment in a central office and the access lines of customers who request such upgrades, provided their access line is less than 15,000 feet long. Based on engineering and industry reports, CBO estimates that the cost of upgrading is between $175,000 and $230,000 per office, and that the bill's mandate would require the Bell operating companies to upgrade between 3,300 and 5,000 central offices that would not be upgraded absent that mandate. Alternatively, the bill provides that a Bell operating company could meet the deployment requirements by providing access to high-speed data services by alternative means, for example through a cable television line, a satellite link, or a terrestrial wireless connection.

The total cost of the mandate to deploy high-speed data services would certainly exceed the UMRA threshold if the Bell operating companies conformed to the mandate by upgrading their central offices. Alternative means could prove less expensive, and by CBO's estimate would fall below the UMRA threshold. But, because none of the alternatives is currently capable of reaching each and every customer, as a strict interpretation of the bill's language requires, it is not clear that meeting the deployment requirements by these means would fulfill the obligation of the Bell operating companies under the mandate—even if those companies were to choose a technical alternative to upgrading their telephone service. Nevertheless, either the courts or the Federal Communications Commission might adopt a less strict interpretation of the mandate that would likely require the private sector to incur costs less than the UMRA threshold.

Estimate prepared by: Federal Costs: Ken Johnson. Revenue Impacts: Erin Whitaker. Impact on State, Local, and Tribal Governments: Shelley Finlayson. Impact on the Private Sector: Philip Webre.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause

3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill, the "Internet Freedom and Broadband Deployment Act of 2001."

Section 2. Findings and purpose

Section 2 makes certain Congressional findings and describes the purposes of the bill.

Section 3. Definitions

Section 3 defines the term "high speed data service" as any service that consists of or includes the offering of a capability to transmit, using a packet-switched or successor technology, information at a rate that is generally not less than 384 kilobits per second in at least one direction. Such term does not include special access service offered through dedicated transport links between a customer's premises and an interexchange carrier's switch or point of presence.

Section 3 defines the term "Internet" as collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

Section 3 defines the term "Internet access service" as a service that combines computer processing, information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services. These end users may include residential consumers, businesses, content providers, or application providers. Internet access service is typically provided by entities known as Internet service providers (ISPs).

Section 3 defines the term "Internet backbone" as a network that carries Internet traffic over high-capacity long-haul transmission facilities and that is interconnected with other such networks via private peering relationships. These private peering relationships are relationships worked out between and among the various Internet backbone providers to ensure the flow of Internet content and services.

Section 3 defines the term "Internet backbone service" as any interLATA service that consists of or includes the transmission of packets by means of an Internet backbone, and shall include the local connectivity portion of such interLATA service. The phrase "local connectivity" is intended to include links between ISPs and network access points (NAPs). However, the phrase "local

connectivity" is only included in the definition of the term "Internet backbone service" to the extent that such local connectivity is part of an interLATA service. The deregulation of the local connectivity component of an Internet backbone service has no affect on the preservation of the regulation of circuit-switched telephone exchange services.

Section 4. Limitation on authority to regulate high speed data services

Section 4 of the bill adds a new Section 232 to the Communications Act of 1934 (47 U.S.C. § 151 *et seq*.) that prevents the Commission and the States from applying rules designed for legacy telephone services and facilities to high speed data services, Internet backbone services, Internet access services, and network elements to the extent that these elements are used in the provision of these services. Section 4 is intended to provide an incentive to offer new services and deploy new facilities and equipment by deregulating high speed data, Internet backbone, and Internet access services and the use of network elements in the provision of these services. Section 4 does not, however, remove circuit-switched voice telephone exchange services from their current regulatory framework. Nothing in Section 4 reduces the authority of the Commission and the States to regulate basic telephone services and the facilities used to provide such services.

New Section 232 provides that the Commission and the States do not have the authority to regulate the rates, terms, charges, terms, or conditions for, or entry into the provision of any high speed data service, Internet backbone service, or Internet access service, except to the extent that such services are expressly referred to in the Communications Act. New Section 232 also prohibits the Commission and the States from regulating any network element to the extent that such element is used in the provision of high speed data service, Internet backbone service, or Internet access service.

New Section 232 prevents the Commission from imposing or requiring the collection of any fees, taxes, charges or tariffs upon a high speed data service, Internet backbone service, or Internet access service. However, it is the intent of the Committee that this provision shall not be construed to limit the amount of universal service support available under Section 254 of the Communications Act.

New Section 232 provides that the deregulation of high speed data service, Internet backbone service, Internet access service, and network elements, to the extent that such elements are used in the provision of such services, does not affect the authority of the States to regulate circuit-switched telephone exchange services, nor the rights of cable franchise authorities to establish requirements otherwise consistent with the Communications Act.

New Section 232 also preserves the Commission's authority to retain or modify the exemption from interstate access charges for enhanced service providers under Part 69 of the Commission's regulations, and the requirements of the MTS/WATS Market Structure Order that enable enhanced service providers to obtain business lines from ILECs. The Committee intends that new Section 232 will not prevent the FCC from requiring local exchange carriers to unbundle circuit-switched basic services from circuit-switched en-

hanced services so that entities such as Internet Service Providers can obtain such basic services on the same terms and conditions as a local exchange carrier provides to itself or an affiliate for the provision of such enhanced services. New Section 232 also preserves the Commission's rules issued pursuant to Section 254 of the Communications Act regarding universal service.

Section 4 also adds a new subsection (j) to Section 251 of the Communications Act. New subsection 251(j) restricts the authority of the Commission and the States to require an ILEC to provide unbundled access to a network element for the provision of any high speed data service. However, subsection 251(j)(1)(A) requires an ILEC to provide unbundled access, even for the provision of high speed data services, to those network elements described in section 51.319 of the Commission's regulations (47 C.F.R. 51.319) as in effect on January 1, 1999, as long as any such requirement is consistent with subsections (c)(3) and (d)(2).

New subsection 251(j)(1)(A) recognizes that, with limited exceptions, the facilities used in the provision of high speed data services are not essential facilities to which competitors require access. They are competitive facilities, and it will promote competition and innovation if providers are free to invest in such facilities without being subject to the sort of unbundling requirements applicable to ILEC facilities used for providing circuit-switched voice services. At the same time that subsection (j)(1)(A) removes unbundling obligations from facilities to the extent that they are used in the provision of high speed data services, subject to subparagraphs (B), (C), and (D), new subsection 251(j)(1)(A) does not in any way change the existing obligations of ILECs with respect to providing unbundled access to network elements for the provision of circuit-switched voice services.

New subsection 251(j) also preserves, with two exceptions, the Commissions Line Sharing Order (Third Report and Order in CC Docket No. 98–147 and the Fourth Report and Order in CC Docket 96–98 (FCC 99–355)) (together, the Line Sharing Order), as adopted November 18, 1999, without regard to any subsequent clarification, interpretation, or reinterpretation by the Commission or any State that would expand an ILEC's obligation to provide access to any network element for the purpose of line sharing. This provision is intended to ensure that the grandfathering of network elements in subsection 251(j)(1)(B) is strictly and narrowly construed. The ILEC's requirement to provide line sharing on a copper loop does not include a requirement to provide, on an unbundled basis, any element of packet switching. A requesting carrier that wishes to line share by using the high frequency portion of a cooper loop must add its own packetizing technology on both ends of that loop.

The first exception to the preservation of the Line Sharing Order provides that an ILEC shall not be required to provide unbundled access to the high frequency portion of the loop "at a remote terminal." The Committee intends that, consistent with prior Commission interpretations, the term "at a remote terminal" means "inside a remote terminal." Requiring an ILEC to provide a CLEC with access to the copper loop inside a remote terminal jeopardizes the operation and security of an ILEC's remote terminal and the ILEC's equipment housed therein. This exception does not, however, remove the obligation of an ILEC to provide access to the high fre-

quency portion of a copper loop at an accessible point, other than inside a remote terminal, on the copper loop between a remote terminal and a customer's premises. A remote terminal is defined as an accessible terminal located outside of the central office to which analog signals are carried from a customer's premises, in which such signals are converted to digital, and from which such signals are carried, generally over fiber, to the central office.

The second exception to the preservation of the Line Sharing Order provides that the Commission and the States shall permit an ILEC to charge requesting carriers for the high frequency portion of a loop an amount equal to which such ILEC imputes to its own high speed data service. The Commission and the States shall allow ILECs to readjust the amounts that they are currently imputing.

Nothing in H.R. 1542 eliminates or modifies paragraph 251(f)(1) of the Communications Act, which exempts a rural telephone company, as defined by the Communications Act, from subsection 251(c) until (1) such company has received a bona fide request for interconnection, services, or network elements, and (2) the State commission determines, in accordance with subparagraph 251(f)(1)(B), that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Nothing in H.R. 1542 eliminates or modifies paragraph 251(f)(2) of the Communications Act which enables a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide to petition a State commission for a suspension or modification of the applications of a requirement or requirements of subsections 251(b) or 251(c) to telephone exchange service facilities specified in such petition.

New subsection 251(j) does not prohibit the Commission from reducing the number of network elements subject to the unbundling requirement, or to forbear from enforcing any portion of the unbundling requirement, in accordance with the Commission's authority under section 706 of the Telecommunications Act of 1996, notwithstanding any limitation on that authority imposed by section 10 of the Communications Act. Thus, although the list of network elements grandfathered by subparagraph (B) may not be expanded, it may be diminished by the Commission in accordance with its statutory responsibilities. For example, as of January 1, 1999, incumbent LECs were required to unbundle operator services and directory assistance. The Commission subsequently determined, however, that these elements should not be unbundled under section 251(c)(3). Section 251(j) should not be read to interfere with that determination in any respect.

New subsection 251(j) provides that any network element used in the provision of high speed data service that does not have to be unbundled in accordance with subsection (c) shall not be entitled to any subsidy, including any subsidy pursuant to section 254, if that subsidy is not provided on a nondiscriminatory basis to all providers of high speed data service and Internet access service. The Committee intends that, to the extent that any network element is used in the provision of circuit-switched telephone exchange service, universal service support shall continue to be made

available to further the objectives of Section 254 of the Communications Act.

New subsection 251(j) requires an ILEC that provides high speed data service to offer for resale any such service at wholesale rates in accordance with subsection (c)(4) for three years. After such three-year period, such ILEC is required to offer high speed data services for resale pursuant to subsection (b)(1). The requirement to offer for resale high speed data services in accordance with subsections (c)(4) and (b)(2) only applies to any such service that the carrier provides at retail to subscribers who are not telecommunications carriers or Internet service providers.

New subsection 251(j) provides that nothing in the subsection permits or requires the abrogation or modification of any interconnection agreement in effect on the date of enactment during the term of such agreement. However, this provision does not apply to any interconnection agreement beyond the expiration date of the agreement's existing term on the date of enactment of this section. In addition, this provision does not affect any change of law provision in an interconnection agreement.

Section 5. Internet consumers freedom of choice

Section 5 imposes obligations on ILECs to ensure that Internet users have the freedom to choose among Internet service providers. Section 5 adds a new section 233 to the Communications Act, the purpose of which is to ensure that ILECs permit unaffiliated Internet service providers to offer Internet access service to customers over an ILEC's facilities.

New Section 233 requires an ILEC to provide Internet users with the ability to subscribe to, and have access to, any Internet service provider that interconnects with an ILEC's high speed data service. This requirement prohibits an ILEC from requiring a customer to purchase the Internet access service of the ILEC or its affiliate in order for the customer to obtain the service of the customer's preferred ISP. New Section 233 also requires an ILEC to make available to an ISP the facilities and services necessary to interconnect with an ILEC's high speed data service for the provision of Internet access service. New Section 233 also requires an ILEC to permit an ISP to collocate equipment in an ILEC's central office necessary for interconnection with an ILEC's high speed data service. In addition, new Section 233 requires an ILEC to provide special access service for the provision of Internet access service to any provider of high speed data services, Internet backbone services, or Internet access service within the same time period in which the ILEC provides itself or any affiliate with special access for the provision of Internet access service.

Section 6. Incidental InterLATA provision of high speed data and internet backbone services

Section 6 amends section 271(g) of the Communications Act by clarifying that high speed data service and Internet backbone service are incidental interLATA services. When subsection 271(g) was originally added to the Communications Act as part of the Telecommunications Act of 1996, high speed data service and Internet backbone service were barely in their infancy and were not available on a widespread commercial basis. As a result, the Tele-

communications Act did not contemplate the relationship between interLATA telecommunications services subject to section 271(b)(1) and high speed data and Internet backbone services.

Since 1996, the Committee, in its exercise of jurisdiction over interstate communications, has devoted an enormous amount of time studying the growth of the Internet and its relation to traditional telecommunications services. The Committee finds that, as a matter of telecommunications policy, the provision of high speed data and Internet backbone services is incidental to the provision of Internet-related communications services. Therefore, high speed data and Internet backbone services are not subject to section 271(b)(1) because, consistent with the deregulatory thrust of H.R. 1542 and the Telecommunications Act, they should be classified as incidental services under section 271(g). However, H.R. 1542 does not otherwise alter the role of the Commission, the Department of Justice, or the State commissions in the process through which a Bell operating company obtains approval to provide in-region interLATA services in accordance with section 271(b)(1).

Section 6 also adds a new subsection 271(k) which prohibits a Bell operating company from providing an interLATA voice telecommunications service originating in an in-region State, except in accordance with Section 271(b)(1), regardless of whether there is a charge for such service. This prohibition applies to an interLATA voice telecommunications service that is included in a Bell operating company's high speed data or Internet backbone service offering.

Section 7. Deployment of broadband services

Section 7 creates a new Section 277 of the Communications Act that requires Bell operating companies and their affiliates to deploy high speed data services in each State in which such company or its affiliates qualify as an ILEC in accordance with the Communications Act. A Bell operating company (or its affiliate) must attain high speed data capability in its central offices in qualifying States based on a specific deployment schedule. The Bell operating company must achieve high speed data capability in 20 percent of its central offices in a State within one year, 40 percent of its central offices in such State within two years, 70 percent of its central offices in such State within three years, and 100 percent of the central offices in such State within five years.

New section 277 defines "high speed data capability" as existing where a central office has been equipped with high speed data multiplexing capability, and where each upgradeable customer loop served by that central office is upgraded promptly upon receipt of a customer's bona fide request for high speed data service. New section 277 also defines "high speed data capability" as the ability of every customer served by a central office to obtain high speed data service from a Bell operating company or its affiliate by means of an alternative technology that does not involve the use of a customer's loop. A Bell operating company can meet the requirement that a central office achieve high speed data capability by either option.

New section 277 defines "upgradeable loops" as a copper loop that is less than 15,000 feet in length from a central office to a customer's premises, and can, with or without loop conditioning, trans-

mit high speed data services on such loop without causing significant degradation of voice service.

New section 277 also provides for forfeiture penalties in accordance with section 503(b)(2) of the Communications Act if a Bell operating company fails to comply with the section's deployment schedule. In determining whether to impose a forfeiture penalty and the amount of any such penalty, the Commission must take into consideration the extent to which the deployment schedule and means of achieving such schedule outlined in the section are technically feasible. The Commission shall have exclusive jurisdiction to enforce the deployment schedule, although a State commission may file a complaint with the Commission seeking the imposition of penalties for a Bell operating company's failure to adhere to the deployment schedule.

New section 277 also requires the Commission to provide an analysis of the deployment of high speed data service to under served areas in each of its annual reports submitted no more than 18 months after the date of enactment. Such report must include a statistical analysis comparing the extent of deployment after the enactment of the Internet Freedom and Broadband Deployment Act with such deployment prior to enactment. Such report must also include an analysis of the delivery of high speed data service by type of technology and class or category of provider. The report must also identify impediments to such deployment and any developments in overcoming such impediments that might have occurred subsequent to the filing of the most recent report. In addition, the report must include recommendations, subsequent to consultations with the National Telecommunications and Information Administration, for further extending deployment and overcoming any impediments to deployment.

Section 8. Commission authorized to prescribe just and reasonable charges

Section 8 permits the Commission to impose penalties in accordance with Section 503 of the Communications Act not to exceed $1,000,000 for any violation of sections 5, 6, or 7 of the Internet Freedom and Broadband Deployment Act. Each distinct violation shall be a separate offense, and, in the case of a continuing violation, each day shall be considered a separate offense. The amount assessed for any continuing violation shall not exceed $10,000,000 for any single act or failure to act described in section 5, 6 or 7.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934

* * * * * * *

TITLE I—GENERAL PROVISIONS

* * * * * * *

SEC. 3. DEFINITIONS.

For the purposes of this Act, unless the context otherwise requires—

(1) * * *

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(20) HIGH SPEED DATA SERVICE.—The term "high speed data service" means any service that consists of or includes the offering of a capability to transmit, using a packet-switched or successor technology, information at a rate that is generally not less than 384 kilobits per second in at least one direction. Such term does not include special access service offered through dedicated transport links between a customer's premises and an interexchange carrier's switch or point of presence.

[(20)**]** *(21)* INFORMATION SERVICE.—The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(22) INTERNET.—The term "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(23) INTERNET ACCESS SERVICE.—The term "Internet access service" means a service that combines computer processing, information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services.

(24) INTERNET BACKBONE.—The term "Internet backbone" means a network that carries Internet traffic over high-capacity long-haul transmission facilities and that is interconnected with other such networks via private peering relationships.

(25) INTERNET BACKBONE SERVICE.—The term "Internet backbone service" means any interLATA service that consists of or includes the transmission by means of an Internet backbone of any packets, and shall include related local connectivity.

[(21)**]** *(26)* INTERLATA SERVICE.—The term "interLATA service" means telecommunications between a point located in a local access and transport area and a point located outside such area.

[(22)**]** *(27)* INTERSTATE COMMUNICATION.—The term "interstate communication" or "interstate transmission" means communication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to

or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States but through a foreign country; but shall not, with respect to the provisions of title II of this Act (other than section 223 thereof), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

[(23)] *(28)* LAND STATION.—The term "land station" means a station, other than a mobile station, used for radio communication with mobile stations.

[(24)] *(29)* LICENSEE.—The term "licensee" means the holder of a radio station license granted or continued in force under authority of this Act.

[(25)] *(30)* LOCAL ACCESS AND TRANSPORT AREA.—The term "local access and transport area" or "LATA" means a contiguous geographic area—

(A) * * *

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[(26)] *(31)* LOCAL EXCHANGE CARRIER.—The term "local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.

[(27)] *(32)* MOBILE SERVICE.—The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding.

[(28)] *(33)* MOBILE STATION.—The term "mobile station" means a radio-communication station capable of being moved and which ordinarily does move.

[(29)] *(34)* NETWORK ELEMENT.—The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

[(30)] *(35)* NUMBER PORTABILITY.—The term "number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

[(31)] *(36)*(A) OPERATOR.—The term "operator" on a ship of the United States means, for the purpose of parts II and III of title III of this Act, a person holding a radio operator's license of the proper class as prescribed and issued by the Commission.

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[(32)] *(37)* PERSON.—The term "person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

[(33)] *(38)* RADIO COMMUNICATION.—The term "radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

[(34)] *(39)*(A) RADIO OFFICER.—The term "radio officer" on a ship of the United States means, for the purpose of part II of title III of this Act, a person holding at least a first or second class radiotelegraph operator's license as prescribed and issued by the Commission. When such person is employed to operate a radiotelegraph station aboard a ship of the United States, he is also required to be licensed as a "radio officer" in accordance with the Act of May 12, 1948 (46 U.S.C. 229a–h).

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[(35)] *(40)* RADIO STATION.—The term "radio station" or "station" means a station equipped to engage in radio communication or radio transmission of energy.

[(36)[*(41)* RADIOTELEGRAPH AUTO ALARM.—The term "radiotelegraph auto alarm" on a ship of the United States subject to the provisions of part II of title III of this Act means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the Commission. "Radiotelegraph auto alarm" on a foreign ship means an automatic alarm receiving apparatus which responds to the radiotelegraph alarm signal and has been approved by the government of the country in which the ship is registered: *Provided*, That the United States and the country in which the ship is registered are parties to the same treaty, convention, or agreement prescribing the requirements for such apparatus. Nothing in this Act or in any other provision of law shall be construed to require the recognition of a radiotelegraph auto alarm as complying with part II of title III of this Act, on a foreign ship subject to such part, where the country in which the ship is registered and the United States are not parties to the same treaty, convention, or agreements prescribing the requirements for such apparatus.

[(37)] *(42)* RURAL TELEPHONE COMPANY.—The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—

(A) * * *

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[(38)] *(43)* SAFETY CONVENTION.—The term "safety convention" means the International Convention for the Safety of Life at Sea in force and the regulations referred to therein.

[(39)] *(44)*(A) SHIP.—The term "ship" or "vessel" includes every description of watercraft or other artificial contrivance, except aircraft, used or capable of being used as a means of transportation on water, whether or not it is actually afloat.

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[(40)] *(45)* STATE.—The term "State" includes the District of Columbia and the Territories and possessions.

[(41)] *(46)* STATE COMMISSION.—The term "State commission" means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers.

[(42)] *(47)* STATION LICENSE.—The term "station license," "radio station license," or "license" means that instrument of authorization required by this Act or the rules and regulations of the Commission made pursuant to this Act, for the use or operation of apparatus for transmission of energy, or communications, or signals by radio by whatever name the instrument may be designated by the Commission.

[(43)] *(48)* TELECOMMUNICATIONS.—The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

[(44)] *(49)* TELECOMMUNICATIONS CARRIER.—The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

[(45)] *(50)* TELECOMMUNICATIONS EQUIPMENT.—The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

[(46)] *(51)* TELECOMMUNICATIONS SERVICE.—The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

[(47)] *(52)* TELEPHONE EXCHANGE SERVICE.—The term "telephone exchange service" means (A) service within a telephone

exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

[(48)**]** *(53)* TELEPHONE TOLL SERVICE.—The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

[(49)**]** *(54)* TELEVISION SERVICE.—

(A) * * *

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[(50)**]** *(55)* TRANSMISSION OF ENERGY BY RADIO.—The term "transmission of energy by radio" or "radio transmission of energy" includes both such transmission and all instrumentalities, facilities, and services incidental to such transmission.

[(51)**]** *(56)* UNITED STATES.—The term "United States" means the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.

[(52)**]** *(57)* WIRE COMMUNICATION.—The term "wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

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TITLE II—COMMON CARRIERS

PART I—COMMON CARRIER REGULATION

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SEC. 223. OBSCENE OR HARASSING TELEPHONE CALLS IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMUNICATIONS.

(a) * * *

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(h) For purposes of this section—

(1) * * *

(2) The term "interactive computer service" has the meaning provided in section **[**230(f)(2)**]** *230(f)(1)*.

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SEC. 230. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.

(a) * * *

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(f) DEFINITIONS.—As used in this section:

[(1) INTERNET.—The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.]

[(2)] *(1)* INTERACTIVE COMPUTER SERVICE.—The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

[(3)] *(2)* INFORMATION CONTENT PROVIDER.—The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

[(4)] *(3)* ACCESS SOFTWARE PROVIDER.—The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) * * *

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SEC. 232. PROVISION OF HIGH SPEED DATA SERVICES.

(a) FREEDOM FROM REGULATION.—Except to the extent that high speed data service, Internet backbone service, and Internet access service are expressly referred to in this Act, neither the Commission, nor any State, shall have authority to regulate the rates, charges, terms, or conditions for, or entry into the provision of, any high speed data service, Internet backbone service, or Internet access service, or to regulate any network element to the extent it is used in the provision of any such service; nor shall the Commission impose or require the collection of any fees, taxes, charges, or tariffs upon such service.

(b) SAVINGS PROVISION.—Nothing in this section shall be construed to limit or affect the authority of any State to regulate circuit-switched telephone exchange services, nor affect the rights of cable franchise authorities to establish requirements that are otherwise consistent with this Act.

(c) CONTINUED ENFORCEMENT OF ESP EXEMPTION, UNIVERSAL SERVICE RULES PERMITTED.—Nothing in this section shall affect the ability of the Commission to retain or modify—

(1) the exemption from interstate access charges for enhanced service providers under Part 69 of the Commission's regulations, and the requirements of the MTS/WATS Market Structure Order (97 FCC 2d 682, 715 (1983)); or

(2) rules issued pursuant to section 254.

SEC. 233. INTERNET CONSUMERS FREEDOM OF CHOICE.

(a) PURPOSE.—It is the purpose of this section to ensure that Internet users have freedom of choice of Internet service provider.

(b) OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.—Each incumbent local exchange carrier has the duty to provide—

(1) Internet users with the ability to subscribe to and have access to any Internet service provider that interconnects with such carrier's high speed data service;

(2) any Internet service provider with the right to acquire the facilities and services necessary to interconnect with such carrier's high speed data service for the provision of Internet access service;

(3) any Internet service provider with the ability to collocate equipment in accordance with the provisions of section 251, to the extent necessary to achieve the objectives of paragraphs (1) and (2) of this subsection; and

(4) any provider of high speed data services, Internet backbone service, or Internet access service with special access for the provision of Internet access service within a period no longer than the period in which such incumbent local exchange carrier provides special access to itself or any affiliate for the provision of such service.

(c) DEFINITIONS.—As used in this section—

(1) INTERNET SERVICE PROVIDER.—The term "Internet service provider" means any provider of Internet access service.

(2) INCUMBENT LOCAL EXCHANGE CARRIER.—The term "incumbent local exchange carrier" has the same meaning as provided in section 251(h).

(3) SPECIAL ACCESS SERVICE.—The term "special access service" means the provision of dedicated transport links between a customer's premises and the switch or point of presence of a high speed data service provider, Internet backbone service provider, or Internet service provider.

PART II—DEVELOPMENT OF COMPETITIVE MARKETS

SEC. 251. INTERCONNECTION.

(a) * * *

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(j) EXEMPTION.—

(1) ACCESS TO NETWORK ELEMENTS FOR HIGH SPEED DATA SERVICE.—

(A) LIMITATION.—Subject to subparagraphs (B), (C), and (D) of this paragraph, neither the Commission nor any State shall require an incumbent local exchange carrier to provide unbundled access to any network element for the provision of any high speed data service.

(B) PRESERVATION OF REGULATIONS AND LINE SHARING ORDER.—Notwithstanding subparagraph (A), the Commission shall, to the extent consistent with subsections (c)(3) and (d)(2), require the provision of unbundled access to those network elements described in section 51.319 of the Commission's regulations (47 C.F.R. 51.319), as—

(i) in effect on January 1, 1999; and

(ii) subject to subparagraphs (C) and (D), as modified by the Commission's Line Sharing Order.

(C) EXCEPTIONS TO PRESERVATION OF LINE SHARING ORDER.—

(i) UNBUNDLED ACCESS TO REMOTE TERMINAL NOT REQUIRED.—An incumbent local exchange carrier shall not be required to provide unbundled access to the high frequency portion of the loop at a remote terminal.

(ii) CHARGES FOR ACCESS TO HIGH FREQUENCY PORTION.—The Commission and the States shall permit an incumbent local exchange carrier to charge requesting carriers for the high frequency portion of a loop an amount equal to which such incumbent local exchange carrier imputes to its own high speed data service.

(D) LIMITATIONS ON REINTERPRETATION OF LINE SHARING ORDER.—Neither the Commission nor any State Commission shall construe, interpret, or reinterpret the Commission's Line Sharing Order in such manner as would expand an incumbent local exchange carrier's obligation to provide access to any network element for the purpose of line sharing.

(E) AUTHORITY TO REDUCE ELEMENTS SUBJECT TO REQUIREMENT.—This paragraph shall not prohibit the Commission from modifying the regulation referred to in subparagraph (B) to reduce the number of network elements subject to the unbundling requirement, or to forbear from enforcing any portion of that regulation in accordance with the Commission's authority under section 706 of the Telecommunications Act of 1996, notwithstanding any limitation on that authority in section 10 of this Act.

(F) PROHIBITION ON DISCRIMINATORY SUBSIDIES.—Any network element used in the provision of high speed data service that is not subject to the requirements of subsection (c) shall not be entitled to any subsidy, including any subsidy pursuant to section 254, that is not provided on a nondiscriminatory basis to all providers of high speed data service and Internet access service. This prohibition on discriminatory subsidies shall not be interpreted to authorize or require the extension of any subsidy to any provider of high speed data service or Internet access service.

(2) RESALE.—For a period of three years after the enactment of this subsection, an incumbent local exchange carrier that provides high speed data service shall have a duty to offer for resale any such service at wholesale rates in accordance with subsection (c)(4). After such three-year period, such carrier shall offer such services for resale pursuant to subsection (b)(1).

(3) DEFINITIONS.—For purposes of this subsection—

(A) the "Commission's Line Sharing Order" means the Third Report and Order in CC Docket No. 98–147 and the Fourth Report and Order in CC Docket 96–98 (FCC 99–355), as adopted November 18, 1999, and without regard to any clarification or interpretation in the further notice of proposed rulemaking in such Dockets adopted January 19, 2001 (FCC 01–26); and

(B) the term "remote terminal" means an accessible terminal located outside of the central office to which analog signals are carried from customer premises, in which such

signals are converted to digital, and from which such signals are carried, generally over fiber, to the central office.

PART III—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

SEC. 271. BELL OPERATING COMPANY ENTRY INTO INTERLATA SERVICES.

(a) * * *

* * * * * * *

(g) DEFINITION OF INCIDENTAL INTERLATA SERVICES.—For purposes of this section, the term "incidental interLATA services" means the interLATA provision by a Bell operating company or its affiliate—

(1) * * *

* * * * * * *

(5) of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; **[**or**]**

(6) of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access**[**.**]***; or*

(7) of high speed data service or Internet backbone service.

* * * * * * *

(k) PROHIBITION ON PROVISION OF VOICE TELEPHONE SERVICES.—Until the date on which a Bell operating company is authorized to offer interLATA services originating in an in-region State in accordance with the provisions of this section, such Bell operating company offering any high speed data service or Internet backbone service pursuant to the provisions of paragraph (7) of subsection (g) may not, in such in-region State provide interLATA voice telecommunications service, regardless of whether there is a charge for such service, by means of the high speed data service or Internet backbone service provided by such company.

SEC. 272. SEPARATE AFFILIATE; SAFEGUARDS.

(a) SEPARATE AFFILIATE REQUIRED FOR COMPETITIVE ACTIVITIES.—

(1) * * *

(2) SERVICES FOR WHICH A SEPARATE AFFILIATE IS REQUIRED.—The services for which a separate affiliate is required by paragraph (1) are:

(A) * * *

(B) Origination of interLATA telecommunications services, other than—

[(i) incidental interLATA services described in paragraphs (1), (2), (3), (5), and (6) of section 271(g);**]**

(i) incidental interLATA services described in paragraphs (1), (2), (3), (5), (6), and (7) of section 271(g);

* * * * * * *

[(C) InterLATA information services, other than electronic publishing (as defined in section 274(h)) and alarm monitoring services (as defined in section 275(e)).]

* * * * * * *

SEC. 277. DEPLOYMENT OF BROADBAND SERVICES.

(a) DEPLOYMENT REQUIRED.—Each Bell operating company and its affiliates shall deploy high speed data services in each State in which such company or affiliate is an incumbent local exchange carrier (as such term is defined in section 251(h)) in accordance with the requirements of this section.

(b) DEPLOYMENT REQUIREMENTS.—

(1) MILEPOSTS FOR DEPLOYMENT.—A Bell operating company or its affiliate shall deploy high speed data services by attaining high speed data capability in its central offices in each State to which subsection (a) applies. Such company or affiliate shall attain such capability in accordance with the following schedule:

(A) Within one year after the date of enactment of this section, such company or affiliate shall attain high speed data capability in not less than 20 percent of such central offices in such State.

(B) Within 2 years after the date of enactment of this section, such company or affiliate shall attain high speed data capability in not less than 40 percent of such central offices in such State.

(C) Within 3 years after the date of enactment of this section, such company or affiliate shall attain high speed data capability in not less than 70 percent of such central offices in such State.

(D) Within 5 years after the date of enactment of this section, such company or affiliate shall attain high speed data capability in not less than 100 percent of such central offices in such State.

(2) HIGH SPEED DATA CAPABILITY.—For purposes of paragraph (1), a central office shall be considered to have attained high speed capability if—

(A)(i) such central office is equipped with high speed data multiplexing capability; and

(ii) each upgradeable customer loop that originates or terminates in such central office is upgraded promptly upon receipt of a customer request for such upgrading, as necessary to permit transmission of high speed data service (including any conditioning of the loop);

(B) each customer served by such central office (without regard to the upgradeability or length of the customer's loop) is able to obtain the provision of high speed data service from such Bell operating company or its affiliate by means of an alternative technology that does not involve the use of the customer's loop; or

(C) each such customer is able to obtain the provision of high speed data service by one or the other of the means described in subparagraphs (A) and (B).

(3) UPGRADEABLE LOOPS.—For purposes of paragraph (2), a customer loop is upgradeable if—

(A) such loop is less than 15,000 feet in length (from the central office to the customer's premises along the line); and

(B) such loop can, with or without conditioning, transmit high speed data services without such transmission on such loop causing significant degradation of voice service.

(c) AVAILABILITY OF REMEDIES.—

(1) FORFEITURE PENALTIES.—A Bell operating company or its affiliate that fails to comply with this section shall be subject to the penalties provided in section 503(b)(2). In determining whether to impose a forfeiture penalty, and in determining the amount of any forfeiture penalty under section 503(b)(2)(D), the Commission shall take into consideration the extent to which the requirements of this section are technically infeasible.

(2) JURISDICTION.—The Commission shall have exclusive jurisdiction to enforce the requirements of this section, except that any State commission may file a complaint with the Commission seeking the imposition of penalties as provided in paragraph (1).

(d) ANNUAL REPORT ON DEPLOYMENT.—

(1) ANALYSIS REQUIRED.—The Commission shall include in each of its annual reports submitted no more than 18 months after the date of enactment of this section an analysis of the deployment of high speed data service to underserved areas. Such report shall include—

(A) a statistical analysis of the extent to which high speed data service has been deployed to central offices and customer loops, or is available using different technologies, as compared with the extent of such deployment and availability prior to such date and in prior reports under this subsection;

(B) a breakdown of the delivery of high speed data service by type of technology and class or category of provider;

(C) an identification of impediments to such deployment and availability, and developments in overcoming such impediments during the intervening period between such reports; and

(D) recommendations of the Commission, after consultation with the National Telecommunications and Information Administration, for further extending such deployment and availability and overcoming such impediments.

(2) DEFINITION OF UNDERSERVED AREA.—For purposes of paragraph (1), the term "underserved areas" means areas that—

(A) are high cost areas that are eligible for services under subpart D of part 54 of the Commission's regulations (47 C.F.R. 54.301 et seq.); or

(B) are within or comprised of any census tract—

(i) the poverty level of which is at least 30 percent (based on the most recent census data); or

(ii) the median family income of which does not exceed—

(I) in the case of a census tract located in a metropolitan statistical area, 70 percent of the greater of the metropolitan area median family income or the statewide median family income; and

(II) in the case of a census tract located in a non-metropolitan statistical area, 70 percent of the non-metropolitan statewide median family income.

(3) DESIGNATION OF CENSUS TRACTS.—The Commission shall, not later than 90 days after the date of the enactment of this section, designate and publish those census tracts meeting the criteria described in paragraph (2)(B).

* * * * * * *

DISSENTING VIEWS OF MR. LUTHER AND MR. LARGENT

While we share the dissenting views of Mr. Markey, et al, we respectfully submit this separate, dissenting viewpoint in order to specifically address the issue of "line-sharing". Indeed, at full committee we (along with Mrs. Wilson, Mr. Shadegg, and Mr. Ehrlich) introduced a controversial line sharing amendment that failed to pass on a 27 to 27 tie vote. Much of the debate on our amendment was of a technical nature, generating a lot of unfortunate confusion, and even speculation, on the actual intent and effects of our amendment. Though a vast majority of the members on the full committee agreed that line sharing was an obligation worth preserving (and that the original, underlying bill was flawed in this regard) the Committee was deadlocked over what actually constitutes meaningful line sharing. During debate, confusion reigned as members and counsel proffered technical and arcane arguments based upon FCC Orders and legislative nuance. We believe that our amendment failed largely because of this confusion.

Despite this confusion, our amendment was narrow: we wished to preserve the FCC's UNE Remand Order, its subsequent Line Sharing Order, and any subsequent Commission orders that implement or clarify these two orders. Under current law as reflected in the UNE Remand and Line Sharing Orders, a Bell company must line-share its entire loop with competitors for the delivery of high-speed data services; and both orders are crucial in preserving this line sharing status quo. H.R. 1542 destroys any meaningful notion of line sharing by only superficially inserting narrow, line sharing legislative language while concomitantly eliminating the full requirements of the UNE Remand and Line Sharing Orders. Worse, by so doing, proponents of the bill claim that they are in fact preserving line sharing. However, in eliminating the mandates of the UNE Remand and Line Sharing Orders, H.R. 1542 preserves the line-sharing obligation only for simple loops and sub-loops that consist of copper and copper only; the bill substantively obliterates this obligation for loops that consist of copper, fiber and remote terminals. Our amendment simply attempted to restore the status quo by restoring both FCC orders and consequently preserve line sharing for all loops regardless of their architecture.

The importance of line sharing cannot be understated. We believe that line sharing is a crucial component of a pro-competition regulatory structure that promotes meaningful consumer choice. Without such an obligation, we fear that natural monopoly power will dominate the market for DSL services, particularly in the residential sector. Because line sharing is a particularly important means of empowering residential consumers with a plethora of different high speed data services from which to choose, we felt that our amendment was one of the most important amendments on which the committee deliberated.

Proponents of H.R. 1542 construct a very formal definition of "line sharing" relegating the obligation to a loop or to a portion of the loop that consists only of copper. They posit that the status quo of line sharing is this and nothing more. In contrast, our definition of line sharing is more realistic, capturing a rapidly changing technical environment, and based upon the status quo as articulated by the FCC. In order to understand this status quo and how it is affected, we provide background on the subject.

BACKGROUND

In November of 1999, the Minnesota Public Utilities Commission promulgated a new rule requiring an incumbent local exchange carrier ("ILEC") to share the high frequency portion of its loop with a competitor for the purpose of delivering Digital Subscriber Line ("DSL") services. That is, if a consumer wished to subscribe to a DSL service from a competitive local exchange carrier ("CLEC"), he or she could use the Bell's existing twisted, copper wire-line leading from the Bell's central office to the customer's premises. As such, the CLEC would not have to build or lease a separate line to the customer. Line sharing was born. Minnesota's logic was simple, but powerful: when subscribing to a CLEC for DSL services, why force the customer to pay for another separate line when a perfectly functioning line already exists? Without such a requirement, CLECs offering competitive DSL services simply would not be able to compete.

Most loops currently consist of twisted copper wire that leads from the central office to the customer's premises. However, this basic loop architecture is quickly changing. Because telecom companies can only deliver DSL services over a limited distance through copper wire, some Bell Companies have upgraded their loops by installing fiber and remote terminals. That is, many loops now consist of fiber connecting the central office to a remote terminal; and from that remote terminal (where DSL delivery equipment known as DSLAMs are located) copper wire extends to the customer's premises. SBC's highly touted "Project Pronto" is the most prominent example of such a loop upgrade. 35% of the nation's loops now consist of this combination of fiber, remote terminals, and copper wire—and this percentage is rapidly growing. But the basic point is this: a "loop" is the entire delivery line that extends from a central office to a customer's premises; and that loop can be either twisted copper wire or a combination of copper wire, fiber, and remote terminals.

In the same November of 1999, the FCC promulgated regulations that effectuated the concept of line sharing for the entire nation. First, the commission released the so-called UNE Remand Order. Under § 251 of the Communications Act, as amended by the 1996 Telecommunications Act, an ILEC must grant CLECs access to certain unbundled network elements ("UNEs")—such a requirement is crucial to promote competition against the Bells and its vast, naturally monopolistic, and entrenched infrastructure. In 1996, the FCC promulgated its first UNE Order that listed all of the network elements an ILEC must make available to a CLEC on an unbundled basis—but this first Order was vacated and remanded by the U.S. Supreme Court (thus, the origins of the UNE Remand Order.)

Under the subsequent UNE Remand Order, the FCC re-listed most of the UNEs under the first Order, but added the following regulations: (1) dark fiber (i.e., unused, unlit fiber) must be made available to a CLEC as a UNE; (2) a CLEC must be able to either colocate its own DSLAMs or line cards in the ILEC's remote terminal or share the ILEC's remote terminal and DSLAMs as UNEs; and (3) the ILEC must unbundle the subloops (from the loop) and lease them separately to a CLEC.

A month later, the Commission promulgated its Line Sharing Order based upon its logic and findings in the UNE Remand Order. Indeed, were it not for an inability to iron out technical difficulties, line sharing would have simply been another network element requirement under the UNE Remand Order. In its Line Sharing Order, the FCC required an ILEC to share the high frequency portion of its copper loop with a CLEC for the delivery of DSL services. Furthermore, in its regulatory clarification known as the Line Sharing Recon Order, the FCC emphasized that an ILEC must share its entire loop regardless of the architecture of that loop. That is, line sharing no longer simply involved the copper wire: an ILEC has the obligation to allow a competing LEC to line share its entire loop and provide DSL service from the central office all the way to the customer's premises—even if that pathway from the central office includes fiber and remote terminals.

THE PROBLEM WITH H.R. 1542

From the above background, it should be obvious that the current status quo for line sharing consists of the entire loop—viz., an ILEC must share its copper, fiber, and remote terminals with a CLEC in order to promote competition in the DSL market. The problem with H.R. 1542 is that it purports to preserve line sharing, but only preserves one piece of the regulatory puzzle.

Section 4(b) of the bill eliminates any UNE requirement in effect after January 1, 1999. Because the UNE Remand and Line Sharing Orders were promulgated after that date, they are effectively eliminated. However, section 4(b) of the bill narrowly restores a very formal definition of line sharing by inserting language that allows access only to the high frequency portion of the copper loop. It is this inserted language that serves as the basis for our opponents' claim that H.R. 1542 retains line sharing. However, this inserted language does little if anything, for CLECs that wish to offer DSL services to customers over loops with fiber and remote terminals. That is, section 4(b) of the bill restores the narrow Line Sharing Order, but restricts the purview of that Order by explicitly eliminating access to copper at remote terminals. Moreover, section 4(b) eliminates any clarifying FCC orders—which includes the FCC's Line Sharing Recon Order that defines line sharing as an obligation involving the entire loop. In the end, because the UNE Remand Order is eliminated, the ILEC has no responsibility to share its fiber or to allow collocation at remote terminals. Furthermore, because the full breadth of the Line Sharing and Line Sharing Recon Orders are eliminated (in favor of inserted statutory language), the line sharing status quo changes from a broad obligation to share the entire loop to a minor obligation to share only antiquated copper wire. Consequently, H.R. 1542 effectively changes

the definition of line sharing and eliminates the UNE obligation for any high tech loop that consists of fiber, remote terminals and copper. Given that the Bells are rapidly upgrading their loops in such a fashion, line sharing will soon be reduced to an obligatory anomaly.

It is important to note the inseparability of the UNE Remand Order and the Line Sharing Orders, and thus the fallacy in H.R. 1542's separation of the two. First, the UNE Remand Order establishes the definition of the "loop." Second and just as important, the Order clarifies the processes, testing, and operation support systems that must be in place in order to access the loop—which obviously is indispensable in effectuating the line sharing obligation. That is, without the loop rule and the rule on operations support systems, as set forth in the UNE Remand Order, the means by which CLECs obtain line sharing cannot be ascertained—consequently, line sharing cannot be implemented. For example, the UNE Remand Order establishes the rules by which a carrier may access an ILEC's Operations Support Systems to obtain "loop qualification" information. (This is the information necessary to determine what services can be deployed on a particular loop; and whether or not the customer and neighborhood are eligible for DSL-based services or line sharing.) Furthermore, the UNE Remand Order requires the ILEC to provide a CLEC with nondiscriminatory access to the same detailed loop information available to the ILEC itself. Without the UNE Remand Order, all of these obligations disappear making it impossible for a CLEC to get the loop information necessary for providing DSL services through line sharing. The salient point is this: the Line Sharing Orders grew out of the more general loop unbundling obligations in the UNE Remand Order. Indeed, it would be difficult to speculate what a line sharing order would look like without the loop provisions in the UNE Remand Order.

Without line sharing, we fear that CLECs offering DSL services to consumers will vanish and that tens of thousands of American consumers will be disconnected. Already, many CLECs are on financial life support teetering on insolvency. To be sure, much of this financial misery is based upon a general macroeconomic malaise; but just as important, the uncertainty of the current regulatory environment and the persistence of market barriers have greatly contributed to the collapse of the CLEC industry. While the capital markets have gone dry, these small competitors remain the life-blood of competition; and we fear that without their presence, the Bell companies will naturally gravitate towards solidifying their monopolies in both the voice and high-speed data markets. Consumers must be able to choose from an array of telecommunications carriers, whether they are CLECs offering only DSL services, CLECs offering both DSL and traditional voice services, or the Bells themselves. By preserving the line sharing status quo, our amendment ensures that competitors will have a fighting chance against the natural monopolistic power of the Bells.

Moreover, we believe that the line sharing status quo is particularly critical given the central thrust of H.R. 1542. Were the bill to become law, the Bell companies would be free to offer high-speed data services unfettered by the inter-LATA restrictions dating back

to the original break-up of AT&T. H.R. 1542 deregulates the Bells' ability to deliver DSL services on a long-distance basis, circumventing the original conditions imposed by the '96 Act; viz., that the Bells may enter into the long-distance market if and only if they first open their local markets to competition. In our opinion, if we are going to alter the conditions of the '96 Act in such a manner, it is supremely reasonable to preserve the ability of competing companies to lease crucial network elements for the delivery of high speed data services.

Opponents of our amendment make several claims. First, they claim that H.R. 1542 already preserves the obligation of line sharing. At the risk of redundancy, we believe that opponents of our amendment define line sharing in an exceedingly formal and technical manner. Unfortunately, during the full committee markup, confusion arose from this very debate whereby opponents and proponents of our amendment had differing views of the line sharing status quo. However, as is apparent from the genesis of line sharing (explained above), we believe that our notions of "line sharing" are more realistic and clearly reflect current line sharing obligations. Line sharing involves the entire loop, be that loop composed of copper or a combination of fiber, remote terminals and copper. Thus, in order to preserve the line sharing status quo, H.R. 1542 must be amended to preserve not only the sharing of copper wire, but the sharing of fiber and remote terminals as well. Because a great deal of confusion arose over the definition of line sharing during the mark-up, we cannot emphasize this point enough.

Second, opponents claim that our amendment will create disincentives for the Bells to upgrade their loops with fiber and remote terminals. They rightfully claim that upgrading their loops in such a fashion costs the Bells billions of dollars; but they further argue that the Bells will no longer be willing to make such capital expenditures were CLEC's able to lease the fiber and collocate at remote terminals on an unbundled basis.

To this, we have several responses. First, loop upgrades such as Project Pronto were, in fact, made in the midst of the current regulatory structure. As such, we see no reason why the Bell companies will cease improving their networks with the passage of our amendment, which (again) would simply preserve the status quo. Second, it is not as if CLEC's are allowed to use the Bells' fiber and remote terminals for free. Under current law, CLECs are required to pay the Bells for the costs of building and maintaining that loop upgrade. In addition, current law requires those payments to include a reasonable profit for the Bells. In essence, the CLECs are de facto customers of the Bell companies. Lastly, such loop upgrades will serve to greatly benefit the Bell companies themselves—with hybrid fiber and copper loops, ILECs will further strengthen their own ability to deliver DSL services. Under such a regulatory scenario, it is hard to see how the Bells would be discouraged from improving their networks in such a fashion.

The third argument our opponents make is that CLECs will have a disincentive to build their own facilities. That is, if they allowed to continue to lease newly constructed fiber and remote terminals, CLECs will have no incentive to similarly embark on such capital

ventures. In our opinion, this may be the most credible argument our opponents make.

However, consider this: the Bells have vast financial power based upon their collective legacy as natural monopolies. The Bell companies and only the Bell companies have the financial wherewithal to invest in such technologies. A vast majority of the CLEC industry is simply not in any capital condition to make such investments. As such, we believe that line sharing is a point where competition begins, not where it ends. It is a means by which small telecommunications companies scratch and claw to get a foot in the door and vie for customers heretofore beholden to one entrenched, wire-line telecommunications network of overwhelming proportions. Line sharing offers consumers a real choice between many telecommunications companies battling each other for their businesses. We are sure that once true competition takes root, CLECs and ILECs alike will strive to build their own facilities that will reap large profits. Indeed, some of the few remaining profitable CLECs have already invested large amounts of capital in their own facilities. Unfortunately, we believe that most small companies will never reach that point if they are unable to survive in an uncertain and unfavorable regulatory environment that effectively kills competition.

CONCLUSION

We believe that our amendment, which narrowly failed to pass full committee by virtue of a tie vote, offered a reasonable, common-sense change to H.R. 1542. By preserving both the UNE Remand and Line Sharing Orders, our amendment would have preserved the line sharing status quo so that consumers do not have to pay for an extra line when subscribing to a DSL service. It did nothing else. Notwithstanding its proponents' assertions otherwise, we believe that H.R. 1542 inadequately preserves line sharing, because it confines the obligation to only the cooper portion of a loop. In fact, line sharing as articulated by current law, constitutes an ILEC obligation to share the entire loop with a competitor regardless of the architecture of that loop. In order for line sharing to be substantively meaningful, both the UNE Remand and Line Sharing Orders must remain intact, and our amendment would have ensured as such. Simply put, ILECs must continue to lease their fiber and remote terminals to smaller CLECs on a cost and reasonable profit basis. This is particularly true given that loops are rapidly changing from simple copper wires to a combination of fiber, remote terminals and copper. Moreover, given that the passage of this bill will grant the Bells a waiver from the competitive mandates of the '96 Act with regard to broadband services, we believe it only makes sense that small DSL carriers retain a fighting chance to compete—and line sharing is a crucial ingredient in that endeavor. We do not believe our amendment would have discouraged future investments in loop upgrades. Under the current line sharing status quo, such capital investments have and will continue to take place. This is largely because the Bells stand to greatly benefit from such upgrades themselves and are further compensated for cost and profit when they lease their network elements to CLECs.

It has only been five short years since the passage of the landmark Telecommunications Act of 1996. Line sharing was born from a legislative vision bent on competition. Because we still firmly believe in that competitive spirit, we respectfully submit that our amendment was a crucial and deliberate way of preserving line sharing and all of the pro-competition benefits therefrom. We regret that it failed to pass committee on the most narrow of votes.

BILL LUTHER.
STEVE LARGENT.

DISSENTING VIEWS OF MR. MARKEY, MR. LARGENT, MR. WAXMAN, MR. PICKERING, MS. ESHOO, MR. STUPAK, MS. MCCARTHY, MS. DEGETTE, MR. LUTHER, MRS. CAPPS AND MR. DOYLE ON H.R. 1542

Congress has taken action on a number of occasions in recent years to update antiquated communications laws. The challenge for policymakers has been to reform such rules in a way that substitutes a sound competitive policy framework, consistent with the public interest, for hitherto monopoly provided services and the rules by which such monopolies were regulated and safeguarded from competition. We believe a competition-based policy is preferable because it maximizes consumer choice, job creation, technological innovation, service quality and price reductions. In addition, the economic interests of the United States are most advanced in the global marketplace by fully establishing competition in our domestic telecommunications markets.

The legislation that most broadly addressed this challenge was the landmark Telecommunications Act of 1996 (P.L. 104–104). We believe that the Telecommunications Act of 1996 (the '96 Act) contains the essential blueprint to encourage the deployment of advanced communications technologies by injecting competition into the market for local telecommunications services. The competition unleashed by the Telecommunications Act has spurred technological advances and innovation, and has helped to promote the deployment of digital services, at lower prices, to ever more American homes and businesses. We strongly endorse retention of this competitive model for our telecommunications marketplace.

However pending telecommunications legislation, H.R. 1542, fundamentally departs from the competitive model upon which we have sought to reform our laws and, over time, to eliminate unnecessary regulations. This legislation eliminates key market opening provisions of the Telecommunications Act and allows the Bell companies into long distance for so-called "high speed data" services. This highly controversial bill was approved by the Telecommunications and the Internet Subcommittee on a 19–14 vote, and recently passed the Full Energy and Commerce Committee on a 32–23 vote.

We oppose H.R. 1542 because it is highly flawed. In short, we believe it is unnecessary, "un-digital," and unfair. It favors monopolies more than it breaks them down and encourages communications consolidation more than it creates new economic opportunities for small businesses and entrepreneurs. It benefits the 4 regional Bell companies yet vastly diminishes the economic prospects for hundreds of other high tech companies and their employees. And in legislation that affects multibillion dollar issues and every American who owns a telephone or a computer, it is woefully deficient

in protecting consumers from potential monopoly abuses, or empowering them with new technology.

BIPARTISAN CONCERN

The pro-competitive framework embodied in the '96 Act, as well as it's subsequent implementation by the Federal Communications Commission (FCC), was not the product of one party. On the contrary, both liberals and conservatives, Republicans and Democrats, have insisted on such rules and developed them in bipartisan fashion over a number of years.

In fact, all of the decisions implementing the key market-opening provisions of the '96 Act at the FCC were unanimous, garnering votes from both Republican and Democratic commissioners alike. Moreover, the nature of the votes at the markups in both the Telecommunications and the Internet Subcommittee as well as in the Energy and Commerce Committee make evident that opposition to this bill is broad and bipartisan.

We turn now to an examination of the provisions of H.R. 1542 and the apologia of our opposition.

IT'S UNNECESSARY

This bill is unnecessary. Prior to proposing myriad "solutions" to a problem, it is useful to identify clearly and convincingly the problem legislation purports to remedy. As the sole hearing this Committee held on the proposed legislation this session indicated, and what the close votes in the Subcommittee and the full Committee markups also amply demonstrated, is that there is little consensus on what, if any, problem needs fixing, or if statutory revisions are required to effectuate any needed change in policy.

The fact is that the Bells don't need legislation in order to provide high speed data services. They can and do offer DSL services today. The Bells don't need legislation to offer Internet access. Again, they offer such services today.

Moreover, the Telecommunications Act allows the Bells into long distance after they've met the requirements of a competitive checklist in a State. They've done this in 5 States. In other words, the key to entering the long distance market is in their own hands.

So what is the problem? Is there insufficient competition? If that's the problem, this bill's remedy is to empty a six-shooter into the heart of new economy companies. This bill doesn't help to create more competition, it serves to shield the Bells from effective competition from competitive local exchange companies (CLECs). It's a competition-killer.

In addition, the bill doesn't give the green light to Wall Street to invest again in innovation. It sends the capital community the opposite message. As Mr. James Henry, managing general partner of Greenfield Hill Capital, testified before the committee at the legislative hearing on H.R. 1542: "It is my observation as an industry analyst that the investment community's willingness to fund telecomm companies in general and CLECs in particular is adversely impacted by legislative and regulatory uncertainty. The proposed [bill] is illustrative of the kind of legislative uncertainty that will cause investors to move to the sidelines and withhold capital from the emerging local competitors."

The legislation makes such uncertainty in the marketplace a chronic condition, because even if the bill becomes law it will unleash new rounds of litigation. We've already been through that.

Even as the bill makes it harder for competitors to serve consumers, it solidifies the position of incumbent monopolists and then deregulates them. There's only one thing worse for consumers than a regulated monopoly and that's an unregulated monopoly.

IT'S UN-DIGITAL

This bill is also "un-digital." Section 6 of H.R. 1542 creates an exception for "high speed data services" to the existing "carrot-and-stick" approach to opening the local telecommunications market to competition. (The "carrot-and-stick" approach compels the Bells, in a State-by-State application process for long distance entry, to meet the market-opening standards established in Section 271—a provision enacted as part of the Telecommunications Act of 1996.) The legislation then adds a limitation to this "data" exception stipulating that, notwithstanding their ability to offer long distance "data" services, the Bells still could not provide long distance "voice" service.

This is a highly "un-digital" provision. It attempts to justify acceding to Bell company pressure to enter the long distance market prematurely by creating a legislative work of science fiction. Going digital means converting all information into a series of zeros and ones. With digital technology, there is no distinction between voice and data transmissions. It helps to create a "technological Esperanto"—where videos, photos, email, faxes, music, everything can universally be expressed in the language of zeros and ones.

H.R. 1542 takes this harmonious universal language and introduces a Congressional cacophony. It doesn't embrace convergence. It does the opposite. Ripping certain bits out of a network to be treated by regulators differently is not consistent with the technological convergence we are witnessing throughout our telecommunications markets. As a result, this legislation turns back the clock—it's "regulatory retrogression." It presents once again the problem of trying to force certain services into particular regulatory boxes even as digital technology renders such classification antiquated or meaningless.

It is clear that the vast majority of telecommunications traffic traveling over most networks today is data traffic, not voice. Moreover, many experts predict that this data traffic will continue to grow in years to come and that voice bits will actually represent a miniscule percentage of the overall bits travelling through our nation's telecommunications infrastructure. As Mr. Clark McLeod, Chairman of McLeod USA, a facilities-based CLEC, testified before the Committee: "It is almost impossible to divide the "carrot" as a practical matter. There is no meaningful distinction between voice and data. Whether you are watching voice or data, when they are digitized and transmitted over a fiber optic cable they are both just flashes of light . . . Furthermore, as voice over the Internet technology continues to develop, the problem grows."

Concern has repeatedly been raised that the Bell companies may have little incentive to demonstrate the opening of their local networks if they are given the ability to provide long distance high

speed data services. Again, as Mr. Clark McLeod, Chairman of McLeod USA, testified: "If we allow the Mega-Bells to provide long distance service for the Internet, then when voice communication over the Internet becomes widespread, the "carrot" will be gone and there will be no incentive to ease the stranglehold on the last mile local loop . . . If you do not find the pace of local competition acceptable, the solution is to increase the "carrot" or add a "stick," rather than to reduce the carrot. Data services constitute the high-growth, high-revenue segment of the intercity long-distance market. It makes up the largest portion of the "carrot." If it is lost, there will be almost no remaining economic incentive to comply with the 14-point checklist in Section 271 and provide quality access to the last mile local loop." Moreover, since the bill eliminates any FCC or State authority over Bell provision of high speed data services, the legislation's bid to limit Bell long distance authority to "data" transmissions is of dubious enforceability.

Under the Telecommunications Act's Section 271 process, fully opening networks to competition in the local exchange market is insisted upon as a prerequisite for Bell companies to enter the long distance market. Once a Bell company obtains such Section 271 approval in a State, the Bell company may offer long distance service in that State for both voice and data services. This construct is consistent with the convergent nature of digital technologies.

IT'S UNFAIR

H.R. 1542 is also unfair. In the aftermath of the enactment of the Telecommunications Act of 1996, several new commercial enterprises were launched and they poured over $60 billion dollars into new infrastructure. They delivered on the promise of the '96 Act by deploying new digital services, prompting the incumbents to finally offer such services themselves. Mr. Charles McMinn, Chairman and co-founder of Covad Communications, testified to the Committee that, "Your decision in 1996 to open local telecommunications markets to competition allowed consumers a choice in broadband services from a variety of competitive providers. The bill you are considering today will take that choice away."

In essence, this bill tells those dozens of new companies—and the hundreds of companies that supply them: "Thanks, but no thanks. We don't need you. We're sorry you borrowed millions of dollars to invest in your business based upon the Telecomm Act, but now we're changing the rules. We're going to rely on the Bell utility phone company to serve consumers. We're going to rely on the Bell utility companies to innovate. We're going to rely on unregulated Bell utility companies to lower prices."

We believe that's a policy that seeks our economic future by looking through a rear-view mirror. The Bells do not have a track record of innovation or rapid deployment of new services. We point to an editorial from Business Week that appeared in the April 18, 2001 issue: "The Bells are not known for their competitive vigor or their willingness to roll out broadband quickly. Indeed, it was only competition from new companies that spurred them to start."

Far from fostering the kind of facilities-based competition that served to prod the Bells into deploying their own services, this legislation thwarts the growth of facilities-based competition. Only the

Bell companies began life after enactment of the '96 Act with a full network and connections to every home—a vast and valuable network paid for, we might add, over and over again by captive ratepayers. This is a tremendous advantage. The Bells would like to make building such a network a prerequisite for any competitor. Congress wisely looked to the record of building long distance competition in the 80's and early 90s as a model for building ever more competition for local telecommunications services.

The '96 Act certainly permits full bore facilities-based competition. Yet it often takes time, as well as a significant amount of capital and customers, to reach that level of infrastructure deployment. For this reason, the Telecommunications Act encouraged competitive entry through resale opportunities, as well as through evolving facilities-based competition. In the latter scenario, companies could buy the piece-part elements of the network they needed (so-called "unbundled network elements," or "UNEs") and use them in conjunction perhaps with facilities they owned and deployed.

H.R. 1542 abandons the policy of encouraging, through multiple means, competitive entry into the local telecommunications services market. Under the bill, certain types of competitive entry will now be explicitly discouraged. First, H.R. 1542 reverses the pro-competitive thrust of the 1996 Act by rolling back the FCC's unbundling rules.

Much debate in the Committee markup centered around the preservation of these pro-competitive policies generally and, in particular, the importance of preserving the Bell companies' obligation to provide competing carriers with unbundled access to the high frequency portion of the loop. This is the policy known as "line-sharing." Advocates of H.R. 1542 allege that the current rules require only access to copper loops and they articulate a policy whereby competitors could solely access the copper loops. We dispute both the allegation that this is all that current rules require and the policy choice favored by advocates of the legislation.

The consequence of the provisions in the bill would be to effectively deprive new entrants to the local exchange market of access to the facilities they need to compete. Limiting line sharing to copper plant would effectively reverse critical FCC clarifications of its line sharing and unbundling rules. As the Bells deploy more fiber, competitors would lose the ability to line share. The bill would also have the effect of forcing certain competitive carriers to abandon serving residential consumers because it takes away important unbundling rights and makes "line-sharing" meaningless. Mr. Charles McMinn, Chairman of Covad Communications, testified to this point: "The sad fact is that competition in local telecom markets, especially in residential broadband services, would be virtually eliminated by this bill." It makes no sense to us to change current rules in a way that lessens the likelihood that residential consumers would receive competitive broadband services.

A key problem is that H.R. 1542 eliminates the Bells' obligation to provide unbundled access to the high frequency portion of the loop at the "remote terminal" that resides between the consumer's home and the central office of the local network. In cases where a Bell company locates its DSL equipment in the remote terminal, competitors cannot use the line sharing equipment they've installed

in the central office. In such situations, the only way for a competitive carrier to reach consumers served by this remote terminal to offer high-speed data services is to locate its own equipment at the remote terminal and interconnect there. H.R. 1542 prohibits this. Multimillion dollar investments made by competitive companies in high tech equipment located at the Bell companies' central offices could be rendered useless by this reversal of current rules.

This policy reversal also has the effect of bolstering the competitive position of the incumbent Bell companies. If competitors are functionally prohibited from serving residential consumers through "line-sharing," consumers seeking a bundled service of both high speed data and voice service over a single line to the home will be compelled to turn to one carrier for such bundled service, the Bell company. That's why these provisions are a win-win for the Bells—they not only significantly reduce the likelihood of competition, but perpetuate for the foreseeable future Bell hegemony over local telecommunications services.

These provisions represent a powerful toxin to competition and in our view should be removed from the bill. Both the Largent Amendment, which deleted Section 4 from the bill, as well as the Luther-Wilson amendment, which was designed to restore rules that make "line-sharing" useful to competitors, would have represented important improvements to the bill. The debate on the Luther-Wilson amendment ended in a 27–27 tie vote, indicating again, the great uneasiness that the Committee has with ending the preference for competition embodied in the Telecommunications Act.

REGULATORY QUAGMIRE

H.R. 1542 sets up a new regulatory regime for telecommunications in the United States. In Section 4 of the bill, new Section 232(a) states that neither the FCC nor any State shall have any "authority to regulate the rates, charges, terms or conditions for, or entry into the provision of, any high speed data service, Internet backbone service, or Internet access service, or to regulate any network element to the extent it is used in the provision of any such service . . .". This provision is ostensibly included to prohibit regulation of the new, so-called "data" services.

The legislation, however, in new Section 232(b) states that States will retain authority under the bill to "regulate circuit-switched telephone exchange service." Presumably, this would be authority over circuit-switched-based telecommunications services irrespective of whether they are so-called "voice" or "data" services. Moreover, the legislation in Section 232(c) includes a provision stating that nothing in this new section "shall affect the ability of the Commission to retain or modify . . . rules pursuant to section 254." Section 254 of the Communications Act deals with universal service issues.

To recap: (1) the FCC and the States have no authority over certain services, namely, the broadly-defined services called "high speed data service," "Internet access service," and "Internet backbone service"; (2) the States retain authority over the newly-named, yet undefined, "circuit-switched telephone exchange service;" and

(3) none of the preceding affects the ability of the FCC to modify universal service rules.

This is a regulatory quagmire. It sets up a convoluted new regulatory regime that Rube Goldberg would be impressed with, only Harry Houdini could untangle, and only a monopolist with a well-financed litigation team could love.

TECHNOLOGICAL NEUTRALITY

The Congress has tried over many years to deal with digital convergence by striving to treat like services in like ways from a regulatory standpoint. The law should address the service offered to consumers, not the particular medium used to deliver that service or the historical antecedents of the company offering the service. Instead of dealing with the marketplace from the standpoint of technological neutrality, H.R. 1542 articulates a new policy of "technological favoritism." By picking technological favorites, the government distorts the marketplace and encourages companies to engage in "technological arbitrage." For example, if a company provides telephone exchange service, but simply uses something other than a circuit-switched technology, that company's offering is deregulated. This is true even if its offering is indistinguishable from that of a company utilizing circuit-switched technology. That's unfair, unnecessary, and un-digital all in one.

This bill compounds the problem of discerning between voice and data on packet-switched networks. It does so by asserting that States can't regulate the service—they can only address consumer welfare if it's delivered a certain way, namely, utilizing a "circuit-switched" technology. This sweeping evisceration of FCC and State authority raises several questions about what rules and regulations may no longer apply. Under the preemption language in the legislation, embodied in the new Section 232, unless "high speed data service," "Internet access service," or "Internet backbone service," are "expressly referred to" in the Communications Act, the FCC and States have no authority over rates, charges, terms or conditions, for such services. This means that many important rules, including consumer protection rules, may be inadvertently swept away.

For example, such preemption language raises the question as to whether the provisions of Section 222, addressing subscriber privacy apply to such services. Likewise, Section 310(a) of the Act, addressing foreign government ownership of telecommunications facilities. In addition, FCC and State utility commission "slamming" and "cramming" rules would not apply to such services. Further, the following additional provisions would not apply to these services: Section 223 of the Communications Act, relating to obscene or harassing telephone calls; section 225, relating to telecommunications services for hearing-impaired and speech-impaired individuals; section 228, dealing with pay-per-call services; section 229, relating to compliance with the Communications Assistance for Law Enforcement Act; section 231, relating to access by minors to harmful material; or section 255, addressing access to persons with disabilities.

Without question, the rise of Internet-based services may require adjustment of many existing rules and regulations. And the elimi-

nation of many other rules will be warranted if innovation flourishes, competition fully takes root, and the rules no longer serve a useful purpose. In the area of broadband policy, policymakers may decide that many of the above rules should apply to non-circuit-switched services, many perhaps should not—and some may be deemed necessary but only in a modified form.

The point is that the Committee has not fully analyzed or debated the nature and extent of the preemption in the bill, the full implications of the new statutory definitions for services, nor the new regulatory regime erected by the bill. Such abrupt and ill-considered changes—with profound implications for competition and consumer protection—should not be rushed through the House.

BACK TO THE FUTURE

It is important to recognize that if the legislation proceeds as currently crafted, this flawed framework will require major and multiple policy adjustments to protect consumer welfare and ensure timely deployment of services. While we prefer a competition-based policy to induce the marketplace paranoia in corporation mindsets that promotes deployment of new services, increases service quality, and lowers prices, H.R. 1542 fails to advance such a policy. Unfortunately, the absence of a competition-based policy will require policymakers to return to the regulatory model of a previous era, when dominant providers had to comply with government mandates for service deployment.

Since the bill severely limits the ability of competitors to reach consumers, it is clear that the government would have to set benchmarks and timetables for deployment of services to the inner city and to rural areas. The Stupak-Largent-Strickland amendment was crafted to ensure reasonable and timely deployment of services to such consumers. It was a pro-consumer amendment that would have meant that millions of consumers would gain access to services from the Bell companies, particularly in areas where, in the absence of a competitive threat, the Bell companies are unlikely to deploy. Although this amendment was defeated, we continue to believe that if the bill is to proceed it must be amended to ensure timely deployment of service, especially to rural areas of the country, with serious repercussions for a Bell company's failure to deploy.

CONCLUSION

Instead of preserving and strengthening the principles of competition and consumer choice, this bill undermines them. We believe its provisions are anti-competitive, anti-consumer and contrary to the public interest. Instead of looking to the future, these provisions return us to the policies and practices of the past.

It is our hope that this bill undergo major legislative surgery so that its monopoly-enhancing provisions can be removed, its vague new statutory definitions eliminated, and its "un-digital" regulatory regime scrapped. In their place, if Congress chooses to legislate at all, pro-consumer and pro-competitive provisions could be added to ensure greater consumer choice, robust entrepreneurial access to markets, and more vigorous enforcement of existing rules and laws.

ED MARKEY.
HENRY A. WAXMAN.
STEVE LARGENT.
CHIP PICKERING.
BART STUPAK.
KAREN MCCARTHY.
DIANA DEGETTE.
ANNA ESHOO.
LOIS CAPPS.
BILL LUTHER.
MIKE DOYLE.

DISSENTING VIEWS OF MR. WILSON, MR. LUTHER, AND MR. EHRLICH

H.R. 1542 would eliminate any meaningful opportunity for competitive carriers to gain access to and use of an incumbents' local loops to provide their own high speed data services. While the bill's sponsors say that it preserves the FCC's current line sharing rules in the 1999 Line sharing Order,[1] in fact it preserves only the illusion of line sharing by selectively eliminating other rules that are crucial to competitors' ability to offer high-speed services over the incumbents' lines.

We offered an amendment at full Committee markup that would have restored meaning to the line sharing requirement by ensuring the continued effectiveness of all of the FCC's current rules relevant to line sharing. In particular, this includes the expanded list of unbundled network elements ("UNEs") that the FCC adopted in the UNE Remand Order.[2] In relevant part, the UNE Remand Order ensured competitors' ability to gain access to certain features of incumbents' local loops that are critical to the delivery of high-speed services via line sharing. Among other things, the UNE Remand Order explicitly gave the competitors unfettered access to "high-capacity" lines, which enabled competitors to deliver-high-speed services over incumbent loops,[3] and so-called "attached electronics," which enabled the competitor to access its customers' traffic at the central office.[4]

The UNE Remand Order also provided competitors with the right to access certain operational support information, such as crticial data that identifies which incumbent can carry-high-speed services. In addition, the UNE Remand Order provided competitors with the flexibility to interconnect with the incumbents' lines at any accessible intermediary point, and take only a portion of the incumbents' line (or subloop).[5] Finally, the UNE Remand Order provided competitiors with the ability to provide high-speed services in other ways (e.g., by accessing available, but unused "dark fiber" or "dedicated transport") at very high speeds.[6]

As the FCC has recognized, line sharing is crticial to promoting local competition, including facilities-based competition. Without an effective line sharing requirement, competitors will not be able to

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[1] Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket NO. 98–147, Fourth Report and Order in CC Docket No. 96–98, 14 FCC Rcd 20912 (1999) ("Line Sharing Order").

[2] Implementation of the Local Competition Provisions of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96–98, Third Report and Order, 15 FCC Rcd 3696 (1999) ("UNE Remand Order").

[3] Id. at 3777¶¶ 176–177.

[4] Id. at 3776¶ 175.

[5] Id. at 3789–90 ¶¶ 206–207.

[6] Id. at 3776¶175,3785¶196 ("[w]e agree with commenters that argue that, because dark fiber provides high transmission capabilities are relatively low cost, unbundling fiber is essential for competition in the provision of advanced services").

offer conumers the choice in high speed services contemplated in the 1996 Act. While the proponents of H.R. 1542 claim that it preserves competitors' ability to provide high-speed services, this ability is rendered hollow by the bill's selective preservation of some existing rules but not others. Preserving the existing line sharing policy is essential and without it, the bill represents a retreat from the competitive vision that Congress created in the 1996 Telecommunications Act.

HEATHER WILSON.
BILL LUTHER.
ROBERT L. EHRLICH, Jr.

DISSENTING VIEWS OF MR. LARGENT ON H.R. 1542

U.S. telecommunications policy is subject to intricate and occasionally confusing tripartite authority. Section 2(b) (47 U.S.C. 152(b)) of the Communications Act reserves to the States the regulation of intrastate telecommunications. Regulation of interstate services is overseen by the Federal Communications Commission. And finally, all companies offering telecommunications services are subject to antitrust laws.

H.R. 1542 offends this delicate, long-standing, and important balance by preempting state regulation of intrastate services that are offered over facilities that would be deregulated under Section 4 of the legislation. This federal usurpation of authority might possibly be justified as Congress contemplates how to rationalize the confluence of telecommunications policy and Internet technology. In my view, however, the proponents of preemption have failed to make their case. For this reason, as well as because of my belief that enactment of H.R. 1542 would retard the development of local exchange competition, I voted against reporting H.R. 1542. I believe the record built at the April 25, 2001 hearing provides a sufficient discussion of the bill's deficiencies with regard to local competition because the impact of the legislation on states' rights has not been adequately aired, I focus my comments here on that issue.

At the outset, the Committee has been asked by the sponsors of H.R. 1542 to bless such a broad preemption of state authority is indeed ironic, given that the bill's sponsors are among those who have been the most aggressive champions—going so far as to file an amicus brief with the U.S. Supreme Court in *Iowa Utilities Board* v. *Federal Communications Commission*—of the notion that the states, rather than the F.C.C., should exercise primary authority over the interconnection and unbundling provisions of Section 251. H.R. 1542 proposes to amend in such a way that would deny this same authority to the states.

The rapid pace at which the Energy and Commerce Committee was compelled to consider this legislation did not lend itself to a measured, thoughtful debate over this very critical policy consideration. There was little, if any, debate over whether it makes sense to modify, implicitly or explicitly, Section 2(b) of the Communications Act. The Committee was denied a reasonable opportunity to engage in this debate when the decision was made to exclude representatives of state public utility commissions from the sole legislative hearing held on the bill during the 107th Congress. Nonetheless, it is clear that state public utility commission objections to H.R. 1542 are numerous.

Many state commissions have filed written objections to H.R. 1542. Virtually every commission that has opined on the legislation in letters to Members has noted that it is likely to threaten local exchange competition by reducing the Bell companies' incentives to

open their respective local exchange facilities to competition. Similarly, they have noted that nothing in current law prevents the Bells from deploying broadband facilities and services to consumers today. These objections are significant, but they are not the most serious of the state commissions' objections to the bill. The most disturbing of the criticisms levied against the bill, raised by almost every state commission that has weighed in on the legislation, is that it is so overly broad in its scope that it will impinge on the ability of the states to regulate the rates for and quality of basic telephone service. This last point has been echoed by business user and consumer advocacy organizations which also have written to Members to offer their views on H.R. 1542.

Members may be able to assume divergent views on the first two points as a matter of honest disagreement, but it is irresponsible for us to engage in an effort so ill-considered that it might deny consumers the most basic of rate and service quality protections and threaten the continued viability of the universal service system. In the Committee's haste to report H.R. 1542, we may be producing a bill with far-reaching negative implications for the very rural and underserved consumers that proponents of the legislation claim it will help.

I urge that every effort be made to remedy this deficiency when the bill is considered by the full House of Representatives.

STEVE LARGENT.

DISSENTING VIEWS OF MR. CHIP PICKERING

Congress enacted the Telecommunications Act of 1996 to promote competition in all telecommunications markets and spur the development of a competitive local exchange market specifically. The most important market-opening tool we created was the obligation for he Bell companies to share their networks with competitors. Under this provision, new competitors to the Bell companies could obtain access to the incumbent's network in three ways: (1) by purchasing local telephone services at wholesale rates and reselling them to end users; (2) by leasing specific pieces of the incumbent's network on an unbundled basis; and (3) by building its own facilities and interconnecting them with the incumbent's network.

No one thought the transition to a competitive local exchange market would be easy. We all know that it would require hard work, substantial resources, and patience. I believe Congress was right when it passed the 1996 Act, and so I voted against H.R. 1542 because it fundamentally undermines the market-opening mechanisms established by the 1996 Act before they have been given an adequate chance to work. H.R. 1542 would make it almost impossible for competitors, even facilities-based competitors, to enter the local exchange market.

I also oppose H.R. 1542 because attempts to justify granting incumbents authority to provide interLATA data services relies upon a false distinction between voice and data transmissions. With the digitization of telecommunications, there is no longer a readily identifiable distinction between voice and data services or any effective method of determining whether the Bell companies are transmitting only data services over their interLATA facilities. The "data exception" in the bill therefore would basically remove any incentive for the incumbents to open their local networks to CLECs.

If Congress really wants to address the lack of competition in the local exchange market, the answer is not to abandon the 1996 Act. Instead, Congress should ensure that incumbents satisfy their existing obligations under the Act by strengthening the FCC's enforcement authority, as Chairman Powell suggested. Let me expand upon each of these concerns in turn.

ELIMINATING THE MARKET-OPENING INITIATIVES IN THE 1996 ACT

First, H.R. 1542 reverses the pro-competitive thrust of the 1996 Act by rolling back the FCC's unbundling rules to January 1, 1999. This effectively deprives new entrants to the local exchange market of access to the facilities they need to compete. Even facilities-based competitors do not spring to life full-blown, able to service an entire region or state with their own networks. Like the early MCI and Spring, which evolved into full facilities-based carriers, new entrants in the local marketplace need to lease elements of the

incumbents' networks in order to provide service throughout any geographic area.

The sponsors of the bill claim that it preserves incumbent local exchange carriers' current obligation to provide competing carriers with unbundled access to the high-frequency portion of the loop, commonly known as "line sharing." They state that the current rules as requiring only access to copper loops. In fact, the FCC's 2001 clarification of the line sharing requirement makes clear that this requirement "applies to the entire loop, even where the incumbent has deployed fiber in the loop."[1] Limiting line sharing to copper would severely undercut, if not eliminate, competitors' ability to provide high-speed services to consumers. The Luther-Wilson amendment, which I supported, would have eliminated any ambiguity on this critical point.

The 2001 clarification was necessary because incumbent telephone companies took the position in line sharing negotiations with competitive carriers that they were not under an obligation to unbundle fiber portions of the loop when those portions were used to provide high-speed services. Limiting line sharing to copper plant would effectively reverse this clarification. As incumbents deploy more fiber,[2] competitors would lose the ability to line share.

Far from preserving existing line sharing requirements, the bill is a giant step backward that undermines the prospects for facilities-based competition. As the FCC recognized, lack of effective access to the high-frequency portion of the loop.

> materially diminishes the ability of competit[ors] to provide certain types of advanced services to residential and small business users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings.[3]

The bill also retreats from existing law by eliminating the incumbents' obligation to provide unbundled access to the high frequency portion of the loop at the "remote terminal" that lies between the customer's premises and the central office. In the Line Sharing Reconsideration Order, the Commission determined that an incumbent had an obligation to provide line sharing to a requesting carrier at either the remote terminal or at the central office, but not both.[4] The bill would deprive competitors of this choice.

This change in current law could effectively render competitors' investments in line sharing equipment located at the incumbents' central office useless. When an incumbent local exchange carrier puts DSL equipment in the remote terminal, competitors cannot use the line sharing equipment they've installed in the central office. In this situation, the only way for a competitive carrier to reach those customers served by the remote terminal to offer high-speed data services would be to interconnect its equipment at the remote terminal.—but the bill precludes this.

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[1] Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order on Reconsideration in CC Docket No. 98–147, Fourth Report and Order on Reconsideration in CC Docket No. 96–98, ¶ 10.

[2] Id. ¶ 13 ("[a]ll indications are that fiber deployment by incumbent LECs is increasing").

[3] Id. ¶ 5 (emphasis added).

[4] Id. ¶¶ 10–11.

Supporters of H.R. 1542 claim that the bill will enhance both the deployment of and competition in high-speed data services. Quite the opposite is true. Countless competitors will be prevented from providing high-speed services to customers that are served by a local loop that contains fiber facilities. And the fact remains that loops containing a fiber component are being deployed aggressively by the incumbents.

Finally, as competitive carriers find that they can no longer provide high-speed services to its customers, they will be unable to meet increasing consumer demand for both high-speed data services and voice services over a single line. Customers seeking these bundled services will have but one carrier to turn to, the incumbent. Thus this bill not only allows incumbents to preclude competition in high speed services, it also enables them to perpetuate their dominance of the local voice markets.

THE ILLUSORY "VOICE-DATA" DISTINCTION

Second, the bill relies upon an illusory distinction between voice and data services to justify the provision of interLATA "data" services by the incumbents. Under the 1996 Act's carrot and stick approach to promoting competition in the local exchange market, the Act permitted the Bell companies to enter the long distance market only after they opened their markets to competition. As we heard at the Committee hearing on this bill, the vast majority of traffic traveling over interLATA networks today is data traffic, not voice, and analysts predict that data traffic will make up 90 percent of all traffic within four years. If the Bell companies are given the ability to provide high speed data services across LATA boundaries without having to satisfy the elements of the competitive checklist, they will have little incentive to comply with the checklist in order to provide interLATA voice services. Moreover, the bill's attempt to "limit" interLATA relief to data transmissions is unenforceable. With the increased digitization of telecommunications, there is no way to clearly distinguish between "voice" and "data" transmissions, as was repeatedly acknowledged by the authors of the legislation.

DESTABILIZING A SHAKY TELECOMMUNICATIONS MARKETPLACE

By fundamentally altering critical elements of the 1996 Act, H.R. 1542 will destabilize the already shaky competitive local exchange industry. When Chairman Powell recently appeared before the Subcommittee on Telecommunications and the Internet, I asked him specifically whether Congress should reopen the 1996 Act at this time. His response was telling:

> MR. POWELL: I think my advice, such that it's worth anything, is that . . . any sort of wholesale rewriting, in my mind, is ill-advised, unless you're very clear as to what it is you think you're going to replace it with. The legal environment, which includes the statute and the regulatory environment, are critical components of the stabilization of evolving markets. And we are as much a contributor to risk and capital risk as anyone else. And I believe that it

> has taken us a long time to get where we are, longer than any of us wanted.

He then expanded upon his point about the destabilization of markets, saying:

> [the capital markets] will handicap anything you do and make judgments about who they think are the winners and losers. And depending on how they receive it, you could certainly tip the balance, at least for the time being, in one favor or the other or in ways that might have unintended consequences.

There can be no doubt that the changes to the 1996 Act made by this bill amounts to the kind of "wholesale rewriting" that Chairman Powell warned against. My concerns are borne out by much of the testimony we heard from the financial community and the competitive carriers during our hearing on the bill. I must strongly dissent to such a course.

STRONGER ENFORCEMENT

There is a better course for fulfilling the promise of the 1996 Act and promoting competition in the local telecommunications marketplace. Strengthening the penalties for violations of the Act and giving the FCC better tools to enforce the law would go a long way toward opening markets to competitors and giving consumers the choices we foresaw in 1996.

Again, Chairman Powell made the same point in his appearance before the Subcommittee on Telecommunications and the Internet: "Enforcement becomes more critical than it has ever been in our period. It is simply a necessity, not an ideology." Unfortunately, as Chairman Powell also explained, "the enforcement tools made available to [the FCC] are inadequate with billion dollar industries. Our fines are trivial. They're the cost of doing business to many of these companies." Even a $10 million fine is trivial to companies of the size and scope of the largest incumbent LECs. For Verizon, with $63 billion in annual revenue, such a fine amounts to the revenue earned in less than 90 minutes. It is the equivalent of a parking ticket. The Commission's current enforcement authority must be strengthened to ensure that Congress' goal of competitive local exchange markets is realized.

CONCLUSION

H.R. 1452 is a fundamentally flawed approach to communications policy. Far from promoting broadband deployment, it will deter competitors, entrench the incumbents, and deny consumers the benefits of competition intended by the 1996 Telecommunications Act. In the current fragile financial markets, its sweeping and premature deregulation of the incumbents will further reduce access to capital for competitors. I cannot support such a measure.

If this Committee desires to find common ground on increasing deployment and addressing some of the lessons we have learned since the passage of the Telecommunications Act of 1996, then I be-

lieve we could construct a framework that is workable. However, at this point this legislation should be opposed.

CHARLES W. "CHIP" PICKERING.

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