INTERNET FREEDOM AND BROADBAND DEPLOYMENT ACT OF 2001

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 1542

JUNE 5, 2001

Serial No. 18

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://www.house.gov/judiciary

U.S. GOVERNMENT PRINTING OFFICE

72–979 PS WASHINGTON : 2001

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: (202) 512–1800 Fax: (202) 512–2250
Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., WISCONSIN, *Chairman*

HENRY J. HYDE, Illinois
GEORGE W. GEKAS, Pennsylvania
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
BOB BARR, Georgia
WILLIAM L. JENKINS, Tennessee
ASA HUTCHINSON, Arkansas
CHRIS CANNON, Utah
LINDSEY O. GRAHAM, South Carolina
SPENCER BACHUS, Alabama
JOE SCARBOROUGH, Florida
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
DARRELL E. ISSA, California
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona

JOHN CONYERS, JR., MICHIGAN
BARNEY FRANK, Massachusetts
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California

PHILIP G. KIKO, *Chief of Staff-General Counsel*
JULIAN EPSTEIN, *Minority Chief Counsel and Staff Director*

CONTENTS

HEARING DATE

OPENING STATEMENT

WITNESSES

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

APPENDIX

Internet Freedom and Broadband Deployment Act of 2001

TUESDAY, JUNE 5, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to call, at 2:00 p.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order.

Today the Committee holds a hearing on H.R. 1542, the "Internet Freedom and Broadband Deployment Act of 2001", also known as the Tauzin-Dingell bill.

Chairman SENSENBRENNER. On May 22, we held a hearing on H.R. 1698 and H.R. 1697, the Cannon and Conyers bills which address the same general topic. Speaker Hastert has now referred H.R. 1542 to us through June 18th, and we will give it fair consideration, as I indicated at the May 22nd hearing.

Given the short time of that referral, I want to announce to all the concerned parties that I intend to go to markup on both H.R. 1542 and H.R. 1698 on Wednesday of next week, and the Committee will not recess until both of these bills are reported. I want to ensure all sides of this debate get the chance to put forth their proposals and to have them debated. So everyone who wants to work with Members of the Committee on these bills should be working toward that date.

Many have asked about my position on these matters. As I said at the previous hearing, I am listening and learning. I have not made up my mind, and I am open to proposals from all sides as to how we should resolve these matters. Like everyone else, I want my constituents to get high-speed Internet access as soon as possible, with as many competitive choices as possible. Messrs. Tauzin and Dingell promise their proposal will bring us that; so do Messrs. Cannon and Conyers. I am still trying to determine which, if any of them, can deliver on their promise. Answering that question is the purpose of today's hearing.

In the previous hearing we heard the arguments for and against the Cannon and Conyers proposals; today we will hear the arguments for and against the Tauzin and Dingell proposal. I am hopeful that it will give all of us the chance to cast a more informed vote next week.

And I am now slowly turning to Mr. Conyers for his opening statement. The gentleman from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman, and Members and witnesses.

Five years ago, we adopted with high hopes and great expectations legislation intended to bring about the savings, innovation and consumer benefits that would come from achieving, at long last, competition for the last mile, the loop, the bottleneck. Until then, previously, that was walled off by the consent decree that broke up the Bell Telephone monopoly; and it had previously thwarted competition in long distance information services and manufacturing.

In 1996, Congress understood that opening the local market to competition was the key that would allow deregulation and bring about tremendous consumer benefits. And so the Telecommunications Act of 1996 unleashed a flood of new investment directed at that last-mile bottleneck. Many new companies were created to bring consumers new choices, including new services. And these competitive carriers used all of the means open to them to compete against monopolies that have become entrenched over the course of the century. The old Ma Bell system was protected from competitors and guaranteed rates of return. This was all at the courtesy of the U.S. Government that supposedly promoted competition, was against regulation, and all the patriotic jargon that goes with those concepts.

Believing in the promise of the 1996 act, the CLEC invested billions of dollars, created hundreds of thousands of jobs and began the enormously difficult work of providing choice to consumers and businesses. But today most of the companies have been devastated by behavior and procrastination on the part of the Bell Systems, which ironically have regrouped and in some ways become stronger than they were before the 1996 Telecommunications Act.

Tens of thousands of newly created jobs disappeared, billions of dollars of value are now gone. Some of the CLECs are bankrupt or penny stocks, and the capital markets are closed to many of the competitors. So we come here today to examine the antitrust implications and to very carefully reconsider the Judiciary Committee's role in the construction of the Telecommunications Act in the first place.

Competition is important in telecommunications. It is the touchstone for lower prices, better services, and for unleashing the innovative creativity that has built our new economy from the ground up. And I think it is important that these concepts be preserved.

And therefore, with my colleague from Utah, Chris Cannon, we have a couple of legislative ideas that we think will further this concept. And I'm happy that these hearings are being considered pursuant to our jurisdiction on these important subjects. Thank you very much.

Chairman SENSENBRENNER. Thank you.

Without objection, Members' opening statements will be placed in the record at this point.

Our panel today consists of four distinguished witnesses. Our first witness is Tom Tauke, the Senior Vice President for Public Policy and External Affairs at Verizon. He is a graduate of Loras College and the University of Iowa Law School. Before coming to Congress, he practiced law in Iowa and served in the State legisla-

ture. He was first elected to Congress in 1978, in a very illustrious and distinguished class, and served through 1990. After that, he went to NYNEX, which in turn became Bell Atlantic and now is called Verizon.

Our second witness is Mr. Clark McLeod, Chairman and Co-Chief Executive Officer of McLeod USA. He began his career as a math and science teacher before becoming a pioneer in telecommunications competition. In 1980, he founded Teleconnect, one of the first competing long distance companies. He ran that company until MCI purchased it in 1990. Shortly thereafter, he founded his present company which is one of the leading competitors in the local telephone market.

We also have Mr. James Glassman, a Senior Fellow of the American Enterprise Institute. Mr. Glassman is a graduate of Harvard College. He has had a long and distinguished career in the publishing world, holding executive positions with the Washingtonian, New Republic, Atlantic Monthly, U.S. News and World Report, and Roll Call. He has published articles in a wide variety of newspapers and magazines and appeared on numerous television and radio shows.

In addition to his duties at AEI, he is currently the host of a politics and technology Web site called techcentralstation.com. And I would now like to ask the gentleman from Alabama, Mr. Bachus, to introduce Ms. Greene.

Mr. BACHUS. Thank you, Mr. Chairman. It is my extreme pleasure to introduce Ms. Margaret Greene. She is a Nebraska native, graduated from the University of Nebraska and the law school there. But she joined BellSouth in 1981 in Birmingham, Alabama, in the local department.

Since that time, she has risen quite rapidly through the ranks at BellSouth. In 1991, she was named President of all BellSouth's operations in the State of Kentucky. While serving there, she took a leave of absence and served as Cabinet Secretary for the Governor of Kentucky.

When she rejoined BellSouth, she was named General Counsel of BellSouth Telecommunications. And then, in 1998, she was promoted to Executive Vice President for Regulatory and External Affairs. There, she is responsible for, and heads up, all of BellSouth's regulatory, legislative, governmental and public affairs areas.

We are very proud of Ms. Greene in Alabama and proud that she joined BellSouth in Alabama.

I welcome you.

Chairman SENSENBRENNER. Would each of you please rise, raise your right hand and take the oath.

Do each of you solemnly swear that the testimony you are about to give before this Committee will be the truth, the whole truth and nothing but the truth, so help you God?

[Witnesses sworn.]

Chairman SENSENBRENNER. Let the record show that each of the witnesses answered in the affirmative.

Without objection, each of your written statements will be included in the record at that part where your testimony appears. We would like to ask each of you to summarize your statement in

about 5 minutes. The red light will go on and it will be somebody else's turn at that point in time.

And you are first, Mr. Tauke.

TESTIMONY OF THE HONORABLE THOMAS J. TAUKE, SENIOR VICE PRESIDENT FOR PUBLIC POLICY AND EXTERNAL AFFAIRS, VERIZON

Mr. TAUKE. Thank you, Mr. Chairman and Members of the Committee. It is an honor to be here, and I appreciate the opportunity to discuss H.R. 1542, legislation which we support.

Mr. Chairman, the Nation today does not have a policy for broadband services. We all recognize that broadband, or high-speed data services, are critical for the future growth of the economy and very important for the delivery of a number of social services, ranging from education to health care. Good broadband services can even improve the operation of government, yet today we don't have a broadband policy.

When the 1996 act was adopted, Congress established in title II a policy for telephony services. In 1996, Congress established a policy for cable services. And despite efforts by many players, Congress did not establish a title VII for broadband services as had been promoted at that time; so there was no policy established for broadband, and we have had confusion for some time. In fact, three separate circuit courts of appeals have addressed the issue of what rules apply to broadband and each of the three reached different conclusions.

The Nation needs a broadband policy, and that's the first reason why we support H.R. 1542. Our belief is that that national policy should be focused on achieving two goals. One is the deployment of broadband services so that your constituents and our customers can get those services as rapidly as possible; secondly, the policy should promote competition in the broadband marketplace where today there is very little competition.

We believe that H.R. 1542 again encourages and achieves those goals. In essence, H.R. 1542 stops the application of rules that were intended for the voice telephony market to the broadband services market. These are two very distinct markets. Voice telephony is an old technology and old service; the broadband high-speed Internet market is a very different market, and the rules for telephony just don't work when applied to the broadband market.

What this act in essence boils down to in the practical world is two things: One, it lifts the restrictions on interLATA services in the broadband arena; in other words, those boundaries that were set up at the breakup of AT&T would not apply to data services. They would continue to apply to voice services, but not to data services.

Secondly, it would eliminate a thing called "line sharing" over the local loop, the last mile to the home, when fiber is deployed in that local loop. And it would eliminate line sharing over local loop when fiber is in it, because we don't know how to do it or do it efficiently. So, as a result, those who wanted to reach the local customer who were competitors would have to buy the whole local loop not just take a piece of it.

Let me speak specifically to the interLATA piece for a moment. Under the 1996 act, Congress established a methodology under section 271 whereby regional Bell Operating Companies could enter the long distance market; and a number of us are working through that process. That market, the voice telephony market, is a $100 billion market, a $100 billion market. The data market is about a $6 billion market.

What we are seeking in this legislation is to be able to enter that data market in order to be able to deploy networks.

Now, why is this important for public policy reasons? Well, if you look at the market or the technology for the Internet, you'll find that there are two kinds of interLATA services, if you will. One is the long-haul market, backbone market, where there is quite a bit of that. But when I represented Iowa, I knew that all those airline flights from New York to Los Angeles didn't do any good unless there was a regional network which allowed you to get to O'Hare Airport so you could get on one of those long-haul flights.

What our challenge is is to build those regional networks which aren't being built rapidly enough today in order to hook up local customers to the long-haul or broadband, long-pipe markets.

Now, we believe that this legislation does that. And it will help many of you in your districts. Take, for example, the southwest Virginia district.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. TAUKE. The clock didn't move, Mr. Chairman.

Chairman SENSENBRENNER. Well, we'll fix that.

Let me point out to each of the witnesses that the referral to this Committee by the Speaker is specifically, quote, "For consideration of such provisions of the bill and amendments recommended by the Committee on Energy and Commerce as proposed and narrow the purview of the Attorney General under section 271 of the Communications Act of 1934." I think the Committee would appreciate the witnesses addressing that particular issue because anything else in the Tauzin-Dingell bill is out of bounds for this Committee to consider.

Would you like an additional minute, Tom?

Mr. TAUKE. Mr. Chairman, I was watching the green, and it never moved off green; so, yes, I would, if I could sum up.

Chairman SENSENBRENNER. Okay.

Mr. TAUKE. Mr. Boucher's district, we have a situation where there is no regional network. And his district is not alone; you can't get from areas in his district to other areas where you can hook into the broadband network, the long-haul broadband network.

Why is that? Because there is no regional network that has been built. In order to get out of Mr. Boucher's district, you have to go to Johnson City, Tennessee, or to Charlottesville, Virginia, in order to hook into the long-haul networks. But there is no high-speed data network from his district to those locations. And Verizon, which serves much of his district, can't build it because of the interLATA restrictions.

The interLATA restriction, lifting that would allow us to build that network, yet we would still have all the incentives to continue to open up our network pursuant to the section 271 process in

order to get at the $100 billion voice long distance market where the money still is in the long distance arena.

So, Mr. Chairman, we believe that this legislation will promote deployment of broadband networks and facilities and services, and it will encourage competition in both the long-haul and the last-mile market for broadband services.

Chairman SENSENBRENNER. Thank you.

[The statement of Mr. Tauke follows:]

PREPARED STATEMENT OF THOMAS J. TAUKE

Thank you, Mr. Chairman, for the opportunity to testify before the Committee. I am Tom Tauke, Senior Vice President for Public Policy and External Affairs of Verizon Communications. I am here today to explain why H.R. 1542 is a good bill—good for consumers and for economic development—and to urge you not to amend that bill in ways that would undermine these goals.

What's this All About?

As recently as a few years ago, most people knew nothing of the Internet. Electronic commerce was all but unknown. In 1995, when Congress was re-writing the Communications Act of 1934, revenues generated by the Internet were a mere $5 billion.

But then something unexpected happened. As Alan Greenspan has noted, "until the mid 1990s . . . computers were still being used on a stand-alone basis. The full value of computing power could be realized only after ways had been devised to link computers into large-scale networks."[1] This networking spurred the economic growth of the late 1990's. The resulting Internet economy included services that were available online. It included giving businesses a new way to reach their customers and to deal with each other. It included companies that made the equipment and the software that made all this happen.

But there are limits to the legacy networks and the economic value they can deliver. And these limits were one of the reasons that this economy reached a plateau and, now, is stagnating.

Speed is important for e-commerce. Consumers love buying online, but get frustrated when they have to wait too long for the picture of the dress to download or to complete their transaction. So the customers gave up and did not make the purchase, and the economy suffered.

And if the picture of the dress came too slowly, there was surely no way for the consumer to get the three-dimensional views of the new cars she was considering. These services absolutely require faster speeds than are possible through ordinary dial-up connections to the Internet. If they are to succeed and grow, speeds must improve.

The economic effects of the Internet economy reach beyond the money that changes hands in an online retail sale. These e-tailers buy hardware and software and the services of web designers and others in order to run their businesses. Internet service providers buy servers, routers and lots more. Backbone transport companies build the networks to carry the billions and billions of bytes that traverse the Internet. Millions of consumers bought their first computer because of the Internet and millions more are expected to do so in coming years. Without the higher speeds that will bring new users and enable new services, this sector will continue to stagnate, to the Nation's detriment.

The benefits of the Internet, of course, go beyond commerce and the economy. The Internet enables advances in education and medical care, and improvements in the quality of life generally. It allows children to sit in school or at home and have access to educational materials, libraries and museums all over the world. Of special importance to me as one of the founders of the congressional rural health care caucus, doctors and nurses everywhere can use medical resources that could otherwise be used only by those at the greatest medical centers. Faster speeds will enable medical monitoring at home and hold the promise of improving health care, especially in rural areas. And people of all ages everywhere can sit at home and read, watch and enjoy words and images that were previously beyond their reach. These are benefits that all Americans should have and, with your help, can have.

[1] Remarks of Alan Greenspan, "Technology innovation and its economic impact" before the National Technology Forum, St. Louis, Mo., April 7, 2000.

What's the Problem?

The problem is that we don't have a national policy that promotes the development and deployment of broadband services. Congress established a national policy for voice telephone services in the Communications Act of 1934 and the Telecommunications Act of 1996. It adopted a different policy for video cable services, now found in Title VI. It has not adopted a policy for broadband. Without a clear national policy, the FCC and the courts have been left to using laws that were enacted for completely different purposes, with predictably confusing results.

A clear national policy is needed to provide the certainty that is needed for companies to be comfortable investing the billions of dollars that are required to bring broadband services to all Americans. Companies cannot be expected to invest what they could in this business if they don't know what the rules are. And, as I will discuss later, they will not invest if they have to share the fruits of that investment with other companies that did not share in the cost or the risk.

The absence of national policy guidance and of rules specially designed for broadband has led to strange results. Existing law prevents one set of competitors—local telephone companies like Verizon—from competing freely in the Internet marketplace, thus insulating cable companies, such as AT&T, and the largest long distance companies—again such as AT&T and WorldCom and Sprint—from full competition. It also imposes on telephone company broadband services a host of requirements not imposed on cable—to interconnect, to file tariffs, to permit resale, to provide collocation, to offer unbundled access to network elements, etc. H.R. 1542 removes some, but by no means all, of the existing regulation of telephone company broadband services and the facilities telephone companies use to provide these services. At the same time, the bill would not remove the requirements on these companies to open their local telephone markets to competition in order to enter the long distance telephone market, but would simply free them to participate fully in the Internet market.

How Does H.R. 1542 Help?

When we look at the broadband Internet access marketplace, it's useful to look at three parts of the service. First, there's the last mile to the home—the wires that go from the home to a switch or some other type of equipment. The second piece is what I'll refer to as the regional network, facilities that carry the traffic to the network access points and connect to the long-haul backbone facilities. And the third piece is the high-speed backbone facilities, that carry Internet messages across the country and around the world. Each of these three pieces is vital, and H.R. 1542 has provisions that will increase competition and the availability of services in all three.

First, the bill will bring more competition to the long haul market. The Antitrust Division of the Justice Department agrees that the Internet transport market needs more competition. In its complaint to enjoin the WorldCom-Sprint merger, the Department found that the provision of Internet backbone services is a relevant market for antitrust purposes and that this market is "highly concentrated." The degree of concentration has only increased since that time. Three long distance companies—AT&T, Sprint and WorldCom—are the dominant players in this market. H.R. 1542 will permit the Bell companies to enter this market and bring much-needed competition.

The second area is the regional market. The problem here is not competition; the problem is deployment. There are vast areas of the United States that simply have no nearby backbone connections. The largest backbone providers have little incentive to connect their systems with smaller providers or to locate hubs away from major urban centers. Many Internet providers have no way to get their data traffic to the backbone efficiently and without numerous back-ups and delays. Many are simply located too far away from convenient backbone connections. And when they do get to the backbone, they find that the lack of adequate capacity slows their customers' service.

However, the Bell companies already have high-speed fiber-optic facilities connecting virtually every city and town they serve. A Bell company could use this network to solve this Internet connection problem. That company could provide Internet hubs closer to the ISPs in these communities and use the fiber that is already in place—but which cannot now be used for these purposes—to connect them to the Internet backbone. That same fiber-optic facility could also be used to deliver Internet traffic collected by *other* hub providers to the main Internet backbone. These options would offer the ISPs in these communities better service at a lower price.

But these regional connections often cross LATA boundaries, those lines that were drawn in 1982 to divide up the voice telephone network. Thus, the interLATA restriction prevents the Bell companies from providing these services.

The third piece is that "last mile." Here the problem is both deployment and competition, and Congress needs to adopt a policy that encourages both. By establishing a policy, Congress will stop the migration of old-style telephone rules to the new broadband market, and Congress will make sure that the rules allow everyone to compete on even terms.

Cable operators started first in providing broadband services to residence consumers, are ahead in deployment and have more customers than local telephone companies. And yet cable is unregulated, while telephone companies are burdened with a set of rules that were designed for the voice business and that make no sense at all in this marketplace.

Moreover, these existing federal regulations affirmatively discourage Verizon's deployment of DSL. The FCC has applied the section 251 unbundling and resale requirements to Verizon and other incumbent local telephone companies. They require Verizon to allow competitors to put their DSL equipment not only in our central office equipment buildings but also in small "remote terminal" boxes in local neighborhoods.

They require us to provide not only unbundled lines from our locations to customers, but also "subloop" pieces of those lines. The FCC first required us to provide DSL-capable loops, then it required "line sharing"—allowing a competitor to use only a portion of the capacity of the loop almost for free to provide DSL service while Verizon provided the underlying basic telephone service. Now we are also required to "line split"—to arrange for two different competitors to share our lines, while we provide no service at all to the customer.

The FCC is now considering requests from other carriers that we be required to provide our new DSL services to them at very low TELRIC prices—prices that are below our costs. If we have to do this, what incentive will we have to make the investments that make these services possible? And yet that investment is exactly what you and the public expect from us.

H.R. 1542 is carefully drawn to deal with these problems and not to change anything else. It does not change the requirements for voice telephony services. It does not change our obligation to allow collocation in our central offices. While continuing line sharing over copper loops, the bill does not require line sharing over fiber, a limitation which is crucial to the industry's deployment of fiber in the local loop.

H.R. 1542 moves telephone company DSL services closer to the regulatory freedom enjoyed by cable and eliminates most of the FCC rules that burden telephone company provision of DSL services.

Finally, section 8 of H.R. 1542 removes any doubt about the deployment of broadband services—it requires that they be made widely available. Coupled with the other sections that are based on the recognition that this marketplace is competitive and that there is no need for costly regulation, this provision establishes a regime that will ensure that no American is left off the high-speed Information Highway.

The Cellular Experience

I'm not just guessing that this approach will work. It *has* actually worked in a new telecommunications service market. In fact, this approach produced what is arguably one of the greatest successes in this industry in the last twenty years—the growth of wireless services. But that approach was adopted only after attempts to apply old telephone rules to the new technology.

In March 1982, the FCC created commercial cellular service,[2] and service began in 1983. No one at that time predicted the fantastic growth of cellular. In fact, at the time of the breakup of the Bell system, it was unclear as to whether AT&T or the BOCs would inherit AT&T's cellular spectrum licenses. AT&T had predicted that cellular subscription levels would reach one million by 1999. In reality, cellular subscribership reached that level in 1987, and that figure is now more than 100 million.

Wireless growth was slow at first. By the end of 1988, there were approximately two million cellular subscribers in the U.S.,[3] with an average monthly cellular bill of $98.02. At that point, the FCC made an effort to significantly deregulate cellular service.[4]. Within four years of the FCC's deregulatory effort, cellular subscribership

---

[2] Report and Order, 86 F.C.C.2d 469 (1981), *modified* 89 F.C.C.2d 58 (1982), *further modified* 90 F.C.C.2d 571 (1982).

[3] CTIA Semi-Annual Wireless Industry Survey Results.

[4] Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service, Report and Order, 3 FCC Rcd. 7033 (1988), *recon. in part* 5 FCC Rcd 1138 (1990).

reached 11 million, while the subscriber's average monthly bill dropped by nearly 30 percent.[5]

A second major deregulatory effort was undertaken by Congress in 1993. In the Omnibus Budget Reconciliation Act of 1993,[6] Congress, to a great extent, deregulated the cellular telephone industry. And in 1996, Congress provided interLATA relief for Bell company wireless services. Between 1993 and 1998, wireless telephone subscribership rose from 16 million to 69 million, while the average monthly bill dropped by nearly 50 percent.[7] Today, there are more than 100 million mobile customers in this country, paying as little as $15 per month for basic service. Wireless long distance service has become so inexpensive that about 40% of mobile phone users make long distance calls on their cellular phone while they are home.

Regulation was not necessary to keep prices reasonable—the market did that. In fact, regulation actually raised cellular prices. During FCC proceedings, a Cellular Telephone Industry Association study showed that cellular prices in regulated states averaged 17% higher than the prices in unregulated states. It also found that cellular penetration and cellular growth is lower in regulated states than in unregulated states.[8]

The inescapable conclusion is that the cellular industry—and cellular consumers—benefited greatly from deregulation. In a deregulated environment, subscribership rose and prices dropped.

The high-speed Internet market is in a similar position today as the cellular industry was more than ten years ago. Of the more than 60 million U.S. Internet households, 5.5 million access the Internet via high-speed cable modem, and only 2.3 million use xDSL technology for high-speed Internet access. Adoption of deregulatory measures, such as those contained in the Internet Freedom and Broadband Deployment Act, will permit telephone companies to provide xDSL technologies at a more rapid pace, hopefully with the same results as deregulation of the cellular industry: more consumers accessing the technology for lower costs.

What Will the Future Bring?

This debate has been largely about traditional markets—telephone and cable—and about old regulatory regimes. In addition to fixing problems that now exist, policy-makers should also be looking ahead, at new markets and considering whether any steps should be taken now to ensure that they develop competitively.

These information transport technologies are really just a means to an end—and that end is the dissemination of information. There will be competition among content providers over the Internet, just as there is now competition among content providers in print and broadcast media. Policy-makers need to be concerned that there will continue to be competition among content providers over the Internet and that content providers will have access to the increasing number of Americans whose primary source of information is the Internet.

Cable systems are closed—their owners generally do not have to allow open or nondiscriminatory access to them. Telephone company systems are open, and H.R. 1542 does not change that, In fact, it specifically requires, in section 5 of the bill, that we both give Internet users the ability to have access to any Internet service provider and give all Internet service providers the right to acquire the facilities and services needed to reach Internet users. While we believe that an open model is better, we are not trying to force it on cable.

But this difference is another reason for you to support H.R. 1542. Congress should want the deployment of open systems, because they are the best for competition and diversity in the information marketplace. Existing rules discourage us from building these open systems and favor the market segment that is building closed systems. This difference in treatment not only makes no sense from a regulatory or antitrust perspective in the broadband market, it is also harmful to the development of a competitive and healthy Internet content marketplace.

The FCC cannot solve the problem of regulation that inhibits broadband deployment and skews the competitive marketplace—Congress must do that. The longer the delay, the longer consumers will have to wait for services they want and the longer the economy will have to wait for the boost that these new services would surely produce. The authors of this bill want to free the Internet from the LATA constraints that were established for the voice telephone network nearly twenty years ago. They want to remove burdensome regulation that discourages innovation and deployment in data services. And they want to put telephone company

---

[5] CTIA Semi-Annual Wireless Industry Survey Results.

[6] Omnibus Budget Reconciliation Act of 1993, Public Law 103-66.

[7] CTIA Semi-Annual Wireless Industry Survey Results.

[8] The Cost of Cellular Regulation, Jerry Hausman, McDonald School of Economics, MIT, January 3, 1995.

broadband providers on a more level competitive playing field with cable. These are all worthy goals, and I urge you to support them.

Thank you.

Chairman SENSENBRENNER. Mr. McLeod.

TESTIMONY OF CLARK McLEOD, CHAIRMAN AND CO-CHIEF EXECUTIVE OFFICER, MCLEOD USA

Mr. MCLEOD. Thank you, Mr. Chairman. Thank you, Committee, for inviting me to testify today. I'll highlight three areas.

First, a little background of myself and the two companies that I have been involved with in the 20 years that I have been in the competitive industry, to H.R. 1542 specifically and our opposition to H.R. 1542, and the third area would be what we would see as the ability for Judiciary to move forward in a more constructive fashion.

On the first point, 20 years in competitive telecom: I guess I'm the only one on the Committee that has gone through the long distance industry and, now, the opening of the local industry. In the 1980s, we built a company which was the fourth largest long distance company in the U.S.

The reason I bring that up is, I think the long distance industry presented a model for opening up monopolized markets. Within 5 years of opening up the market, 5 years following divestiture, competitive companies had over a 30 percent share of the long distance industry. Today, we have 8 percent, all of the competitive providers, after 5 years of the 1996 Telecom Act.

Secondly, the experience that we have had in the CLEC business: Starting in 1996, we have grown the largest independent CLEC operation, and because of that, I think I can provide some specific testimony to you today.

H.R. 1542: Well, it clearly restrains competition, no ands, ifs or buts about it. It strengthens the Bell monopoly by restricting access to the local loop. It removes the carrot that was placed in the 1996 act of allowing the long distance companies into interLATA services, removes that carrot prematurely. And finally, the real garotte is the fact that this legislation actually restricts our access to the Bell network.

So, the bill is being held out as helping rural America. We are helping rural America. We are building fiber networks of the type that Mr. Tauke has talked about. As far as increasing DSL services, the Bell companies are providing DSL services as fast as they choose to today. They have a 75 percent share.

So I would ask that the Judiciary Committee oppose H.R. 1542, take it off the table, it's very destructive. It's moving our industry towards remonopolization. It's causing financial markets to go away completely. We have no access to capital today to build new networks. H.R. 1542 has no redeeming characteristics.

Let me go for a moment into the long distance marketplace of the '80s. That was a model for competition because it mandated equal access by competitive providers. Think about, if all competitive providers had equal access to the Bell networks for provisioning services, then broadband services would be deployed very rapidly. But what do we have today?

We actually have unequal access. We have access to a network that maybe 20 or 30 percent of the time we don't receive our orders on time, and our customers become frustrated and go back to the Bell Companies; and for this, we are paying as if we are getting the service 100 percent of the time.

In the telecom arena, in the 1980s, there was a special period where competitive companies had a transitional period to when they got equal access; and we received lower costs for our services during those—for the services that we bought from the Bell Companies during those periods of time.

The economic pressure that is on the competitive industry is, we are paying too much, we are getting too little. And the monopolies that are controlling this marketplace have been able to put forward legislation like H.R. 1542 which really heads our industry back towards remonopolization.

I would hope that the Committee would oppose H.R. 1542, get it off the table, and look towards the future of moving our industry back to a competitive industry, and stop the trend towards remonopolization.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Thank you, Mr. McLeod.

[The statement of Mr. McLeod follows:]

PREPARED STATEMENT OF CLARK MCLEOD

H.R. 1542 will lead to the re-monopolization of all telecommunications markets by the Bell companies. This bill is unnecessary, unfair and unwise for many reasons.

First, H.R. 1542 does nothing to spur broadband investment in rural America. While some of the Bell companies have abandoned rural America by selling their rural exchanges, McLeodUSA invests and serves residential and business customers in rural markets in many states.

Second, the Bells can and do provide broadband DSL service today without passage of H.R. 1542. The Bell companies try to distract legislators by suggesting the cable companies have some advantage over the Bells in providing high-speed Internet service. This is false.

Third, the Bells can provide in-region, long distance (data and voice) service by simply complying with the 14-point checklist. To date the FCC has granted long-distance approval in 5 states: New York, Texas, Kansas, Oklahoma and Massachusetts. Numerous other Section 271 activities are ongoing. Most of the remaining 45 states have invested heavily in the 271 process, and we should support that investment of tax dollars.

Fourth, H.R. 1542 creates uncertainty, which harms access to capital. Capital is the lifeblood of competition. Continued access to capital is critical for competitors to continue providing customers with a competitive choice for telecommunications.

Fifth, H.R. 1542 would severely disrupt the CLEC industry. By granting immediate authority to provide long-distance data services before local markets are opened to competition, the bill reduces the Bells' incentive to open their local markets, thus preserving their monopoly. Furthermore, the bill is based on a wholly artificial attempt to distinguish voice from data transmission. Once content is digitized, there is no meaningful distinction between voice and data.

Sixth, H.R. 1542 further strengthens the Bells' monopoly control over the local network.

Finally, in order to create competitive telecommunications, Congress, the FCC and state regulators should follow the successful model used in the long-distance industry and mandate equal access, monitor access quality and enforce equal access.

On behalf of McLeodUSA, I would like to thank the Committee for the opportunity to talk with you today. I would like to accomplish three goals today: first, summarize McLeodUSA's presence and progress in serving residential and business customers in rural and urban markets; second, discuss our strong opposition to H.R. 1542, which would lead to re-monopolization of all telecommunications markets by the Bell companies; and third, propose an alternative plan to create competitive

telecommunications, thereby bringing lower prices and higher service quality to all customers.

I. MCLEODUSA IS EXACTLY WHAT CONGRESS ENVISIONED.

A. Entrepreneurial

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

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

McLeodUSA's corporate team is recognized as one of the strongest management groups in the telecom industry: strong because of our breadth, and strong because of our depth. Our five-year compounded annual growth rate for revenue is 104% and for deployment of route miles of fiber optic cable is 74%. With the support of policymakers, we can continue our competitive activities at a fast pace.

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

B. Serving a Wide Range of Customers

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

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

II. MCLEODUSA IS BRINGING COMPETITION AND ITS BENEFITS.

McLeodUSA is the largest independent CLEC in the country. In March 1996 we served approximately 40,000 local access lines. Today, we serve over 1.1 million lines.

A. Jobs

In late 1994 we had approximately 200 employees, primarily in Iowa. Today we have nearly 11,000 employees working in 150 offices located in 25 states.

B. Technology

At the end of the first quarter of 2001, we had 50 central office and long distance switches and 396 data switches in operation. In addition we had deployed and begun operating approximately 29,000 route miles of fiber optic cable connecting most of those facilities. By the end of 2002, we will operate a 30,000-mile broadband network connecting 810 cities capable of delivering service to a local telephone connection (the "local loop" for 90% of the U.S. population. The one critical missing requirement for meaningful local competition, however, is for competitors to have equal access (functional and economic) to the Bell local network . . . the entire local network.

III. H.R. 1542 WILL LEAD TO THE RE-MONOPOLIZATION OF ALL TELECOMMUNICATIONS MARKETS BY THE BELL COMPANIES.

H.R. 1542 is unnecessary, unfair and unwise for many reasons. First, H.R. 1542 does nothing to spur broadband investment in rural America. Last year, the Bells

hailed this bill as the solution to narrow the so-called "Digital Divide" in rural America. This year, the Bells have completely abandoned this rationale for providing them "relief." Furthermore, during the past several years, some of the Bell companies have abandoned rural America by selling their rural exchanges. In sharp contrast, McLeodUSA invests in and serves residential and business customers in rural markets in many states, including Wisconsin and Illinois.

Second, the Bells can and do provide broadband DSL service today without passage of H.R. 1542. The Bell companies try to distract legislators by suggesting the cable companies have some advantage over the Bells in providing high-speed Internet service. This is false. The Bells chose to delay offering their high-speed Internet access service, and thus, the cable companies got a three-year head start. Marketshare growth for the Bells' DSL service, however, is now growing must faster than the growth for the cable companies' internet access service. H.R. 1542 is totally irrelevant to the Bells' argument involving DSL service.

Third, the Bells can provide in-region, long distance (data and voice) service by simply complying with the 14-point checklist. To date the FCC has granted long-distance approval in 5 states: New York, Texas, Kansas, Oklahoma and Massachusetts. Numerous other Section 271 activities are ongoing. Most of the remaining 45 states have invested heavily in the 271 process, and we should support that investment of tax dollars.

Fourth, H.R. 1542 creates uncertainty, which harms access to capital. Capital is the lifeblood of competition. Since passage of the '96 Act, McLeodUSA and other CLECs have invested over $55 billion dollars in capital to deploy broadband networks to serve business and residential consumers in both urban and rural America. Continued access to capital is critical for competitors like McLeodUSA to continue providing customers with a competitive choice.

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

CLEC stock prices disproportionately decreased for two key reasons: uncertainty in the public policy arena and continued difficulties in accessing the Bells' local networks. Wall Street is now investing in re-monopolization (the Bells), because proposed policy changes during the past 12 months clearly favored the Bells.

Fifth, H.R. 1542 would severely disrupt the CLEC industry. By granting immediate authority to provide long-distance data services before local markets are opened to competition, the bill substantially reduces the Bells' incentive to open their local markets, thus preserving their monopoly. This would delay the development of local competition. Furthermore, the bill is based on a wholly artificial attempt to distinguish voice from data transmission. Once content is digitized, there is no meaningful distinction between voice and data. Both voice and data, when they are digitized and transmitted over a fiber optic cable, are just flashes of light. When you see those flashes there is no way to determine whether the message is voice or data and, therefore, no way to know if the message should be allowed. Furthermore, as voice over the internet technology continues to develop, the problem grows. If we allow the Bell companies 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 Bell stranglehold on the "last mile" local loop.

Sixth, of most relevance to this committee, H.R. 1542 strengthens monopoly control for the Bells over the local networks. This monopoly control is bad for customers. SBC held over 1 million customers "hostage" when it refused to offer DSL service in Illinois unless it could maintain its monopoly control over its network. The FCC and the Illinois Commerce Commission rejected SBC's anti-competitive threat and held that competitors are entitled to full access to SBC's network. Consequently, SBC has threatened to abandon its "Project Pronto" deployment of new technology, rather than offering the citizens of Illinois a competitive choice for service.

Strengthened monopoly control over local networks is also unfair and harmful to CLECs. CLECs pay for and are entitled to receive access to the entire Bell local network. The rates CLECs pay the Bells for unbundled network elements are based on forward-looking costs using the best currently available technology. In other words, the Bells are receiving money from CLECs to pay for deploying fiber deeper into the neighborhoods. Because CLECs are paying for the newest technology and network, CLECs are entitled to access that network . . . the entire network.

IV. A PROVEN PLAN FOR COMPETITIVE TELECOMMUNICATIONS

Today, we are at the beginning of providing consumers a competitive choice for their local telecommunications service. Five years after the '96 Act, all competitors (CLECs, AT&T, Worldcom and Sprint) have gained 8.5% share of local access lines. In contrast, competition in the long-distance industry during the 1980s developed much faster. Five years after the 1984 divestiture of AT&T from the Bell companies, all long-distance competitors had gained 3X the marketshare that competitors have gained in local access lines. The Bells have successfully denied competitors equal access (both functional and economic) to their local network, thus restraining the growth of competition and preserving their monopoly.

In an effort to bring real consumer choice to the local telecommunications market, Congress, the FCC and state regulators should follow the successful model used in the long-distance industry. Long-distance markets are competitive today because of two key actions. The first was mandated access. In 1981, the FCC mandated that all competitors have access to the AT&T network. In 1986, equal access from the Bells was mandated, thus allowing 1+ dialing. The second was strong enforcement. Judge Greene provided the strong enforcement, including meaningful penalties, to deter anti-competitive conduct. The result was healthy long distance competition resulting in lower prices and higher service quality for all customers.

Similar actions need to be taken to create competitive telecommunications in the local markets. First, Congress and the FCC must mandate equal access to the Bells' monopoly-controlled local networks. Equal access means that both competitors and the Bell companies' retail operations must request and purchase the same network inputs under the same terms and conditions and through the same operation support systems (OSS). The Bell network operations must be made "blind," to make it impossible to discriminate, whether an order or request comes from the Bell retail operation or a competitor. As long as there is a reason to treat one user better than another, and the ability to do so, there will not be the type of equal access that allowed competition to flourish in the long distance markets. Once equal access is established customers can, and should, be allowed the opportunity to select both their local service provider and their long-distance provider through the use of a balloting process.

Second, in order to improve the quality of access to the entire Bell local network (copper *and* fiber), it is important to establish and monitor meaningful standards in every step of the process: preordering, ordering, provisioning, maintenance and repair and billing. The FCC currently monitors several specific performance measures. The FCC should require full compliance by the Bells with all these performance standards both before obtaining 271 approval and after 271 approval on an ongoing basis.

Third, there must be strong enforcement of these equal access standards. One way would be to award meaningful damages to competitors when the Bell companies fail to comply with these equal access standards. Awarding damages directly to competitors will incent the Bells to change their anti-competitive behavior, rather than simply pay the fines as a cost of doing business. A second way would provide competitors with price discounts for unequal access. In the long-distance industry, competitors received a 55% price discount until competitors received "1+" equal access. Damages or price discounts will ensure competitors remain "economically whole," thereby providing a sustainable competitive choice for consumers.

If the Bells do not comply with the equal access mandate, Congress should grant the FCC authority to separate the Bell companies, either functionally or (if necessary) structurally. The FCC should then act if the Bell companies refuse to grant equal access to competitors by a certain date.

Congress should also authorize the FCC to establish a system of progressive penalties. Meaningful, progressive penalties will deter anti-competitive actions. Penalties should be authorized up to 5% of the offending Bells' annualized pretax profits. Only penalties of this size can impact business decisions. Penalties should also be repeated monthly for continuing violations. Finally, penalties should progressively escalate for repeat violations by the Bells. Progressive penalties provide a critical incentive for the Bell companies to comply with an equal access mandate.

Finally, Congress needs to clarify that anti-trust laws apply to the '96 Act. Violations of equal access standards and interconnection agreements must be per se violations of antitrust law and allow for private causes of action coupled with recovery of traditional anti-trust remedies. In addition, Congress should authorize the FCC to award damages to fully compensate competitors for proven losses, along with treble damages, punitive damages and attorneys fees. These strong enforcement measures will help accomplish the goal of competitive telecommunications.

Conclusion

H.R. 1542 would allow a further restraint of competition by restricting access to the Bells' bottleneck facilities and, thus, must be defeated. Setting H.R. 1542 aside, in order to create competitive telecommunications, Congress, the FCC and state regulators must mandate equal access, monitor access quality and enforce equal access. In closing, I ask this Committee to join me in an effort to provide real consumer choice in telecommunications.

Chairman SENSENBRENNER. Ms. Greene.

TESTIMONY OF MARGARET GREENE, EXECUTIVE VICE PRESIDENT FOR REGULATORY AND EXTERNAL AFFAIRS, BELLSOUTH CORPORATION

Ms. GREENE. Mr. Chairman, Ranking Member Conyers, Members of the Committee, good afternoon and thank you for the opportunity to appear before you today to testify on H.R. 1542.

This is a critical piece of legislation, and its passage is necessary to help achieve the economic promise of the digital age. My goal in my testimony is to outline for you the incentives and disincentives currently at work in the telecommunications industry and outline how the Tauzin-Dingell bill can help clarify those incentives.

In the '96 act, Congress outlined a four-pronged policy designed to change the competitive dynamics of the local exchange telephone market. In implementing this legislation, the FCC focused on but one of the four goals, creating competition, and ordered that local exchange companies make their network available to their competitors in total, or piece parts, at a regulatorily set price. That price imagines that the local exchange companies have totally efficient state-of-the-art networks.

In addition, our retail prices are set by regulators at the State and Federal levels. Let's look at some real numbers to see how this regulatory policy has driven behavior.

Competitive local exchange companies have flocked to the business markets in the metro areas. They have largely avoided the residential and rural areas. Their behavior is driven by regulatory policy. In Georgia, 120 competitors serve 800,000 lines. They're concentrated in metro areas and most are competing for exactly the same customers in exactly the same geography.

The regulatory prices explain why. Our retail rate for a business in metropolitan Georgia is $48.30. This is a rate set by regulators in a noncompetitive area, a noncompetitive area intentionally above cost to subsidize residential rates. The wholesale rate set by regulators is $14.21—our retail rate, $48.30; competitors' wholesale rate, $14.21. The $34 difference between those rates is the potential profit margin available to our competitor. The same difference is the potential profit margin lost to us because of a regulatory rule change.

Behaviors of competitors are clear and rational. They go where the money is, to metropolitan business customers, and they have flocked to that market. In several areas of our cities, we currently have below 50 percent of the business market share.

But in rural Georgia, we don't have a lot of competition yet for residential customers. This is no surprise since regulation encourages competitors to go elsewhere. The regulators set our rural residential retail rate at $12.50; the wholesale rate, $26.08. Our competitors would have to pay $26.08 to gain access to a $12.50 revenue stream. This is not an incentive for competitors to invest, and

their behavior reflects that. They continue to avoid the residential market.

Neither is it an incentive to invest for companies like mine. Implementation of regulatory policy to date has sent one signal to local exchange companies: Your traditional profit margins are open to attack and you can't do anything about your interLATA rates.

If you were a business owner, what would your likely response to this message be? It would be one of caution, and you would want more information before you committed to an investment that you may have to make available at terms you did not count on when you placed the investment.

I outline these numbers for you not to complain about the implementation of the '96 act, but rather to make a point about investment. Investment is like water; it goes naturally to the open course. It flows where there is the least impediment, avoiding narrow or dammed up opportunities. Regulation has created open flows, and it has created dams in the flow of competitive investment to the local exchange market.

Broadband is not the existing telephone plan that was the subject of the '96 act and yet it is increasingly treated as such. Broadband requires investment and lots of it. New networks have to be built, new things have to be put in place, things with names like DSL and D-Slams and remote terminals. The decisions to place these new investments are influenced by factors like, where is the open course, what will the rules be impacting my decision to invest, when and where will I get my money back? The broadband networks we are building and will build do not exist in a vacuum. They are introduced into a marketplace where competition is dominated by the cable companies that outrank us 3 to 1 in investment.

The Tauzin-Dingell bill would put a stop to the fact that their investment is not regulated and ours is. It's a bill designed with a built-in compromise. It treats the traditional plant in exactly the same way as it's treated today; and yet it treats the new plant and new investment in an unregulated and more market-friendly way, reflecting the competition that consists in the marketplace today.

We need a clear broadband policy. Tauzin-Dingell is that policy.

Chairman SENSENBRENNER. Thank you, Ms. Greene.

[The statement of Ms. Greene follows:]

PREPARED STATEMENT OF MARGARET H. GREENE

Mr. Chairman, Congressman Conyers, members of the House Judiciary Committee, thank you for giving me the opportunity to testify regarding H.R. 1542, the Internet Freedom and Broadband Deployment Act 2001. BellSouth supports this legislation and we would urge you to lend your considerable influence to its passage. The members of this Committee played a key role in the passage of the Telecommunications Act of 1996, and you can do so here—We hope that you avail yourself of this similar opportunity in 2001 with respect to H.R. 1542.

The key sections of H.R. 1542 which we support are Sections 4 and 6. Section 4 deals with limitations on the authority of State and Federal governments to regulate high speed data service, Internet access and Internet backbone service. Section 6 provides interLATA relief for high speed data and Internet backbone services, but specifically excludes relief for the provision of interLATA voice communications over such facilities.

The Need for Legislation

Why is legislation of this sort needed? The Telecommunications Act of 1996 was based on at least 4 fundamental principles. First, it was designed to encourage competition in both the local and long distance market. Second, it protected universal

service by making implicit subsidies explicit. Third, the Act encouraged investment in competitive networks while requiring resale and unbundling of incumbents' networks. And fourth, it encouraged deregulation as evidenced by the forbearance provisions of the Act. However, in the 5 years since the enactment of the 1996 Act, the Federal Communications Commission (FCC) has taken a number of steps that contradict those purposes.

First, the FCC has substantially diminished any incentive a new entrant may have to deploy its own local facilities. This is due to the fact that the FCC has permitted requesting carriers to use unbundled access as a mode of entry at confiscatorily low prices—even though the 1996 Act requires unbundled network element prices to be based on the *cost* of providing the network element.

Second, the FCC adopted policies that have put off the long distance competition that the 1996 Act envisioned. The FCC has done this by expanding the 14-point checklist beyond recognition. BellSouth's experience with three applications, South Carolina once and Louisiana twice, has been that each time we filed the bar got higher and higher. This has delayed our entry into long distance, beyond anything envisioned by the 1996 Act.

At a hearing before the Senate Commerce Committee in April 1999, the then Chairman of U.S. West, Solomon Trujillo, made the point that the 14–point checklist had been vastly expanded to become, by that time, a 672–point checklist. It has expanded more since 1999. This expansion, I might add has occurred, despite the express prohibition in the Act barring the FCC from expanding the checklist. As BellSouth prepares its Georgia application, we are attempting to operationalize a 'checklist' of some 1831 individual performance measures that must be accumulated separately for each and every CLEC operating in that state. Multiply that number by the 9 states in which we operate and one can readily see how expansive the list of requirements has grown.

We need legislation such as HR 1542 because the FCC has taken two significant steps that have expanded the reach of the 1996 Act's provisions to Internet-related data markets. The FCC has interpreted Section 251 of the Act, which contains the affirmative steps that we must take to assist competitors to enter the local exchange market, to apply not just to local voice service, but also to high speed data services. This is inconsistent with the pro-competitive, deregulatory scheme that we believed Congress intended. Incumbent local exchange carriers are *not* dominant in the high speed data market. At this point, the cable platform (cable modem service) is by far the most popular platform for high speed Internet access, with a better than two-to-one lead over our DSL service. The cable platform is not subject to these same regulatory requirements, even though it is a functionally equivalent service.

We do not favor extending this type of regulation to cable at this time. This would be a policy mistake. We favor what the Chairman of the Telecommunications and Internet Subcommittee, Fred Upton, refers to as deregulatory parity. Section 4 of H.R. 1542 accomplishes this deregulatory parity. Market forces, not regulation, can govern the robustly competitive high speed data market, which also includes cable, wireless and satellite providers.

InterLATA Relief for Data

As to Section 6, this is the other key provision of H.R. 1542. It applies to InterLATA relief for high speed data services and Internet backbone services. This is likewise a robustly competitive market and we are well suited to compete in this market. Our entry into this market will increase, not diminish, competition, leading to lower prices and improved service.

I have heard two criticisms of Section 6. First, critics contend that if Bell operating companies are allowed to compete in the interLATA data market, our incentive to comply with the vastly expanded 14-point checklist will go away. That is absolutely false. We have more incentive today than ever before to comply with that checklist, because our competitors can offer a package of services—long distance voice, long distance data, local voice, local data, cable, Internet access and cellular. We cannot offer those packages today. Even with H.R. 1542, we will not be able to provide voice services across LATA lines. This is a major hole in our service offerings and the only way that we fill it is by complying with the checklist. BellSouth has spent billions to meet these requirements and will continue to fulfill its obligations under the 1996 Act.

A second criticism that I have heard is that because a "bit is a bit", one cannot distinguish voice service from data service. The suggestion is that we will provide voice services under the guise of providing a data service. H.R. 1542 recognizes this and expressly prohibits us from *providing voice*—this means offering, marketing, billing, etc.

Local Phone Competition

During your Committee hearing last month, there were a number of questions about the state of local telephone competition. First, I want to emphasize again that H.R. 1542 deals with high speed data service, Internet access service and Internet backbone. It does not concern voice service. A CLEC wishing to provide local voice service has access to everything that the 1996 Act, the courts and the FCC say they are entitled to. This means local loops, transport, switching, operational support systems all at pricing levels that are well below cost. Nothing in H.R. 1542 changes any of that. The changes being proposed again relate to Internet services not voice services.

Having said that, one important point must be made. When the bills that ultimately led to the 1996 Act were being considered by the Congress in 1993, 1994 and 1995, we as members of the United States Telecom Association (USTA) considered seriously and at length what steps needed to be taken to ensure the development of local telephone competition for both business and residences. We advised the Congress that one of the steps that was absolutely mandatory to assure competition to both classes of customers was what we call *rate rebalancing*. Let me explain. In our BellSouth states we are required by our state public service commissions to charge business customers more for local telephone services than we charge residences. This has been the case for decades. In reality, it costs us less in most instances to provide businesses with telephone service than residences because businesses are densely located, for instance in a downtown business district.

We advised the Congress and submitted proposals that would have had the Congress require the states to rebalance these local telephone rates—in other words eliminate this price disparity and permit us to base our rates on the costs of providing the service, not on the class of customer. Our ideas were not accepted. We explained and offered at the time our opinion that the net result of this failure to rebalance rates would be robust competition for business customers because they were being charged considerably more than cost, and little competition for residential customers, because in most instances they were receiving service at below cost rates.

CLEC Focus on Business Market

I read with interest the written testimony of John F. Malone submitted to this Committee last month. He is the management consultant who assists CLECs. He points out that "CLECs have successfully penetrated the customer base of the incumbent telephone companies." He said that USTA's estimate that CLECs serve 20 million access lines may be understated, and that CLECs may serve a "far greater" number of lines He went on to say "CLECs are not known to target the residential customer." He also said that we at BellSouth lose to CLECs "on the order of $30 million per month."

Why are CLECs not making money? Mr. Malone accurately pointed out that the "CLEC market is saturated with competitors." Way too many CLECs are clustered around the same densely populated business geography each going after the same customers. Also, a number of companies established faulty business plans primarily based on capitalizing on regulatory arbitrage opportunities. Further, many CLECs have not invested in facilities. Indeed, by permitting CLECs to use unbundled access at confiscatorily low prices, the FCC has given them little reason to do so. By this action the FCC has stifled facilities based competition. This same distortion should not be allowed to occur in the high speed data and Internet backbone service market. Absent a clear policy against an unbundling requirement on our advanced services network investments, such investments will be retarded.

In conclusion, I would say to you that the deregulatory provisions of Sections 4 and 6 of H.R. 1542 are a positive step in the right direction. We do not need common regulation developed over many years to regulate voice service to be applied to Internet service, especially when our biggest competitors for these services are not regulated in this manner.

Chairman SENSENBRENNER. Mr. Glassman.

TESTIMONY OF JAMES K. GLASSMAN, RESIDENT FELLOW, AMERICAN ENTERPRISE INSTITUTE

Mr. GLASSMAN. Thank you, Mr. Chairman, Mr. Conyers, Members of the Committee. Thank you for inviting me here today to share my views on H.R. 1542.

My name is James K. Glassman; I'm a Resident Fellow at the American Enterprise Institute.

There's a crisis in the deployment of fast Internet services' broadband connections. This crisis is destroying whole industries, damaging the economy and frustrating American families. H.R. 1542, the Tauzin-Dingell bill, is being promoted as a way to boost deployment of high-speed data services. In fact, it will produce the opposite result. Without competition, the rollout of broadband will be slowed, even stopped in its tracks.

The bill will do substantial harm not just to competitive telecom companies, or CLECs, but to the U.S. economy. In fact, a series of studies that I am conducting with two economists shows that this bill, by increasing uncertainty, has helped dry up the flow of capital, destroying CLECs and harming the economy. Very simply, you cannot have real consumer choice and the benefits that flow from it without competition and you cannot have competition without competitors.

H.R. 1542 would eviscerate the crucial provisions of the Telecommunications Act of 1996 that created the CLEC industry, once a $200 billion industry and now one-fifth of that size in market capitalization. The bill would, make no mistake, kill that industry, kill the competitors, both current and future. And without competitors, the Bells, once seven companies and now just four regional monopolists, will expand their monopoly from local service to long distance to Internet services.

This appears to be what some in Congress actually want. They assume that if we will trust the nine monopolists, they will bestow wonderful benefits on American consumers. This is a dangerous fantasy. We have tried it before and it doesn't work.

And, Mr. Chairman, if there is an antitrust issue for this Committee, this is it. Instead, it is competition that best serves consumers, all consumers, including the poor inner-city residents and rural families. Before there was competition, for example, the Bells kept their high-speed DSL technology on the shelf. Why deploy it if not pressed by competition? That will be their behavior when they emerge again as end-to-end monopolists.

Some of the backers of this legislation call it deregulation. I have devoted much of my career to advocating deregulatory free market solutions to economic and social problems. I know deregulation when I see it; this is not deregulation. Instead, H.R. 1542 will allow the Bells to crush the remaining CLEC opposition and extend their monopoly.

And what will Congress do when this state of affairs becomes evident? It will reregulate, of course. You know as well as I do that you will not sit there and allow such a powerful monopolist to set prices, quality and extent of service in your communities. Congress will step in with strict mandates. We are already seeing that response to H.R. 1542. In the Commerce Committee, provisions were added to set deployment timetables. There will be more such mandates on the monopolists, as in fact there should be. In short, this bill causes reregulation.

The mere prospect of the passage of H.R. 1542 and its predecessor last year has already severely damaged the CLEC industry. This is one of the preliminary findings of studies that I am com-

pleting with two economists Kevin Hasset of the American Enterprise Institute and William Lehr of MIT. The uncertainty generated by this bill and the possibility that the Bells will destroy what is left of the CLEC industry if it passes have helped dry up the flow of capital to CLECs and have damaged the U.S. economy as a whole.

Five years ago a group of risk-taking entrepreneurs went into the telecommunications market against tough odds. They were comfortable at least that a new law would force the Bells to share, at reasonable cost, the physical infrastructure that they had built up over a century as a protected, subsidized monopolist. But what H.R. 1542 proposes is to pull the rug out from under these CLEC entrepreneurs, what's left of them. That is more than unfair, it's damaging to the economy. As an editorial in the Los Angeles Times put it, H.R. 1542 is, quote, "a proposal without logic. The change would only strengthen the Bells' chokehold on local service and remove any incentive to compete and innovate." And, our research shows that the bill has already done that.

The chokehold has nearly killed the CLECs. If this bill progresses, it will surely finish the job of ending competition. That is why it must be stopped and stopped now. Stopped here, not in the Senate.

Thank you.

Chairman SENSENBRENNER. Thank you very much, Mr. Glassman.

[The statement of Mr. Glassman follows:]

PREPARED STATEMENT OF JAMES K. GLASSMAN

Mr. Chairman and members of the committee:

Thank you for inviting me here today to share my views on the Internet Freedom and Broadband Deployment Act of 2001, also called the Tauzin-Dingell bill, HR 1542.

My name is James K. Glassman. I am a resident fellow at the American Enterprise Institute for Public Policy Research in Washington and host of TechCentralStation.com, a website that focuses on matters of technology, finance and public policy, including telecommunications. I have also been deeply involved in issues involving financial markets in my longtime role as a syndicated columnist for the Washington Post as well as for the Reader's Digest and the International Herald Tribune and in my capacity as a frequent contributor to such publications as the Wall Street Journal, the Washington Times and the Atlantic Monthly.

A Dangerous Fantasy

Let me get immediately to the point: HR 1542 is being promoted as a way to boost deployment of high-speed data services. In fact, it will produce the opposite result. It will severely harm prospects for sustainable and effective telecommunications competition—and it will further deter the deployment of broadband Internet technology and do substantial damage to the U.S. economy as a result. You cannot have real consumer choice and the benefits that flow from it without competition, and you cannot have competition without competitors. HR 1542 would eviscerate the crucial provisions of the Telecommunications Act of 1996 that have created the competitive local exchange carrier (CLEC) industry and, make no mistake, kill that industry—kill the competitors, both current and future.

Furthermore, the bill, which is being presented by some of its sponsors as "deregulation," will actually produce *re-regulation*. I have devoted much of my professional career to advocating deregulatory, free-market solutions to economic and social problems. I know deregulation when I see it, and the Tauzin-Dingell bill is not deregulation. For reasons I will explain below, it will take us back to the pre-1984 days of heavy telecommunications regulation.

With the last of their CLEC competitors destroyed by this legislation, the monopoly Bells will expand their monopolies. This appears to be what some in Congress want. They assume that if we will trust benign monopolists, they will bestow won-

derful benefits on American consumers. This is a dangerous fantasy. We tried it before, and it doesn't work.

In fact, the mere *prospect* of the passage of HR 1542 and its predecessor last year has already severely damaged the CLEC industry by helping to cut off the flow of investment capital. I did not come to this conclusion lightly. Instead, it is one of the preliminary findings of a series of studies that I am in the process of completing with two distinguished economists, Kevin Hassett, resident scholar at the American Enterprise Institute, and William H. Lehr, associate director of the Internet and Telecoms Convergence Consortium of the Massachusetts Institute of Technology. I am not saying that Congress should not discuss Mr. Tauzin's bill. I am saying that, by increasing the possibility of such legislation becoming law, Congress is unwittingly aiding in a strategy to kill the competitive telecommunications industry in its cradle and to deny to their constituents the benefits of high technology at a reasonable cost—the same kind of benefits that competition has brought to such sectors as computers (which have fallen in price, adjusted for quality, by 90 percent in 10 years), software and, in fact, long-distance services. Think of it this way: If you were a big lender or equity investor, would you devote capital today to CLECs threatened with annihilation by HR 1542? I don't think so.

HR 1542 will not deregulate telecommunications. Instead, it will undeniably do the following:

Bill Leads to Re-Regulation, Not De-Regulation

First, it will allow the monopoly Bells to crush their remaining CLEC opposition and extend their monopoly from end to end: from local service to long distance to fast Internet connections, or broadband.

Second, it will lead us straight back to remonopolization and re-regulation—back to the conditions that existed before the breakup of AT&T in 1984. If the Tauzin bill becomes law, and the Bells, as expected, eviscerate their opposition by leveraging their local monopoly, you here today know as well as I do that Congress will not stand by and allow such a powerful monopolist—either a single company or four regionals, or somewhere in between—to set prices, quality and extent of service. Congress will step in, as it should, with strict mandates. We will be right back where we started. Already, we have seen an amendment added to HR 1542 in the Commerce Committee's markup that sets a deployment timetable. All I can say is: Here we go again. Perhaps it is well intended, but the Tauzin-Dingell bill is an act of re-regulation, not de-regulation.

Background: Slow Rollout of Broadband

Before I examine the specific deficiencies of this legislation, let me first offer some background: Today, barely 5 percent of households have even the most rudimentary form of broadband—or fast access to the Internet. As a result, the promise of the Internet is not being enjoyed by 95 percent of Americans—an increasingly frustrated group. Incredibly, in the first quarter of this year, for the first time ever, the number of Americans with Internet access of any sort actually declined. As Francis Rose wrote recently in Wired magazine, a monthly magazine that is a kind of non-partisan high-tech bible: "The digital future has arrived, but the analog past won't let go. Data flashes across the country at the speed of light only to end up dribbling out of your wall in the tech version of Chinese water torture."

Most Americans with Internet access have dial-up 56K modems even though the technology is readily available for speeds averaging 20 to 30 times that fast, using manipulations to the copper wiring entering your house—a process called DSL. But for lack of consumer access to DSL and other technologies, companies all up and down the line—from firms that wanted to deliver video down these pipes to companies that provide the infrastructure—are stumbling and falling, watching their stock prices plummet, failing at gathering more capital, and filing bankruptcy. Since November 1999, some 25 CLECs have filed for Chapter 11 protection. Copper Mountain, a leading DSL equipment maker, has seen its revenues plummet. In the first quarter of 2000, its top four customers (NorthPoint, Rhythms, DSL.net and Lucent) spent over $50 million, but in the first quarter of 2001, the remaining companies in this group spent only $1 million.

"All this year, victims of the 'tech wreck' have been looking furiously for someone to blame for their huge losses," wrote Ethan H. Hugo of David L. Babson & Co., a Cambridge, Mass., investment management firm, in a recent letter to clients. "Pick your scapegoat . . . greedy Wall Street underwriters and their cheerleading analysts, even Alan Greenspan. We suggest another culprit . . . the growing pains and slow adoption of residential high-speed 'broadband' Internet access. This is the *business* factor that has been causing so many shattered dreams in tech-land."

And the problem is not merely declining stock prices and unemployment in the telecom and Internet sector. The problem is the overall decline in the U.S. economy—from a Gross Domestic Product growth rate, in annual terms, of more than 5 percent a year ago to barely 1 percent today. One of the preliminary results of the Glassman-Hassett-Lehr studies is that a key contributor to the slowdown in the U.S. economy is the slowdown in the dissemination of broadband.

The Bottleneck That Has Held Up Deployment

What is holding up the deployment of broadband? The answer to that question is not difficult to discern: There is a bottleneck at the "last mile"—at the local connection between high-speed long-distance data lines and the homes and small businesses of America. The Telecommunications Act of 1996 was supposed to loosen that bottleneck and at the same time spread the blessings of consumer choice and competition throughout the telecom system.

The idea behind the act was a sound one: The extensive local networks owned by the Bells had been built over decades and represented billions of dollars in sunk investments, much of which had been subsidized by a variety of implicit and explicit public-subsidy mechanisms. In the face of an entrenched and uncooperative monopolist, local competition faced barriers to entry that were simply too high, outside of a few major metropolitan areas. Without being able to interconnect to the incumbent's local access facilities on an equivalent, non-discriminatory basis, a CLEC was unable to offer a competitive product to establish itself in the marketplace. So, the Telecom Act of 1996 mandated that the Bells unbundle their networks and provide resale of all retail services at non-discriminatory, cost-based wholesale rates and that they also negotiate interconnection agreements for reciprocal traffic.

Of course, the Bells had a huge incentive to be uncooperative. They didn't want the competition. The Act provided a carrot: open up your local networks to competitors sufficiently and, on a state by state basis, you will be granted interLATA relief—that is, you will be allowed into long distance. This was a sensible deal for all parties and a good way to move toward what Congress and the president wanted: deregulation and the benefits—in lower prices, higher quality and broader dissemination—that competition had already provided in long distance and equipment markets, which the Bell System monopolized before its structural separation in 1984.

The Birth of an Industry

The Telecommunications Act of 1996 produced the birth of an industry—the CLECs. Some 300 companies exploded onto the scene, and investment in telecom infrastructure soared. Bells, which had kept DSL technology on the shelf for 10 years, suddenly began to deploy it in the face of competition, cutting prices to lure customers. "The Bells are not known for their competitive vigor," said an editorial in Business Week. "Indeed it was only competition from new companies that spurred them to start."

But despite that encouraging beginning, the Act has not provided the results that were envisioned. The incumbent carriers—the seven regional Bells plus GTE—have now become just four companies through remonopolization. They're now called, aptly, "mega-Bells" by the media. They serve 95 percent of the U.S. small business and consumer market and own 91.5 percent of all lines in the country. In only five of the 50 states have these Bell companies complied with the act to the extent that they have been permitted into long distance.

The Bell monopolies were fined over $370 million in 2000 for anti-competitive business practices, service problems and failure to live up to legal obligations. At every stage along the way, the Bells sought to overturn or weaken the pro-competitive provisions of the Act. They immediately appealed the FCC's first order establishing the economic standard to be used to set cost-based rules for unbundled elements on the grounds that the commission had overstepped its jurisdiction. The lawsuits and the foot-dragging continued. Wrote Mr. Rose in Wired: "The Telecommunications Act of 1996, which was intended to end the Bells' monopoly on local lines and transform the industry into a competitive free-for-all, has proved toothless."

Immediate Entry Into the 'Good' Part of Long Distance

An obvious remedy, therefore, would be to give the Act some teeth. Instead, HR 1542 proposes the exact opposite course. Incredibly, it removes the one incentive—in the absence of tough enforcement—that can encourage the Bells to open up their local networks to competition. That incentive, of course, is long-distance authorization. Let me again quote Mr. Rose of Wired magazine:

"The Bells' goal is to satisfy their customers' telecom needs in one package. But, so far, they've been allowed to offer long distance in only four [now five] states . . . because they haven't met the criteria set out in the Telecom Act. So while they stall

on the local loop, the Bells have lobbied Congress to give them long distance anyway—not long distance voice, which is no longer a fast-growing market, but long distance data services, which are exploding." In fact, according to Telcordia Technologies, data represents about 75 percent of all network traffic, up from 50 percent in 1998. By 2004, data will be nine-tenths of traffic, voice just one-tenth.

As an editorial in the Los Angeles Times on April 27 stated: "The 1996 Telecommunications Act, meant to bring competition into local phone service, clearly hasn't delivered. Most consumers have no choice but to pay high prices. Reps. W.J. (Billy) Tauzin (R-La.) and John D. Dingell (D-Mich.) say they intend to fix this by allowing the Baby Bells into the long-distance DSL business while keeping their local-service monopoly. It is a proposal without logic. The change would only strengthen the Bells' chokehold on local service and remove any incentive to compete and innovate."

Think of long distance as the carrot—the only enticement, really—to get a donkey to move in the right direction, that is, for the Bells to act in a way that enhances competition and helps consumers. Think of HR 1542 as a law that orders the carrot to be *fed* to the donkey. The law, then, will stop the donkey in its tracks, that is, end the chances for competition that will help consumers.

Already, it should be noted, there are *no* regulatory impediments to the deployment of DSL by the incumbent Bells. Indeed, they are already deploying DSL—without the Tauzin-Dingell bill. SBC, to name just one Bell company, announced it is spending more than $6 billion on "Project Pronto," a program to get DSL to millions of customers. BellSouth's Duane Ackerman has stated that his company "invested $33 billion . . . during the 1990s" and that it expects "total DSL revenue of approximately $225 million this year and $500 million in 2002. Mr. Ackerman, at a Salomon Smith Barney conference in January 2001, admitted that the regulatory challenges BellSouth is facing "are unlikely to slow down the momentum of the marketplace."

By letting the Bells immediately into long distance as a way of speeding broadband to consumers, the bill tries to solve a problem that doesn't exist: the Bells can *already* get broadband to consumers.

The Bill Turns Back the Clock to Before a Key Supreme Court Decision

But the bill is even worse.

It would overturn several FCC decisions since January 1, 1999, that give CLECs access to the network elements necessary to provide consumers with advanced communications services. Under the FCC's existing rules, the incumbent Bells are generally not required to share packet-switching equipment used for advanced services. The bill would expand this exemption to cover any network elements identified as essential to competition since January 1999, to the extent they are used to provide advanced services. The January 1999 date is significant. It was in January 1999 that the U.S. Supreme Court ruled decisively against the incumbents' challenges to the FCC's unbundling rules and upheld the FCC's authority to specify which network elements should be available to competitors. Subsequently, using the "necessary and impair" standard in the 1996 Act, as the Supreme Court required, the FCC added to the list of network elements that incumbents must make available for purchase.

HR 1542 rolls back the clock by fixing the list of network elements as of January 1, 1999—before the Supreme Court remanded the list to the FCC and before the FCC revised it as the Supreme Court directed. In effect, the bill hands the incumbent Bells the victory decisively rejected by the Supreme Court and rewards them for their refusal to comply with the requirements of the 1996 Act.

As the incumbents update their networks and replace more and more of their copper facilities with fiber optics to deliver high-speed services as well as basic voice, an increasing portion of those networks will become inaccessible to competitors. Ultimately, there could be little, if anything, left of the statutory mandate for the incumbents to give competitors access to unbundled network elements—even loops, which are the critical "last mile" that competitors simply cannot do without.

In essence, the bill would effectively close the most significant door to competition under the Act by enabling incumbent carriers to avoid the fundamental obligation to open up their networks to new entrants. In a direct reversal of the requirements of the 1996 Act, it would preserve, exclusively for the incumbent carriers, the economies of scale, scope and density that they have built on the backs of the ratepayers

Study Shows That Just Consideration of Bill Impairs Capital

HR 1542 and its predecessor, HR 2420 last year, are so clearly destructive of potential competition that that the very progress of the bill itself has done terrible damage to the market capitalization of CLECs. In our research, we conducted what

are called "event studies," looking at the market-price response to specific events that improved potential for passage of the Tauzin-Dingell bill or its earlier siblings. We found that CLEC prices fell significantly and repeatedly on those occasions, providing empirical evidence (as if any were needed) that markets believe that HR 1542 will destroy, not just competition, but competitors.

All of us in this room are aware of the decline in stock prices since the spring of 2000. Between March 1, 2000, and April 30, 2001, the Standard & Poor's 500-Stock Index, the prime benchmark for the U.S. market as a whole, fell 9 percent, and the PSE Technology Index fell 35 percent. But our research found that an index of CLECs fell more than 80 percent. Remarkably, we discovered that almost half of that decline was concentrated in the handful of days when the market learned that this bill or its predecessor was more likely to pass. A rich academic literature shows that capital investment for companies and sectors is tied to the direction and extent of market capitalization. We can expect, then, to see a sharp decline—probably in the 80-percent range—in capital investment by CLECs in the near future. This decline has already begun, with capital investment by all telecommunications companies falling in the first quarter of 2001 compared with a year earlier. It can only be reversed by wiping out the possibility of passage of a bill such as HR 1542.

This is my main concern. What I care about is the U.S. economy and the standard of living of average Americans, and what I know is that competition and deregulation produce better results than monopoly and regulation. This bill kills competition by killing competitors, and it will lead to more regulation, not less.

William Kennard, who served as FCC chairman from 1997 until early this year, called HR 1542 "a prescription for disaster. . . . You'd be telling Americans, 'Forget about having competitive choice for DSL service—We're going to give it to the incumbent monopolists."' He also said, "This bill moves us 180 degrees in the wrong direction." Reed Hundt, who served as FCC chairman from 1993 to 1997, explains why capital has dried up for the competitors. "Investors no longer know the direction of policy," he told Bloomberg Business News recently. "They no longer know what to bet on so they are taking their money off the table."

The high level of uncertainty introduced simply by Congressional consideration of HR 1542 is exactly the type of force that squashes investment. Moreover, it raises the possibility that the Bell monopolies are purposefully lobbying heavily for bills such as this one because they are well aware that *uncertainty about those changes can itself accomplish the job of slowing CLEC investment*. Because of their smaller size and greater need for financial resources, CLECs suffer disproportionately when regulatory uncertainty contributes to raising the costs for financial capital. That is one of the preliminary conclusions of our study, but common sense would indicate its truth.

Fundamental Question: Trust the Monopolist? Or Trust Competition?

Mr. Chairman and members of the committee, the stakes are extremely high. The rise of the Internet, e-commerce, and the Bell mega-mergers have changed the communications landscape since the passage of the Telecommunications Act of 1996. The principle behind the act was sound. But it was flawed. As Nicholas Economides, a New York University economist, has said, "It didn't have the deadlines and punishments to make people do what they were supposed to do." Two bills introduced by Reps. Cannon and Conyers and their colleagues, HR 1697 and HR 1698, help enforce the Telecom Act through a reaffirmation of antitrust policy.

This hearing poses a fundamental question. What is the best way to accelerate the deployment of broadband technology? The Bells say that if you will relieve them of competitive pressures, they will roll out broadband faster. This is a paternalistic game that might be called, "Trust the Monopolist." Just give us back our monopoly power, and we will work wonders.

Nonsense. Competition, not monopoly, offers a far better guarantee that new technology reaches all Americans. Time and again, Congress and the president—across partisan lines—have trusted competition. And it has been the right course. The order to break up the Bell System in 1984 was an action that trusted competition—and prices fell and quality rose. Again, in 1996, Congress decided to trust competition, and it was right. This bill would undo that decision and would instead trust monopolies. That it why it is wrong.

The bill will do great damage to the economy and to consumers. In fact, it already has. It is time to reject a course that turns back the clock and hurts all Americans.

Thank you.

Chairman SENSENBRENNER. The Chair will enforce the 5-minute rule on Members, and Members will be recognized alternately on

each side of the aisle in the order in which they appeared at the beginning of the hearing. So I will recognize myself for 5 minutes.

Mr. Tauke, are you familiar with the decision of the U.S. Court of Appeals in the Seventh Circuit in the case of *Goldwasser* v. *Ameritech*?

Mr. TAUKE. Mr. Chairman, I am familiar with it, not as familiar as my legal counsel, Mr. Barr, who testified at the last hearing.

Chairman SENSENBRENNER. Do you think that decision was correctly decided?

Mr. TAUKE. I believe, as he testified, that the decision, at least as we understand it, was——.

Chairman SENSENBRENNER. Move your microphone a little bit closer.

Mr. TAUKE. The decision, as we understand the decision—and I understand that there is some difference of interpretation—was essentially correctly decided. As we understand the decision, it merely indicated that a violation of the Telecom Act of 1996 is not necessarily a violation of the antitrust laws. However, the antitrust laws as they stood before the '96 Telecom Act remain in place today, and we are subject to them.

Chairman SENSENBRENNER. I don't agree with you, and I don't agree with Mr. Barr. It seems to me that what the Seventh Circuit decided was that the antitrust savings clause in the Telecom Act of 1996 did not apply to section 271 applications by Baby Bells, or RBOCs, into the long distance and broadband market.

Now, assuming for the sake of argument that is a correct interpretation of the decision, do you think that an RBOC should effectively have an antitrust exemption in this market, while everyone that the RBOC competes with is subject to the antitrust laws as they are written?

Mr. TAUKE. I believe that our view is that we should—we are subject to the antitrust laws, and we do not anticipate that the passage of this legislation would alter that; that the savings clause of the '96 act was not overturned by *Goldwasser*.

You obviously have a differing view. We don't see it that way, and we believe that the passage of this legislation would not exempt us from application of the antitrust laws.

Chairman SENSENBRENNER. Would you support an amendment to the Tauzin-Dingell bill that would clarify this confusion on what the *Goldwasser* holding was, to ensure that the antitrust laws were applied equally to an RBOC entry into the broadband market, as to a competitor who is not an RBOC.

Mr. TAUKE. From a policy perspective, I believe we are not trying to get out from under the antitrust laws and believe that they do apply and do not object that they apply to our company. And so, from a general policy perspective, I don't believe there is an objection. Obviously, we would want to see the wording of any amendment before making a judgment.

Chairman SENSENBRENNER. Thank you.

The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I want to congratulate the witnesses for joining us here today.

We are in a situation here in this Committee, and this hearing is very important because if we send a strong message to the Con-

gress that the game is up here and that we are not going to allow the Telecommunications Act of '96 to be rooted out.

As the Bells, in an extremely aggressive move—they've been so profitable that they're combining with each other now. They're getting stronger and more powerful, and yet they're claiming we can't get out to the rural areas. I mean, it's really tough. We wish we could. We need more power. We need to knock long distance out even further so that we can really take over this thing completely, and then we'll get you service.

And so I come here slightly stunned at the nerve of companies that control typically 96 to 98 percent of the residential lines, over 90 percent of the business lines, and they say, we need more. I mean, it looks like you Bells would be tiptoeing around, hoping that nobody calls you to task or that an oversight committee like Judiciary doesn't step in.

But no, you bring legislation forward that says, give us more. It's not that we've kept out of long distance, we are making huge profits. We are merging with each other, we are so successful, but that isn't quite enough.

And so I come here, hoping that through all of this very important and technical presentation that we are giving, we are being given, that the truth will come out very clearly to all of the Members. I commend the Chairman for these hearings. I think they're critical.

Now, we've got this provision in here that talks about the build-out. H.R. 1542 requires the Bells to provide broadband services to underserved areas within 5 years, but the former Attorney General of the United States, William Barr, said that Verizon is, quote, "not happy with the requirement." In other words, all that you're getting is still not enough.

The Tauzin-Dingell bill is tough on the Bells, and they want to strip that provision out, which I think should shock a lot of people. I'm not going to ask those that represent them whether they will support the provision. I mean, it would be pretty hard for me to get that you'd say no in broad daylight. But, you know, we found out what you think about the Telecommunications Act after we signed it and touted it that it would create competition, we find out where we are now.

And then there's another little piece called a State preemption in which we just excuse public utility commissions, all of whom oppose H.R. 1542, and whose job it is to protect consumer interests, not to mention all the other consumer organizations that are dead set against it; plus a whole host of new industries that have been created by the Telecommunications Act, that they would be given the death knell has already been carefully explained.

So what do you think of that?

Well, I don't have much time, Mr. Chairman.

The CHAIRMAN. Four seconds to be precise.

Mr. CONYERS. You're overgenerous today, as usual.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. CONYERS. Thank you very much.

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you very much, Mr. Chairman, and thank you for holding these hearings. I must say that I'd like an answer to that last question if there is time left at the end of my time.

But I guess my first question would be for Mr. Tauke and Ms. Greene. If this is such a good idea, why is it that every PUC, especially in my case, California's, has opposed this bill? If you could give me a short answer that maybe I could understand——.

Mr. TAUKE. I think, Congressman, that the simple—first of all, every PUC, I do not believe, does oppose the legislation; but secondly, a number of them do, and it's not surprising. Whenever Congress begins to take power away from regulators, regulators always fight for their jurisdiction, and that's essentially what's happening here.

But there is a worldwide Internet without boundaries, and trying to regulate it on a State-by-State basis is virtually impossible, and certainly a policy that seeks to do that would be very difficult to enforce.

Mr. ISSA. That's a fair answer.

Ms. Greene.

Ms. GREENE. I think there is another factor here, and that is that mixed metaphor that has happened in the discussions we have been having so far today.

H.R. 1542 does not change in any way the '96 Telecom Act as it applies to traditional telephone plants. What we are talking about in H.R. 1542 is a broadband plant, a new plant that will have to be built; and it's being built today. That plant is not built in a monopoly environment. That plant is built where we have four existing technologies as the service platform. And one of those cable companies already enjoys over a 70 percent market share.

Mr. ISSA. Okay. I appreciate that. Thank you for the answer to the question.

Maybe to help you get into the next question, as you may or may not know, I just came from the private sector; and in my own company, less than 3 miles away from a central station, I requested a DSL and a T-1. And the DSL, had it been deliverable, never quite got the reason it wasn't deliverable, and ran out of time. But had it been deliverable, since it was qualified and it was technically within a CLEC rollout area, would have been—and this is for, you know, one MIP plus T-1 speed—it would have been $200 and some with fixed IPs. My T-1 in my previous building and in my next building had been $1,000, and then we were able to contractually get it down to slightly less than $800.

What I'm not sure I understand is, you know, I'm hearing about all this competitiveness that is already available. My T-1s predate the 1996 Telecommunications Act. I'm concerned that, in fact, the Bells have not had real competition in data that existed prior to that time that, in theory, I have to accept that the 1996 act intended to open competition for.

Can one of you from the Bell side answer that?

Ms. GREENE. Well, I'm not sure that I understand exactly what you're asking, but the only thing that I would say is that nothing in Tauzin-Dingell would change in any way the CLECs' access and competitors' access to that plant. You still have open access; it's just a matter of price.

Mr. ISSA. And if that's the case, then would you accept that Tauzin-Dingell would have an enactment date of 1996 or 1999, some date that would be prior to court decisions?

Ms. GREENE. I think what Tauzin-Dingell has, what it attempts to do is to draw a line between plant that was subject to unbundling by regulators prior to 1999, and then plant that was subject to unbundling by regulators post-1999. So I think the act already tries to strike the compromise that your question is implying.

Mr. ISSA. Tom, did you have a different answer?

Mr. TAUKE. No, I think that is essentially the correct answer. But there really is only one small area that the act changes in the local marketplace and that is line sharing over loops that contain fiber. The loop is from the central office to the home and it's only those that have fiber where line sharing would be restricted.

Mr. ISSA. Thank you. Reclaiming what little time is left, just see if I can summarize this.

If I understand correctly, what Tauzin-Dingell really wants to say is that the next level of technology, something that existed prior to 1996, but was not rolled out, when it's rolled out will take the deregulation of 1996 and undo it because we will then be rolling out over fiber rather than twisted pair and have the potential for higher speeds.

If that is correct, then aren't you asking——.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. ISSA.—a reregulated monopoly. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Glassman, our summary shows—and I think you have referred to this—that H.R. 1542 would eliminate the 1996 act's requirements that the Bell Companies share their phone networks through unbundled network elements and resale with their competitors. The bill does this by rolling back regulations relating to unbundled access that the FCC issued after January 1, 1999. From a practical impact—and maybe Mr. McLeod might want to answer this too—exactly how does that disadvantage competition from a practical perspective? What does it do?

Mr. GLASSMAN. I will defer to Mr. McLeod, if you would like to talk about the technical aspects of it. But the point is that what we will find is that the—is, basically the incentives for the Bells to cooperate in opening their networks will vanish, will vanish as a result of H.R. 1542.

Mr. SCOTT. Mr. McLeod, you indicated that you only had 8 percent. How would that make your ability to get into the market better or worse from a competitive point of view?

Mr. MCLEOD. We don't have 8 percent. The combination of all long distance companies, all CLECs, after 5 years of competing have now, according to the FCC, captured a 5 percent share of the local market.

The act envisioned that competitive companies would have access to the network, and looking forward to advances in the network through the pricing that was put forward, it did envision fiber. In fact, there was a great deal of fiber in the Bell networks in 1996.

Mr. SCOTT. If the bill passes, what will that do to your ability to get into the market? From a practical point of view, how will it stop you from getting into the market?

Mr. MCLEOD. It restricts us from using the local loop in certain ways at certain times.

Mr. SCOTT. Like what?

Mr. MCLEOD. When a line is a combination of fiber and copper, there is restriction on our access to that loop. And in reality——.

Mr. SCOTT. Are there homes you can't get into if this were to pass?

Mr. MCLEOD. Yes, there are.

Mr. SCOTT. How would that keep you out of the home?

Mr. MCLEOD. Because the network becomes, over time, a hybrid which it is today a hybrid fiber/copper network. We are having a hard time getting access today to the network where we are supposed to have total access. And now we are injecting some new technology.

This is not new technology. We have had DSL around and we have had fiber around for a long time.

Mr. SCOTT. Let me ask this a different way. If I called your firm and said I wanted your firm to service my house, how would the passage of this bill prevent you from serving my house?

Mr. MCLEOD. It may or may not, depending on the plant serving your house. We would do a qualifications of the line service to your house to determine whether or not facilities would be made available from the telephone company to us to service the house, unless we did a direct bill to your house.

Mr. TAUKE. Mr. Scott, the fact of life is, if this legislation passes every local loop, whether it contains fiber in it or does not contain fiber in it, must be resold on an unbundled network element basis to any competitor.

Secondly, every competitor has to purchase any service that we offer over that local loop on a wholesale basis for retail. So there are two ways the competitor can get to every home in America.

The only thing this bill does is to say one methodology that is currently available and used very sparingly—parenthetically, by competitors, the line-sharing methodology where you split the copper in two—and you have one carrier offer the voice service over the copper and a second carrier offer DSL service over the copper. That would not be required when there is fiber.

Why wouldn't it be required? Because we don't know how to do it. So if you don't lift that requirement on fiber in the local loop, then you cannot deploy fiber in the local loop and that means a diminishment in the availability of high-speed data services.

Mr. SCOTT. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from Florida, Mr. Keller.

Mr. KELLER. Thank you, Mr. Chairman. My primary concern in this debate—in fact, my sole concern, frankly—is to try to get to the bottom of what is going to be best for consumers here.

Now, the long distance companies say if that is the sole criterion, at least it is for me, then we should vote no on Tauzin-Dingell. They say that, as evidence, look at what happened since AT&T

broke up; the long distance rates went down and the local rates continue to go up.

The same question—the local Bell Companies say if that is the criterion, best for consumers, we should vote yes because they are in a far better position to deploy broadband, particularly to the rural areas.

I want to give Mr. McLeod and Ms. Greene a crack at that issue. Mr. McLeod, take a minute or two and just explain to me in terms of the bottom line why voting no on Tauzin-Dingell is best for consumers.

Mr. MCLEOD. Voting no means voting no to, in effect, allowing the Bell Companies into interLATA services before they open up their local network. The '96 act requires that they open their network, the section 271 checklist; and once that's done, the Bells are free to provide any kind of services they choose to.

Now that's the name of the act. We are 5 years into it. And we have about 10 percent compliance, about 5 States out of 50. So anything that undercuts the '96 act, like allowing a major provision, interLATA services to be open, is lessening the impact of the '96 act.

Second, there are restrictions to our ability to use the local network in the Tauzin bill. There are restrictions placed on the speeds with which we can access these networks. And so there are two places where we have restraint to competition, which means less choice for consumers.

Mr. KELLER. Ms. Greene.

Ms. GREENE. I would actually agree with the last statement that he made in that what's in the best interest of consumers is the maximum possible competitive choices.

What we are talking about in a broadband network is a technology or a service that is delivered by four different technologies—cable, which has a 70 percent market share; satellite; wireless; and then land line telephone companies. We currently have about a 25 to 30 percent market share. And if you're going to have robust and meaningful competition for cable and wireless broadband, you need to allow us into that market with clear signals that if we invest in that market, we'll be able to recapture our investment.

Just one point that I'd like to address, though. You said in your opening statement that the inter-exchange carriers talk constantly about residential rates going up and long distance rates going down. In fact, residential rates for basic service have been frozen for well over a decade and there has been no increase in that price.

Part of why I went through those numbers at the beginning was to show the distortion that we currently have in the regulatory pricing, which is also a disincentive to consumers.

Mr. KELLER. Thank you.

Mr. Glassman, what is your opinion about the impact to consumers that this bill would have?

Mr. GLASSMAN. I think that the best way to serve consumers always is through robust competition. Competition drives down prices and increases quality.

What this bill does is, it limits competition. We already have that problem. The CLECs, which started off with such high hopes in 1996 as a result of this act, 300 of them starting are now on the

ropes. Why? Because the Telecom Act basically has not been enforced. There has been foot-dragging, there have been lawsuits, so these companies are going out of business.

This bill, the Tauzin-Dingell bill, removes the only incentive that the Bells have to open up and to allow the CLECs connection to the last mile that allows them to live.

They're going to die. You're not going to have any competition. And without competition, basically consumers are left with no choice except perhaps the choices that this Congress would mandate on the Bells, telling them, you have to deploy by this time, you have to do this, you have to do that.

That's basically the way we ran telecommunications prior to 1984, and I don't think we want to go back to that date.

Mr. GLASSMAN. So what we need is to promote competition, and that is not what the Tauzin-Dingell bill does.

Mr. KELLER. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired.

Gentlewoman from Wisconsin, Ms. Baldwin.

Ms. BALDWIN. Thank you, Mr. Chairman.

We were reminded by our Chairman earlier that our special role as a Member of this Committee is to look at the particular aspects of this bill that narrow the purview of the Attorney General under section 271 of the Communications Act of 1934, but each of us also comes to this Committee with another role which is as Members of Congress representing our specific districts and like Mr. Keller, who questioned the witnesses just a moment ago, that's a role that I'm very clear on.

In my case, I represent the Second Congressional District of Wisconsin, a district that is approximately one-third urban, one-third suburban and one-third rural; and last year I had a chance to meet with an array of constituents from Dodgeville, Wisconsin. Dodgeville, Wisconsin, is in Iowa County, a county of about 23,000 constituents; and Dodgeville's the biggest city in that county. It's sort of anchor businesses, lands and corporations—I hope everybody in this room has heard of it—an employer year round of about three, four thousand individuals and seasonally many more, many of whom are members of farm families trying to bring in extra income in the struggling economy.

But also at this meeting in Dodgeville, aside from the CEO of Lands End, were a public health nurse, a librarian at the Dodgeville library, the owner of a lumber store, the head of the Dodgeville Chamber of Commerce, a farmer by the name of Michael Gingrich who was a dairy farmer. He buys grain over the Internet and also was about to get involved in a venture to develop a specialty French cheese that he wanted to market over the Internet. And an individual was also there from the community of Hillandale, a much smaller community of about 200 population. He reminded me that they were the last to get electricity in their county, the last to get phone service, and they certainly predict that they will be the last to get high-speed Internet.

They don't know what ILECs, CLECs, RBOCs are or anything of the sort, but they want to know when they are going to be truly participants in the high-speed Internet arena. That's what I want to know; and, like Mr. Keller, I would like to see us thinking about

how we set a national policy on deployment of broadband access and what sort of legislation we need to support to get there.

I would ask each of you on that issue, not talking about competition in local phone service or competition in other arenas but in competition for broadband service to these individuals, how would—and each of you in the time remaining please briefly say—how would passage or defeat of H.R. 1542 help or harm in this situation and specifically who and when do you—who do you think is going to provide broadband access to Mr. Gingrich or to the librarian or to the public health nurse and when? Go ahead.

Mr. TAUKE. Congresswoman, first, the right model to look at from a consumer standpoint is what happened in wireless, and I encourage you to read my written testimony because the wireless market is very much—of 10 years ago is very much like the broadband market of today. Lifting the restrictions allowed for an explosion in the wireless marketplace and a tremendous increase in the services available to consumers.

I grew up in Dubuque, so I know Dodgeville well, and Dodgeville is an area that will be served with this legislation because: First, the regional network that caused Lands End that—wasn't pleasant and caused Lands End to move some of its facilities to a larger city in Wisconsin would be put in by the local Regional Bell Operating Company presumably; and, secondly, the Rush amendment ensures they will be billed out of local broadband facilities.

Ms. BALDWIN. Mr. McLeod.

Mr. MCLEOD. Again, this bill is really targeting the Bell companies specifically. So to the markets where the Bell companies are being served, there's nothing to restrict Bell companies from providing high-speed services in any of the markets today. They can do that, and they are doing that, and they're growing DSL services faster than anybody else in the marketplace.

So, as far as this bill specifically causing a stimulation in DSL services in rural cities, if they are presently serving rural cities, the Bell companies can service those markets with DSL. There is nothing stopping them from doing that. There is nothing stopping them from putting fiber in; and, in fact, they are aggressively putting fiber in.

The bottom line, though, is that we need to create an environment where other people can get access to those local lines in these Bell markets so that competitors, DLECs, CLECs, IXEs can come in and offer data services on those lines as well, invest in those lines and provide choice.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

The gentleman from Utah, Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman.

I'd like to ask unanimous consent to submit for the record an article by Mr. Glassman that was printed in the Washington Times.

Chairman SENSENBRENNER. Without objection.

[The information follows:]

WESLEY PRUDEN, *Editor in Chief*
WILLIAM E. GILES, *Managing Editor*
HELLE BERING, *Editor of the Editorial Page*
MARY LOU FORBES, *Editor of Commentary*
WOODY WEST, *Associate Editor*
ARNAUD DE BORCHGRAVE, *Editor at Large*
TED AGRES FRANCIS B. COOMBS JR.
Deputy Managing Editors
JOSEPH W. SCOPIN GEOFFREY ETNYRE
KENNETH M. McINTYRE MARIA STAINER
Assistant Managing Editors

The Washington Times
Founded 1982
America's Newspaper

RICHARD H. AMBERG JR., *Vice President, General Manager*
GEOFFREY H. EDWARDS, *Vice President*
KEITH COOPERRIDER, *Chief Financial Officer*
MICHAEL R. MAHR, *Advertising Director*
ARTHUR D. FARBER, *Circulation Director*
PETER COURTRIGHT, *Marketing Director*
DAVID N. COLEMAN, *Production Director*
SARA COOPERRIDER, *Computer Services Director*
JAMES BORER, *Human Resources Director*
RICHARD OBEN, *Facilities Director*

WEDNESDAY, APRIL 25, 2001

For whom the Bells still toll

More deregulation of telecoms needed

By James Glassman

Rep. Billy Tauzin is making a fatal mistake regarding the nation's telecommunications. In a presentation to the Progress & Freedom Foundation, the powerful Commerce Committee chairman stated clearly and correctly that the primary threat to future economic growth is a continued meltdown in the information technology sector. Since March 2000, stock prices for telecommunications companies have dropped 70 percent, many have gone bankrupt and others are quickly running out of cash. A domino effect has knocked down the profits of the suppliers that serve them.

Mr. Tauzin was also exactly right when he said that a strong rebound in telecommunications requires two things: first, reliable energy supplies and, second, widespread availability of broadband to speed delivery of services from the current-copper crawl pace.

But Mr. Tauzin's remedy is all wrong. He thinks the best way to boost broadband is by releasing the regional Bell monopolies from their obligations under the Telecommunications Act of 1996. Such a move would kill competition and innovation, the keys to a rebound in both broadband and the economy as a whole.

What were the obligations? Five years ago, the Bells agreed to open their local loops to competitors. In exchange, the Bells would be able to get into the long-distance market.

Unfortunately, little has changed since 1996. The Bells dragged their feet, and they continue to have a chokehold on the last mile of phone line into the home. Some 95 percent of U.S. residences still have a regulated Bell monopoly as their local service provider. And, like all monopolies, the Bells have been raising their local rates and doing little to improve service.

Hope for real competition is rapidly running out. Several months ago one of the largest competitive local exchange carriers (CLEC), Covad Communications, cut back the planned expansion of its national digital subscriber lines (DSL) broadband network. Two weeks ago, another large CLEC, NorthPoint Communications, which is in bankruptcy, ended service to 100,000 customers. Rhythm NetConnections has run out of money. And soon, PSInet, which laid a million miles of fiber optic through 28 countries and 90 metropolitan areas of the United States, could follow suit. As PSInet founder William Schrader says, the "dinosaurs" (as he calls the Bell monopolies) are winning because "deregulation has stopped, and they will become monopolists again because the competition can't compete with monopolists."

Indeed, the monopolists are only getting bigger. Thanks to mergers among themselves, the seven Bells plus non-Bell local giant GTE have become just four companies — SBC, Verizon, Bell South and Qwest. And in addition to merging to reduce competition, they have reneged on the promises they made (to win merger approvals) to get into each other's territories. Verizon, formed when Bell Atlantic merged with Nynex and GTE, announced last month it would slow down an already sluggish expansion into other Bells' regions. And SBC says it won't come close to its target — set by the Federal Communications Commission when it merged with Ameritech, the Midwest monopoly — to enter 30 major-city markets.

Yet, as far as Mr. Tauzin is concerned, it is the Bells that are the victims. So, to make things equal, he would let the Bells get into the most lucrative part of the long distance market — data transmission — without having to open up their local loops. He would also release them from their promises to compete with each other.

What will happen if the powerful local Bells get what they want from Mr. Tauzin and Congress? History shows it won't be the expansion of affordable broadband. In the past, the Bells tried to kill the Internet in its crib by putting per-minute charges on local calls made to the Internet Service Providers (ISPs) that connected consumers to the Internet. Just such policies in Europe and Japan have curbed the Internet's growth there, to those nations' economic detriment. In the United States, brave CLECs stepped up to the plate and gave those ISPs good low-cost service.

The Bells also kept DSL service under wraps for more than a decade, not wanting to divert business from their high-speed, high-cost T1 lines. Only when the upstart CLECs began delivering it to customers at affordable prices did the Bells start to do the same. And now that competition from the upstarts is waning (as the Bells drag their feet on local connections, file lawsuits and renege on agreements to pay their "reciprocal compensation" bills), the Bells are making DSL service less affordable once again. A competitive market would not allow SBC to hike prices for its DSL service 25 percent, as it did last month.

To achieve deregulation, the answer is to break the Bells up — not geographically, but functionally, as some states, like Pennsylvania are already trying to do. Each local phone company should be divided into two businesses: wholesale and retail. The wholesale side would sell local service both to its own retail side and to any other company that wanted to purchase that service. That's how to achieve real competition, to boost quality and push down prices.

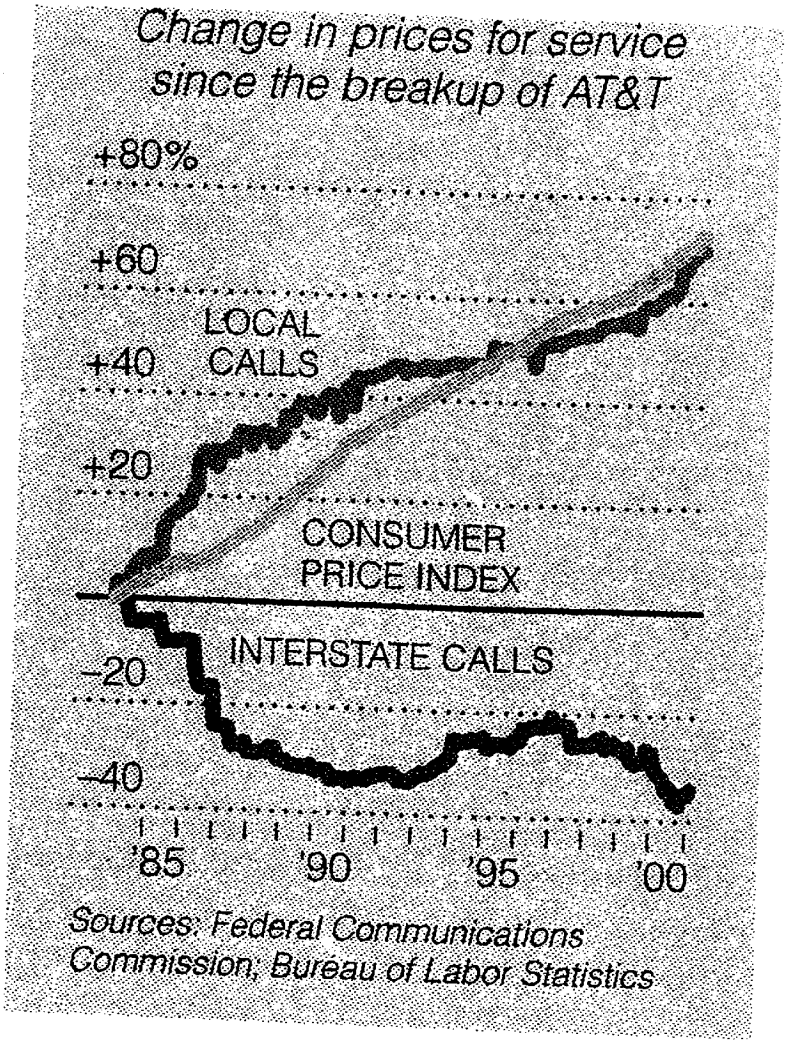
Giving in to the Bells' demands for a rollback of the Telecommunications Act of 1996 is a prescription for disaster that will throttle the prospects of the New Economy for decades to come.

James Glassman is the host of TechCentralStation.com. He also wrote about the telecommunications industry in late December 2000.

Mr. CANNON. Also, a chart showing the difference in increase and decrease in prices for local and long distance service since the breakup of AT&T.

Chairman SENSENBRENNER. Also without objection.

[The information follows:]



Mr. CANNON. Also, various letters from local—or State public utilities commissions to various Congressmen.

Chairman SENSENBRENNER. Without objection.

[The information follows:]

PUCO

The Public Utilities Commission of Ohio

Bob Taft, Governor
Alan R. Schriber, Chairman

Commissioners
Ronda Hartman Fergus
Judy A. Jones
Donald L. Mason
Clarence D. Rogers, Jr.

May 14, 2001

The Honorable Steve Chabot
United States Representative
129 Cannon House Office Bldg.
Washington, D.C. 20515

Dear Representative Chabot:

I respectfully urge you not to support H.R. 1542, the Internet Freedom and Broadband Deployment Act, sponsored by Reps. Tauzin and Dingell.

Although the stated purpose of this bill is to spur the deployment of advanced internet services throughout the rural regions of the nations, upon closer inspection, the proposal does nothing to ensure that the goal will be accomplished. In fact, not only does the bill not ensure that advanced services will spread to rural regions, but the provisions of the bill have several disturbing ramifications; most notably is the proposal to preempt FCC and state regulation of facilities using packet-switched or successor technology.

Today, most telecommunication networks operate on a circuit-switched basis; however, next generation networks are now deploying packet-switching as the means of transmitting telecommunication messages. Packet-switching is the way the Internet works. In packet switching, the "conversation" (which may be voice, video, images, data, etc.) is sliced into small packets of information. Each packet is given a unique identification and each packet carries its own destination address. The packets are reassembled in proper sequence at its destination using the identification and sequencing information.

Historically, this Commission has not regulated the internet or internet services provided by ISPs to retail customers. We have only regulated the providers of underlying network facilities. We have done so to ensure that the incumbent providers do not use their network facilities in a discriminatory manner. Under the Tauzin/Dingell bill, it appears that we would lose our ability to police this important aspect of network operations not only for internet traffic but also for voice traffic in the near future.

As you may know, this bill is moving through the process at a rapid pace so we appreciate your prompt attention. Should you have any questions, please do not hesitate to contact me or the PUCO legislative office at (614) 466-1224.

Sincerely,

Alan R. Schriber
Chairman

ARS:jc

STATE OF ILLINOIS

Office of the Chairman & Commissioners

Illinois Commerce Commission

April 30, 2001

The Honorable Henry J. Hyde
Member of Congress
2110 Rayburn House Office Building
Washington, D.C. 20515-1306

Dear Congressman Hyde:

On behalf of the Illinois Commerce Commission, we respectfully urge you to oppose H.R. 1542, the Internet Freedom and Broadband Deployment Act of 2001, sponsored by Representatives Tauzin (R-LA) and Dingell (D-MI). If enacted, H.R. 1542 would seriously undermine the key market opening requirements contained in the Telecommunications Act of 1996 ("the Act"). These requirements, mandating Bell companies to demonstrably open their local markets to competition prior to receiving authority to provide the services authorized by H.R. 1542, are a driving force behind the deployment of broadband services today, and are currently leading to the development of local competition across Illinois.

Current telecommunications law does not prevent Bell companies from providing broadband services to customers, if such broadband services do not cross LATA boundaries. In fact, Bell companies have already deployed this very same broadband technology in their home markets where new competitors are offering competing services. H.R. 1542 attempts to circumvent obligations under the Act which prevent Bell companies from providing the long-haul transmission of data across LATA boundaries within their own serving areas until they have opened their markets to competition.

If enacted, H.R. 1542 would:

- Give monopoly carriers free rein to enter long distance data markets without any of the safeguards contained in the Act. For several years local telephone companies have possessed digital subscriber line (DSL) technology. Only recently and primarily in response to competitive pressure have local telephone companies begun aggressively deploying DSL. Local competition is the fastest and most effective way for consumers to obtain broadband services at competitive prices. This bill undermines that competition.

- Pre-empt state commission authority to regulate not only high-speed data services, but also interexchange voice telephone services carried over a packet switch network. Packet switching is the way the Internet works. In packet switching, the "conversation" (which may be voice, video, images, data, etc.) is sliced into small packets of information. Each packet is given a

unique identification and each packet carries its own destination address. The packets are reassembled in proper sequence at its destination using the identification and sequencing information.

- Eliminate the Federal law which currently permits state commissions to enhance competition for local telephone services by requiring additional points of interconnection with the incumbent local telephone company network.

- Drastically reduce incentives for Bell companies to meet their obligations to open local markets. Data traffic already comprises roughly half of all telecommunications traffic today. If Congress weakens the long distance entry requirements of the Act with this proposed exception for data communications services, the Bell companies will largely lose the incentive to open their local markets to competition.

- Endanger crucial pro-consumer policies. H.R. 1542 puts at risk the requirement that incumbent local telephone companies share their lines with competitive data local exchange carriers. This line sharing requirement is critical to the rapid deployment of competitive broadband services to consumers.

In sum, we respectfully urge you to oppose this ill-conceived "broadband relief" measure and to support the growth and innovation stemming from the Act that is beginning to benefit American telephone consumers. We firmly believe that enactment of this legislation will harm competition by destroying the carefully crafted incentives of the Act for Bell companies to open their local markets to competition.

Thank you for your consideration of this matter.

Sincerely,

Chairman Richard L. Mathias

Commissioner Ruth K. Kretschmer

Commissioner Terry S. Harvill

Commissioner Mary Frances Squires

STATE OF FLORIDA

E. LEON JACOBS, JR.
CHAIRMAN

CAPITAL CIRCLE OFFICE CENTER
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
(850) 413-6046

Public Service Commission

April 23, 2001

The Honorable Joe Scarborough
United States House of Representatives
127 Cannon House Office Building
Washington, D.C. 20515

RE: The Internet Freedom and Broadband Deployment Act.

Dear Representative Scarborough:

On behalf of the Florida Public Service Commission (FPSC), we urge you to consider some of our questions regarding the Internet Freedom and Broadband Deployment Act to be sponsored by Representatives Tauzin (R-LA) and Dingell (D-MI). We suggest that you carefully scrutinize the bill before considering signing on as a co-sponsor. The requirements in Section 271 of the Telecommunications Act of 1996 (the Act) mandate that Bell companies demonstrate they have opened their local markets to competition prior to receiving relief from restrictions against providing InterLATA (local access and transport area) service. These requirements are valuable tools to help achieve local competition, which may be undermined by the bill in question.

We have not yet received a draft of the bill, so we do not know whether its provisions will be identical to those contained in last year's H.R. 2420. However, based on the presumption that the legislation will be similar to H.R. 2420, we note the following potential areas of concern:

- The bill may give a monopoly carrier the ability to enter long distance data markets without any of the safeguards contained in the Act. Only recently, and primarily in response to competitive pressures, have local telephone companies begun aggressively deploying digital subscriber line (DSL) technology. Local competition is the fastest and most effective stimulus for consumers to obtain broadband services at competitive prices. This bill could undermine development of local competition.

- The bill may diminish local oversight of telecommunications companies that to date have retained dominant control over local markets. The Internet uses packet switching, in which the "conversation" may include both voice and data traffic. This may result in the commingling of voice transmission over the same facility. Currently, over one-half of the traffic on the network is data. This is expected to climb to over 90% by 2005.

- The bill may eliminate the federal provision which currently permits state commissions to enhance competition for local telephone services by requiring additional points of interconnection with the incumbent's local telephone company network.

- The bill may reduce incentives for Bell companies to meet their obligations to open local markets. If Congress weakens the long distance entry requirements of the Act with this proposed exception for data communications services, the Bell companies may largely lose the incentive to open their local markets to competition. Weakening incentives to open local markets may result in ALECs leaving the market. Every alternative local exchange company (ALEC) has to interface with the RBOC in order to provide service. Currently, ALECs only have 6 percent of the market in Florida.

- The bill may harm pro-consumer policies. Should this Act contain the same language as H.R. 2420, it could put at risk the requirement that incumbent local telephone companies share their lines with competitive data local exchange carriers. Elimination of the line sharing requirement could decrease the rate of deployment of competitive broadband services to residential consumers.

Furthermore, a statutory change does not appear necessary to achieve the stated purpose of the legislation. Under current telecommunications law, Bell companies are not prevented from providing broadband services to customers if such broadband services do not cross LATA boundaries. In fact, Bell companies are aggressively deploying this very same broadband technology in their home markets where new competitors are offering competing services.

In Florida, local telecommunications competition and the deployment of advanced services by both RBOCs and CLECs is in its infancy. The FPSC has been given the responsibility to promote local competition. We are implementing this mission in several ways. We are currently in the midst of setting prices for unbundled network elements for BellSouth, we have conducted extensive testing of BellSouth operations support systems (OSS), and we are readying to make an expedited decision on a BellSouth 271 application. Through these and other efforts, we believe that we can foster increased local competition and promote the timely deployment of advanced services.

We note that overall, Florida ranks well above the national averages in broadband deployment, number of broadband providers, and lines. According to FCC data, 87% of Florida zip codes are served by at least one broadband provider, 69% are served by one to three providers, and 13% are served by at least 4 providers. These percentages are above the national averages of 59%, 49%, and 4%, respectively. Florida has 100% more ADSL providers, 200% more cable providers, and 40% more types of traditional wireline, optical, satellite, and fixed wireless providers than the national averages. Florida also has 260% more broadband lines than the national average.

Before considering co-sponsorship of any "271 relief" legislation, you may want to obtain answers to the following questions:

- Does the bill undermine the incentives for Bell operating companies to open their local markets to competition?
- Would the Regional Bell Operating Companies lose their incentive to open up their markets if the data traffic were allowed across LATA boundaries?
- Does this bill harm, rather than help, competition in broadband deployment? If so, does that impede broadband deployment to rural areas?
- While the Florida Public Service Commission does not "regulate" the Internet, wouldn't the preemptive language in the bill keep the FPSC from overseeing the nondiscriminatory application of terms and conditions in tariffs for high-speed data services?
- Does the bill take away the regulatory leverage to spur the Bell companies to open up their markets?

In sum, we respectfully urge you to be cautious about this "RBOC relief" legislation. We note that NARUC has passed a resolution against such legislation. Last year, 30 state commissions filed comments against passage of H.R. 2420. It is important to note that when an efficiently operating competitive market is achieved, legislation like that proposed in H.R. 2420 in 1999, might be appropriate. Until that time, we believe that incentive regulation and state participation may well be the best way to ensure that local competition is achieved. Bills like H.R. 2420 have laudable goals, but they could also derail the work that state commissions are currently doing to achieve local competition and they could lessen the incentives for RBOCs to seek 271 approval for voice traffic. We urge you to consider the impact this type of legislation could have in regard to preempting not only the efforts of the FPSC, but more importantly, preempting the Florida Legislature in these matters.

Thank you for your consideration. We would be happy to provide further information about Florida's activities on Section 271 and local competition upon request.

Sincerely,

E. Leon Jacobs, Jr.
Chairman

ELJ:CBM:jm

STATE OF INDIANA

INDIANAPOLIS, 46204

INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, ROOM E306

May 4, 2001

The Honorable John N. Hostettler
Member of Congress
1507 Longworth House Office Building
Washington, DC 20515-1408

Dear Congressman Hostettler,

I write to you today to express the Indiana Utility Regulatory Commission's opposition of H.R. 1542. Telecommunications legislation that would permit Regional Bell Operating Companies (RBOCs) to carry long distance data traffic continue to concern the Commission.

As you know, the House Committee on Energy and Commerce recently conducted a hearing on H.R. 1542. This bill is essentially the same as last year's H.R. 2420. Just as we opposed last year's bill, we also oppose the same legislation as introduced this year. I felt it appropriate to reiterate our position with regard to this bill and general issues related to the rapid deployment of broadband technologies.

Specifically, if enacted this bill would:

- Give RBOCs free rein to enter long distance data markets without any of the market opening incentives contained in the Telecommunications Act of 1996 (TA-96). Only recently and primarily in response to competitive pressure have local telephone companies begun aggressively deploying digital subscriber line (DSL) services. Local competition is the fastest and most effective way for consumers to obtain broadband services at competitive prices. These bills undermine competition.

- Greatly reduce the incentive to RBOCs to open local markets by weakening long distance entry requirements of TA-96. Since data traffic already accounts for roughly one-half of all telecommunications traffic today, the incentives for incumbents to open markets to greater local competition will be drastically reduced by carving out an exception for data communications.

- Endanger crucial pro-competition, pro-consumer policies. H.R. 1542 undermines the requirement that incumbent local telephone companies share their lines with competitive data carriers. This line-sharing requirement is critical to the rapid development of broadband services.

The Commission is an active member of the National Association of Regulatory Utility Commissioners (NARUC). During its winter meetings in March of 2000, NARUC

passed a resolution opposing this type of legislation. I have enclosed that resolution for your reference.

Proponents of the bill explain the goal of the legislation is to incent deployment of state of the art technologies, particularly in rural areas, and that without this legislation deployment will progress slowly if at all. While the Indiana Utility Regulatory Commission would also like to see faster deployment of advanced services, we believe that there are better ways to accomplish this goal.

It is our view that the most successful incentive for companies to deploy new and innovative technologies in the most efficient manner is the existence of robust competition. Any legislation that limits the development or the existence of competition would be counterproductive and potentially damaging to the market.

Currently, there are at least two bills introduced in Congress that provide financial incentives (tax credits) to companies that choose to deploy broadband services in rural areas (S. 88 and H.R. 267). We believe that these types of incentives are appropriate, and should expedite the deployment of broadband services, particularly in rural areas, without impeding competition.

I will continue to make myself, and my staff available to you at your convenience to discuss this issue as well as any other utility related matter. Please don't hesitate to call me directly, or contact Mike Leppert, the Commission's Executive Director, if you would like to arrange a meeting or need assistance in any way.

Sincerely,

William D. McCarty
Chairman

Enclosure

Cc: The Honorable David W. Hadley, Commissioner, IURC
The Honorable Judith G. Ripley, Commissioner, IURC
The Honorable Camie J. Swanson-Hull, Commissioner, IURC
The Honorable David E. Ziegner, Commissioner, IURC
Mike Leppert, Executive Director, IURC

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
505 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102

LORETTA LYNCH
PRESIDENT

TEL: (415) 703-2444
FAX: (415) 703-3033

April 30, 2001

Honorable Christopher Cox
Member of House of Representatives
2402 Rayburn House Office Building
Washington, DC 20515

Subject: H.R. 1542, the Tauzin/Dingell bill

Dear Congressman Cox:

The California Public Utilities Commission opposes HR 1542, and urges you also to oppose this misguided and fundamentally problematic piece of proposed legislation. If enacted, HR 1542 would seriously undermine the key market opening requirements contained in the Telecommunications Act of 1996 (the Act).

HR 1542 raises at least four major concerns that would adversely impact California ratepayers and businesses. First, it would preclude any state or federal regulation of high-speed data services, including consumer protection or service quality regulation. In particular, in its proposed new Section 232(a), HR 1542 would prohibit the FCC or the states from regulating the rates, charges, terms, or conditions for, or entry into, the provisioning of any high speed data service. This prohibition is of very great concern to us, because we at the California Public Utilities Commission have received a high volume of complaints regarding the provision of Digital Subscriber Line (DSL) service, and the Tauzin-Dingell bill would prevent us from taking any steps to protect DSL customers from abuses in the future.

Second, HR 1542 includes a limited reservation of state authority regarding voice traffic. However, this reservation does not include continuing state authority over inter-exchange voice telephone services carried over a packet switch network. Packet switching is the way the Internet works. In packet switching, the "conversation" (which may be voice, video, images, data, etc.) is sliced into small packets of information. Each packet is given a unique identification, and each packet carries its own destination address. The packets are reassembled in proper sequence at their destination using provided identification and

sequencing information. As the Internet becomes an increasingly important component of the voice telecommunications system, this market segment, if deregulated, will not be subject to the same consumer protection laws and requirements as other regulated voice telecommunications providers. At this point in time, when the parameters of this emerging service are still unknown, it would be imprudent to eliminate state oversight over such Internet voice telephone service.

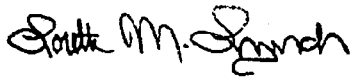
Third, HR 1542 would exempt the RBOCs and other incumbent local exchange carriers from resale and network unbundling requirements that now apply to high speed data and internet access services under the Act. These requirements would put at risk current efforts by the FCC and by our Commission under California law (AB 991 - Papan) to require incumbent local exchange companies to share their lines with competitive local exchange data carriers. The current "line sharing" requirement is critical to the rapid deployment of competitive broadband services to consumers.

And fourth, the Tauzin-Dingell bill would also allow Bell companies to provide in-region interLATA (local access and transport area) data services without having to satisfy the market-opening mandates outlined in section 271 of the Act. Since data traffic comprises roughly half of all telecommunications traffic today, this requirement would drastically reduce incentives for the RBOCs to meet their obligations to open local markets.

In conclusion, HR 1542 should be opposed, because if enacted, it would seriously undermine the current authority of the states to protect the interests of consumers and ratepayers, as well as to undermine key market opening requirements contained in the Telecommunications Act of 1996.

Thank you very much for your consideration of these comments. We would be more than happy to talk with you or with any member of your staff to discuss these important issues further.

Sincerely,



Loretta Lynch
President

Georgia Public Service Commission

(404) 656-4501
1 (800) 282-5813

244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.state.ga.us

May 2, 2001

The Honorable Bob Barr
House of Representatives
1207 Longworth House Office Building
Washington, DC 20515

Dear Representative Barr:

I respectfully urge you not to cosponsor or support H.R. 1542, the Internet Freedom and Broadband Deployment Act, sponsored by Reps. Tauzin and Dingell. This bill preempts state commission authority to regulate all rates, charges, terms and conditions for high speed data services including the facilities used in the provision of such services.

This bill will seriously undermine key local telephone market opening requirements contained in the Telecommunications Act of 1996 ("the Act"), and guarantee years of costly and time-consuming litigation. In addition, the bill does nothing to stimulate or assure deployment of advanced services in rural parts of Georgia.

1. THE "TAUZIN/DINGELL" BILL THREATENS TELECOMMUNICATIONS COMPETITION BY GUTTING KEY MARKET-OPENING PROVISIONS IN THE 1996 ACT.

As proponents have conceded, *The Internet Freedom and Broadband deployment Act eliminates a major incentive for the Bell Companies to open their local markets to competition.* Section 271 of the Act is designed to open local phone markets. That section currently requires the Bell companies to comply with a 14-point market-opening checklist before being allowed to provide long-haul transmission of data or voice across LATA boundaries. The "Tauzin/Dingell" bill eliminates those requirements with respect to data services severely undermining efforts to fully open local markets for competitive entry.

Bell Companies in five states with widely varying demographics have already passed the Section 271 checklist. To date, New York, Massachusetts, Texas, Oklahoma, and Kansas can now provide cross-LATA voice and data services. There are more applications pending throughout the country. Indeed, an April 12, 2001 Precursor © Group estimate suggests that the Bell companies will file for Section 271 authorization in all but one of the remaining states where they currently lack authorization to move voice or data traffic across LATA boundaries by the second quarter of 2002. It suggests that all will have met the checklist requirements by the second quarter of 2003.

In the Qwest region, 13 states have begun region-wide OSS testing with competitors to solve the technical requirements of interconnection as a prelude to individual State PUC approval of Qwest entry into cross-LATA voice and data services. There is no urgent need to pass this bill and undermine the process that Congress envisioned in 1996.

2. NOTHING IN CURRENT LAW PREVENTS BELLSOUTH FROM PROVIDING ADVANCED SERVICES TO CONSUMERS TODAY.

The current law does not prevent Bell Companies from providing broadband services to customers. They are only prevented from carrying data traffic across a LATA boundary. Indeed, the Bell companies have had digital subscriber line (DSL) technology for several years. However, only recently, in response to competitive pressure from cable modem service, have local telephone companies begun aggressively deploying DSL.

Local competition is the fastest way for consumers to obtain broadband services at competitive prices. The "Tauzin/Dingell" bill would actually inhibit the deployment of advanced services because it reduces the incentives for RBOCS to open their local markets to competition. In fact, Bell companies have already aggressively deployed broadband facilities in their home urban markets and are actively marketing high speed Internet access in the areas where they face competition.

3. THE "TAUZIN/DINGELL BILL WOULD MAKE IT IMPOSSIBLE FOR STATE PUC'S TO KEEP BASIC RATES FROM SKYROCKETING.

The bill expressly preempts state commission authority to oversee the nondiscriminatory application of terms and conditions in tariffs for high-speed data services. There may also be the risk that there might be commingling of voice transmission over the same facility. Packet switching is the way the Internet works. In packet switching the "conversation" (which may be voice, video images, data, etc.) is sliced into small packets of information. Each packet is given a unique identification and each packet carries its own destination address.

Currently, over one half of the traffic on the network is data. This is expected to climb to over 90% by 2002. Deregulation of this traffic would dramatically diminish local oversight of telecommunications companies that to date have retained dominate control over local markets.

Since voice and data is indistinguishable over the network, it is likely that at least some voice services will be provided using Internet protocols. These services may not fit within the definition of "telephone exchange service," a terms that presupposes the traditional circuit-switched telephone network of copper loops and central office switches. Under the bill, even if Internet-based telephone service replaces conventional service as a basic mode of local telecommunications, State Commissions would be powerless to protect consumers against higher rates or poor service quality.

In conclusion, we urge you not to cosponsor this bill and support the continued growth and innovation stemming from the pro-competitive measures in the 1996 Act that Congress worked so hard to pass. Competition will eventually eliminate the need for regulation of broadband services. Exempting these services from Section 271 requirements can only further delay the arrival of competition. *Congress should address broadband deployment to rural and urban areas directly and in a competitively and technologically neutral way – not by removing the Bell's incentives to open their local markets.*

We are enclosing a copy of a resolution passed by the National Association of Regulatory Utility Commissioners (NARUC) last March opposing this legislation. This resolution articulates the concerns that all state public service commissions have about this bill.

Thank you for your prompt attention to our concerns. If you have any questions about the status of broadband deployment or the status of local competition in your district, please do not hesitate to contact me.

Sincerely,

Stan Wise
Georgia Public Service Commissioner

Mr. CANNON. Thank you.

Mr. McLeod, if I could ask you a particular question? I was talking with a—some young entrepreneurs who have a high-tech company that depends on Internet access and you are their service provider. I raise it because they need consistent high-speed access and have had a terrible time with it. In addition to that, they have been double-billed by your company and the local RBOC. The erratic service, after much time and attention, turns out to be a defective switch at the RBOC side of things. And my understanding—I don't recall the numbers exactly, but they either wrote off $5,000 of an $8,000 bill or maybe they wrote off the whole—that is, your company wrote off the whole $8,000 bill because their service was not acceptable during that period of time. Is this typical of your experience with RBOCs around the country where you operate?

Mr. MCLEOD. We would find error rates in providing services in the 15, 20, 25, 30 percent range in filling orders. Okay? So if there is an error in filling an order, as we're proposing here, then we must go——.

Mr. CANNON. This is over like a 6 or 8 month period of time. So these people had problems for 6 or 8 months.

Mr. MCLEOD. Yeah. And those are the kinds of problems we will spend thousands of dollars trying to rectify. So an error that comes through a Bell facility, covered in their payments by us, while the Bell companies are making money on our payments to them, we are spending thousands of dollars trying to make good and hold on to a customer like that.

Mr. CANNON. And writing off the billing that you would otherwise receive.

Mr. MCLEOD. And writing off the billing because we don't really have equal access to the network. The Bell companies provide us one quality of service, and they provide their own customers a different quality of service.

Mr. CANNON. Mr. Glassman, could I ask you, it seems to me the real problem here is incentives, that if you have incentive to—if quality pays for itself, then you will want to have—qualify if you're an RBOC except as it relates to your competitor. Do you think this is a problem?

Mr. GLASSMAN. Yeah. I think it's a massive problem. Essentially, the Telecommunications Act of 1996, which I think is a good framework for the kind of broadband dissemination we need, had some flaws, and one of the flaws was it really didn't have any teeth. Instead, it simply offered an incentive to the Bells. If you do this, you can get into long distance. But they also had incentives on the other side to cause problems for people like Mr. McLeod's business. If they can cause problems for a long, long time, as they have been doing, then eventually these companies, the ones that are not as financially stable as Mr. McLeod's, go out of business. And now, to compound things, they have asked for this other bill which lets them immediately into long distance.

Mr. CANNON. Let me shift gears, if you don't mind, Mr. Glassman, and ask another question.

I was talking with an executive from the industry about the value of these companies—you indicated that their stock market valuation has plummeted and—about who would be buying those companies and why. And the answer is nobody is going to buy these companies even at their highly depressed prices as long as you have got the Tauzin-Dingell bill hanging over the head of the industry, because they could be valueless.

Mr. GLASSMAN. Absolutely. These companies still have a market cap, the way we define the companies anyway, of about $40 billion today, down from $200 billion. Big decline. But there're still assets there, there's still value there, and that value is rapidly diminishing as a result of this bill. If this bill passes, the value is going to be close to zero. Think about it. If you're an investor, if you're a lender or somebody who wants to commit equity to a CLEC, you have to be out of your mind today with this bill hanging over the industry. You would be nuts.

Mr. CANNON. That's essentially what you said.

May I ask one final question of Ms. Greene? You pointed out that 70 percent of this industry is dominated by cable and only 30 percent by DSL, the RBOCs. Isn't it true that only about 7 percent of the people have access to broadband today? So you're talking about 70 percent and 30 percent of only 7 percent, isn't that right?

Ms. GREENE. Only 7 percent in total have access?

Mr. CANNON. Only 7 percent of the people around the country today have access today to broadband.

Ms. GREENE. I would think that it is different in every service territory. In BellSouth service territory, we will have 70 percent of the households that we pass eligible for DSL lines by the end of next year; and so we are making a concerted effort to get DSL available and roll out our technology.

Chairman SENSENBRENNER. The time of the gentleman has expired.

The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman; and I yield for as much time as he may need to the Ranking Member, Mr. Conyers.

Mr. CONYERS. I thank you, Mr. Delahunt.

I just want to clear up an important question that Congressman Scott raised with our former colleague in which it was not made perfectly clear that, under this bill before us, the section 271, we would be providing voice telephone service under Tauzin-Dingell but not data service. Mr. Tauke said yes to both, and this is the huge—here's the $64,000 question that just got slipped through here. It does not include data, and that's where the market's going, right?

Thank you for yielding.

Mr. DELAHUNT. I think maybe Mr. Tauke would like to respond, but I don't think I have the time to allow him to do that.

Mr. Tauke, you indicated earlier that, with the PUCs, their inclination to oppose Tauzin-Dingell was predicated, in your opinion, on loss of jurisdiction. Now, you've heard other colleagues here speak to the issue of the consumer. Now, Consumer Federation of America, Consumer Union—these are legitimate consumer organizations, and they're highly regarded by Members on both sides—are both opposed to Tauzin-Dingell. Is their analysis in terms of the impact on the consumer inaccurate? How do you account for their opposition and its impact to the consumer?

Mr. TAUKE. Yes, in simple terms, I think their analysis is wrong. There has been a lot of faulty analysis relating to this bill; and, frankly, I think there has been quite a bit of that today. There are other groups such as the NAACP, the League of United Latin American Citizens, Alliance for Public Technology——.

Mr. DELAHUNT. Sir, you have answered my question. I appreciate that. But in terms of the consumer interest, these are groups that have for a long period of time existed and analyzed various proposals before Congress regarding impact on consumers.

Mr. TAUKE. And they opposed the '96 act, too. They have traditionally opposed any change in telephony regulation.

Mr. DELAHUNT. All right. Again—and I would go back just to pursue the point by Mr. Cannon. I mean, I think the point that Mr. Glassman is making—and I'll presume that his data is accurate and maybe you can expand on that—but while Tauzin-Dingell is kicking around here in Congress, it is having an impact in terms of capital access, and uncertainty we know the financial markets do not embrace and, in fact, run away from.

Mr. McLeod, you—as someone that's in the business, do you have any anecdotal information? In your own experience when you go to a bank, are they saying to you, gee, Mr. McLeod, we'd like to help, but what is Congress going to do in terms of Tauzin-Dingell? Are you aware in your own experience or any of your competitors finding access to capital substantially impaired?

Mr. MCLEOD. Yeah. I think the handwriting is pretty simple to read. I don't think I have to hunt very far for examples of this. When you see the industry and the capital being shut off you know that the markets have weighed in and said, look, we set up the rurals in 1996. This bill——.

Mr. DELAHUNT. Mr. McLeod, my question is, have you run into that experience? Are you aware of anybody that has gone down seeking capital and it just isn't working?

Mr. MCLEOD. Yes. I have spoken to people on Wall Street who will specifically talk to a bill like H.R. 1542 and say if we go in this direction are we just remonopolizing the marketplace. So that is——

Mr. DELAHUNT. Mr. Glassman.

Mr. GLASSMAN. We've had three dozen CLECs in chapter 11, and lots of them are ready to go in. Let me just quote Reed Hunt, former FCC Chairman: "Investors no longer know the direction of policy. They no longer know what to bet on, so they are taking money off the table."

Mr. DELAHUNT. Thank you.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. I thank the Chairman.

One of the reasons we are here today is to talk about the antitrust provisions of this and the—what is it called? *Goldwasser* case, is that how you pronounce it? Now, it's my understanding today—I mean, not understanding. When you want to pass a rate or a tariff you go to the regulatory agency and you get that approved. Does everybody on the panel agree with that?

Mr. TAUKE. Yes.

Mr. BACHUS. You file for it and you get it approved? And once that's approved, then you don't have to defend it against the tariff. You don't have to defend that against an antitrust action, a collateral attack by a customer; and that's true, isn't it?

Mr. TAUKE. Yes.

Mr. MCLEOD. Well, the rates for services are still being questioned all the way to the Supreme Court today.

Mr. BACHUS. Well, they're being questioned. But now there's—we've had a doctrine—and I graduated—I was outstanding senior at a pretty good law school, and we were taught that if you go to—and I only say that because, you know, we were taught then and I think I mastered it that if you go to a rate agency and you get—you file and you get a tariff approved, then a customer can't go in and collaterally attack that. Isn't that the doctrine we've had since—what is that case? Chicago Northwestern is the defendant, wasn't that right? Hasn't that been the law since 1922?

Mr. TAUKE. That is what I understand the law to be.

Mr. BACHUS. And it was affirmed in the *AT&T* case just recently, wasn't there, 1998, by the Supreme Court? Now, does anybody disagree with that doctrine, that if you go to an agency and you get a rate or a tariff approved that you don't have to let every customer go into court and collaterally attack it? Don't we all agree on that?

Mr. GLASSMAN. Mr. Bachus, I hope my silence doesn't mean I agree with it. It's just that I'm not a lawyer——.

Mr. BACHUS. You talk about companies going broke. If that doctrine came off and you had to defend yourself against every rate attack by every customer that was disgruntled, there'd be a lot more companies going——.

Mr. MCLEOD. In a monopoly-controlled environment, where rates are established for a resource, that is, a monopoly resource——.

Mr. BACHUS. Right, but what I'm saying, the Circuit Court just affirmed that doctrine. They affirmed the doctrine in the *Keogh* case.

Mr. TAUKE. And it's true not just in monopoly environments. It's true in any environment, including long distance marketplaces or others where tariffs are filed, they aren't subject to subsequent attack by customers on an antitrust basis.

Mr. BACHUS. You know, I went to read that case thinking it was some complicated thing, it would be hard to understand, and all the court did is affirm a doctrine that's been in existence since 1922, and it's been affirmed every so often. I mean, that's my understanding of the case. I mean, I didn't think it was—I'll go back and——.

Mr. MCLEOD. Can I talk practical versus legal for a second?

Mr. BACHUS. Yeah. But I mean it was a legal decision. And it may have a practical effect, but what I am saying, maybe the court as a practical matter needs to say that once you get a rate or a tariff approved, customers can go in and collaterally attack it, something I don't think anybody in the industry would want, but, you know, that's the doctrine.

Mr. MCLEOD. Certainly the monopolies would not want that to occur, because it is protection for the monopolies.

Mr. BACHUS. I think if you go to a regulatory agency——.

Well, let me ask you this, and I also heard this—and let me just ask Ms. Greene, because I could have sworn that our farmers have endorsed Tauzin-Dingell. Have not your farm organizations, some of them, the Grangers and others, hadn't they—they represent rural America, I mean, the farmers. Hadn't they endorsed this bill?

Ms. GREENE. I'm confident that the Grange has, but we have many consumer organizations that have endorsed this bill.

And back to the question that was asked about Consumer Federation of America and Consumers Union, they do not endorse Tauzin-Dingell, but the reason is because they want open access for cable as well. They want competitors treated similarly, which is what Tauzin-Dingell would do, but they want regulation imposed on all sides.

Mr. BACHUS. Would we all agree that today your small—your rural consumer, your small business, if he's not hooked up to the Internet, he can't compete effectively? Do we all agree to that?

Mr. GLASSMAN. Yes. And, by the way, as you may or may not know, Congressman, the Bells have been selling off their rural lines. They sold off 10 million rural lines already, and there was a Legg-Mason conference where the analyst said they want to sell off another 20 to 30 million rural lines.

Mr. BACHUS. And——.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Virginia, Mr. Boucher.

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

Mr. Tauke, let me get you to respond to some of the claims that have been made by opponents of the legislation with respect to the state of competition of the local exchange; and let me begin with just some numbers about the percent of lines of the local exchange that are in the hands of the CLECs.

In the case of the residential market, the CLECs have something like 6 percent of the lines nationally, but in the case of the business market, the CLECs have something on the order of 40 percent

of the local exchange lines. And I think Ms. Greene said that in the City of Atlanta that number now approaches 50 percent.

The rules for obtaining access are exactly the same as in the case of the residential market and the business market, and so what is there about the residential market that has caused the CLECs not to invest? Why do we have only 6 percent of those lines in the hands of CLECs, whereas in the case of the business market it's 40 percent and upwards? And what conclusion should the Members of this Committee draw from those numbers about whether or not the local exchange is truly open to competition today? Mr. Tauke.

Mr. TAUKE. Well, first, Mr. Boucher, I think it's important to note that competition is developing very rapidly in some marketplaces. If you look, for example, at the State of New York, even if you look at just access lines, just access lines, 25.62 percent of the access lines in the State of New York are now controlled by competitors; 17.96 percent in the State of Massachusetts; 14.04 percent in the State of Pennsylvania. So competition is developing quite rapidly in some States, particularly where there are major metropolitan areas.

Secondly, if I you look at a State like New Jersey, and you have the barbershop on the first floor and the apartment on the second floor, the barbershop for dial tone pays 50 bucks a month. The residence that's on the second floor pays $8.18 a month. Now, if you are a competitor, where are you going to go to sell your services? You're going to go to the barbershop, not to the apartment upstairs. This is what Ms. Greene was trying to explain earlier in her remarks. They go where the money is.

That's how—why we develop—competition develops first in the very large business, high-speed-access market to large businesses. It develops next in the mid- and small-sized businesses, and it develops last in the residential marketplace, except in those States where they have begun to change the rate structure.

Mr. BOUCHER. And the conclusion that we should draw as Members of this Committee about the state of competition of the local exchange is what? What would you say?

Mr. TAUKE. Well, as the FCC said in its report that was just recently issued, and I encourage all of you to read it, competition is developing very well in the local market. It's going to the business market before it goes to the residential market and it develops more rapidly in States where long distance entry has been granted. Why? Because then the long distance companies come in and compete in the local marketplace.

Right today, the long distance carriers don't come in in a major way in States until they see the Bell company getting into the long distance market, and then they go into the local market in order to preserve their customer base.

Mr. BOUCHER. The second claim I'd like to get you to respond to is this. The opponents of the legislation say that passage of the Tauzin-Dingell bill would undermine the section 271 process that currently governs the entry of Bell Operating Companies into the interLATA long distance market.

Let's suppose this bill is passed, and immediate entry for data service is allowed. What remaining incentives would there be for the Bell Operating Companies to take the steps necessary to open

their local exchange to competition or retain the openness that now exists in the event that the bill passes? And I would ask for the answer in two particulars. First of all, is the size of the voice-based long distance market adequate to provide that incentive? And, secondly, are there any provisions in existing law, perhaps in section 251 of the 1996 act, that would require the Bell Operating Companies to have an open local exchange, incentives aside?

Mr. Tauke.

Mr. TAUKE. On the first question, the size of the voice market, long distance voice market is over $100 billion, and the margins are high. The size of the data long distance market is about $6 billion, no estimate that I've seen higher than $10 billion. So the comparison of the two markets shows the incentive is in the voice market, and the margin in the data market is virtually nonexistent.

In answer to your——.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Good to have you all with us.

From the comments made during the last hearing on this subject there appeared to be general agreement that the Bell companies would receive section 271 approval across the country and, therefore, under the provision of the 1996 Telecom Act, be granted entry into the long distance market and competitors will have access to their local route.

I'm furthermore advised that the FCC is in the process of reviewing line-sharing agreements—strike that—line-sharing requirements and looking for an efficient and fair way to apply such requirements to fiber lines.

Now, if the Bells are going to be able to enter the long distance market within the next year, give or take 4 or 5 weeks and the FCC is reviewing line-sharing requirements, why is Tauzin-Dingell necessary?

From anyone. Ms. Greene.

Ms. GREENE. Well, we will still not have a clear telecommunications policy, even if the FCC would decide that line sharing wouldn't be required. The FCC has recently decided that they should extend unbundling and regulation to packet switching. In each generation of technology that comes forward, there is still the regulatory threat that the FCC will reach out and break that apart into piece parts and then price it at a deeply discounted rate and make it available to competitors. Cable doesn't enjoy that kind of regulation, satellite doesn't, and neither does wireless.

Mr. COBLE. Anybody else want to weigh in on this?

Mr. GLASSMAN. Yeah, I'd like to, Congressman.

You asked a very important question. Right now, the Bells are perfectly capable of getting into DSL. They're doing it. SBC's Project Pronto, $6 billion. BellSouth is doing it. It isn't necessary to pass this legislation. However, with the legislation up here hanging over the heads of CLECs, as it has been for over a year, their market caps are declining. Uncertainty grows, capital dries up. So from a strategic point of view it makes a lot of sense for the RBOCs to have this bill hanging around. From a practical point of view, no.

Mr. COBLE. I understand that. I did not mean to imply that it's not necessary, but, as the old farmer said, I wanted somebody to 'splain to me why it was necessary.

The gentleman from Iowa.

Mr. TAUKE. Well, first, I want to point out I vigorously disagree with Mr. Glassman's analysis of the market, which we could get into at another point, but, in response to your question, I think that it is important to understand that timing is of the essence here because the fact of life is that today Americans are seeking and want broadband services, and every month, quarter, year delay takes time. So one issue is just timing, and the timing relating to our long distance entry and the timing relating to the deployment of broadband services in the local loop and for the FCC to change its rules is very important, and that takes time.

The second big thing is that——.

Mr. COBLE. You have to make it quick because I have got to beat that red light.

Mr. TAUKE. I will speak fast. The FCC has tried—they tried to relieve us from the section 251 rules. These are some of the requirements we're talking about today. If you put this in a separate affiliate, your high-speed data services in a separate affiliate, these rules shouldn't apply. In part they did that because they don't think that it makes sense for telephony rules to apply to broadband. The court overruled them. So the fact of life is that the FCC sees the need to do it, but they aren't sure they have the authority to do it.

Mr. COBLE. Mr. McLeod.

Mr. MCLEOD. Absolutely right. Mr. Tauke has said time is of the essence. We have waited 5 years for compliance to section 271, the competitive industry has waited 5 years, and if, in fact, they're ready to open up their network in a year, I would say the Bell companies could certainly wait another year and comply with section 271 and be able to provide all services.

Mr. COBLE. Let me ask Ms. Greene a follow-up question. Ms. Greene, what is your company's business plan if H.R. 1542 were to become law, compared to the fact that if it did not become law?

Ms. GREENE. Our business plan, if 1542 was law, would be not characterized with the degree of caution that we have today. Today, as we look where we're going to place our DSL investment, we have great concern that the same pattern that has happened to us with the investment that we've had in the traditional network, that that same pattern will occur, where we have subsidized rates and we are counting on an incentive and then the regulators will come in and force us to sell that network at a deeply discounted rate. We would have more confidence. We would be a bolder investor.

Mr. COBLE. All right, folks. Can competitors compete with Bell monopolies?

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. CANNON. Mr. Chairman, may I ask unanimous consent that Members be allowed to submit written questions to the witnesses?

Chairman SENSENBRENNER. Without objection.

Also without objection, and at the request of Mr. Conyers, I would like to insert into the record a letter dated June 4th from

the Association for Local Telecommunications Services addressed to me in support of the Cannon-Conyers bill and in opposition to the Tauzin-Dingell bill.

[The information follows:]

June 4, 2001

The Honorable F. James Sensenbrenner, Jr.
Chairman
House Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We are the senior executives of several of the nation's leading competitive local exchange carriers (CLECs) that are members of ALTS – the Association for Local Telecommunications Services. We write to express our profound opposition to H.R. 1542, the Tauzin-Dingell bill and our strong support for H.R. 1697 and H.R. 1698, the Conyers-Cannon and Cannon-Conyers bills.

We are the pioneers. We were among the first companies to compete for local telecommunications services against the Regional Bell Operating Companies (RBOCs). Collectively, we have created almost 100,000 jobs and invested over $56 billion to build new communications networks in the five years since passage of the Telecommunications Act of 1996. (ALTS State of Local Competition Report, Feb. 2001). Our entrepreneurial companies were the first to market many sophisticated voice and data services, including DSL, at prices far lower than the Bells' then-existing prices. Furthermore, we reinvest over one-half our revenues each year back into our networks, a rate of investment that far surpasses the investment percentage of the RBOCs. As a result, approximately 60% of local dial-up Internet traffic is carried by the telecom networks we have built. In other words, our companies provide the foundation for our nation's "Information Economy."

Our future growth, however, depends upon continued enforcement of the 1996 Telecom Act. While we have grown substantially, the FCC reports that we had only about 8% of the local telephone market at the end of 2000. (FCC Local Competition Report, May, 2001). Our progress has been hindered by the continued failure of the RBOCs to open their networks to competition as Congress required. The RBOCs often refuse to connect consumers' telephone wires (the "loop") to our equipment, they deny our bona fide requests to place equipment in the central offices, they bill us for services we have not ordered, and they otherwise delay our ability to provide service to our customers. These obstructions are a significant reason why many CLECs have been forced into bankruptcy over the past year.

We support H.R. 1697 and H.R. 1698 because they strengthen the enforcement of the 1996 Telecom Act. These bills reiterate that the antitrust laws continue to apply to anticompetitive actions of the incumbent local telephone companies, establish an alternative dispute resolution mechanism to resolve disputes quickly, and allow the RBOCs into the interLATA data market only after their market share falls below 85%. These bills allow the antitrust laws to be used to open the local telephone marketplace to competition, establish an alternative dispute resolution mechanism to resolve disputes quickly, and allow the RBOCs into the interLATA data market only after their market share falls below 85%. By requiring the RBOCs to open their networks to competition, these bills will advance the pace of broadband deployment all across the country.

By contrast, the Tauzin/Dingell bill will slow down broadband services and could delay local competition even further. This unwise legislation will exempt the RBOCs from opening their networks to competition and reward them unjustifiably for ignoring Congress' mandate to deal with competitors. This bill is extremely damaging to competition, the Internet, and consumers. It is for this reason that Internet providers, states, and consumer groups all have joined with the CLECs in opposing this bill.

On behalf of our own companies and the 64 CLECs that are Members of ALTS, we strongly urge you to vote in support of H.R. 1697 and 1698 and to oppose H.R. 1542.

For further information, please call John Windhausen, Jr., ALTS President, at 202 969-2587.

Sincerely,

Bob Taylor
President and CEO
Focal Communications

Royce Holland
Chairman and CEO
Allegiance Telecom

Dhruv Khanna
Executive VP and General Counsel
Covad Communications

Roscoe Young
President and COO
KMC Telecom

David Ruberg
Chairman, President and CEO
Intermedia Communications

Clark McLeod
Chairman and co-CEO
McLeodUSA

William Rouhana
Chairman and CEO
Winstar Communications

Dan Moffat
President and CEO
New Edge Networks

Jim Geiger
CEO
Cbeyond Communications

Clifford Rudolph
Chairman and CEO
Advanced Telcom Group

Wally Griffin
President and CEO
Pac-West Telecomm

Nate Davis
COO
XO Communications

Dave Struwas
Chairman and CEO
DSL.Net

Larissa Herda
Chairman, CEO and President
Time Warner Telecom

George F. Schmitt
Chairman and
Acting Chief Executive Officer
e.spire Communications, Inc.

Bob Hale, Sr.
Chairman
Network Plus

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I'd be delighted to yield to the Ranking Member.

Mr. CONYERS. Thank you, Ms. Jackson Lee.

Tom, this isn't our best day, but let me just point out to you the NAACP does not support the Tauzin-Dingell bill. Do you know that?

Mr. TAUKE. Well, I think I disagree with you, Mr. Conyers.

Mr. CONYERS. Well, check with Hilary Shelton, the Executive Secretary—Executive Director of NAACP, because I just called him.

Mr. TAUKE. Well, they're on the Hill lobbying in favor of the bill.

Mr. CONYERS. Okay. I'll go get him then. If I bring him here, and he'll—he won't be able to be a witness, but if I can bring him in the room and have him hold up a sign, would that—what would that do for you?

Chairman SENSENBRENNER. The gentleman from Michigan knows that demonstrations are not allowed in the Committee room.

Mr. CONYERS. Could we slip him a note, Mr. Chairman?

Thank you. I thank the gentlelady.

Ms. JACKSON LEE. Thank you very much, and I thank the Ranking Member.

Let me use the time I have to try to bring us back to where we started, not at the turn of the century but 1996 and the Telecommunications Act. And to Mr. Tauke I'd like to ask, and as our time flows, why that does not fit for what you're trying to do today. And I am going to go right to your next door neighbor, Mr. McLeod, for why you feel we need legislative action to fix where we are today. Mr. Tauke, why not the 1996 bill? Why is that not tough enough, telecommunications?

Mr. TAUKE. The 1996 act did not address broadband policy. Ira Magaziner, as some of you may recall, was at the White House at that time and handled the White House position on the——.

Ms. JACKSON LEE. Your mike, please, is not on, I don't think. Is the light on? Thank you.

Mr. TAUKE. Okay. During the 1996 act, Ira Magaziner, who represented the White House, worked very hard to get a title VII in the act, which some of you may recall, to establish a broadband policy, and it would have said that services above a certain speed would have been treated as broadband policy and—or as broadband, and there would have been a separate policy articulated. Because that was not done in the 1996 act, there has been a lot of confusion as to what rules do apply.

As I indicated in my earlier testimony, three circuit courts have addressed this issue and haven't even been able to decide if broadband services are telecommunications services or in some cases if they're cable services or which piece of the act applies to them. The FCC tried to deregulate many of these services as part of the merger, for example, in our case of *Bell Atlantic* and *GTE*, as long as we placed them in a separate subsidiary, which we subsequently did. The court overruled that effort by the FCC.

Ms. JACKSON LEE. You do not think, yes or no, that the 1996 act precludes Tauzin-Dingell? Precludes.

Mr. TAUKE. No, it does not preclude Tauzin-Dingell.

Ms. JACKSON LEE. Mr. McLeod, why cannot we act in the framework of the 1996 Telecommunications Act as it relates to CLECs?

Mr. MCLEOD. I think the framework for the '96 act is fine. However, in the process of implementing that, we need to buy services, if you will, from the telephone companies and receive equal access to those services. To get equal access means that the telephone companies need to provide that service in the same way they're providing it directly to their own retail operations.

If anyone believes that there isn't a conflict of interest there that is so huge it's insurmountable, then I'd like it explained to me, how we would get equal access to their retail operation. So, to solve that, we need to be able to functionally separate that provisioning

of services so that we get the same service as their own retail operation. How can we separate them—or you can do as we did in the long distance industry, and that is we can break them apart structurally. Now, those are the two solutions to that.

The second thing is that, as we move forward here, the Bell companies have to have some kind of punishment when they don't comply with the act, some kind of punishment.

Let me read a short article here from the Telecom Report where——.

Ms. JACKSON LEE. Would you be kind enough maybe to submit it to the record or summarize it? Because my time is moving, and I've got some additional questions.

Mr. MCLEOD. I will summarize it very quickly.

Ms. JACKSON LEE. If you would.

Mr. MCLEOD. SBC was fined $88,000 for not complying with the merger act when they bought Ameritech. This is a $100 billion company. Let's not go after elephants with BB guns. You can't fight an $88,000 fine.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. I appreciate your holding this second hearing on this important issue.

I have a statement that I would ask to be inserted in the record.

Chairman SENSENBRENNER. Without objection.

Mr. GOODLATTE. Thank you, Mr. Chairman.

[The statement of Mr. Goodlatte follows in the Appendix.]

Mr. GOODLATTE. Mr. Chairman, in addition, I have a lengthy letter addressed to you by Herbert Hovencamp, who is the professor of law at the University of Iowa who is the author of the 18-volume Antitrust Law, one of the major treatises in this area, that supports the *Goldwasser* decision, says it's a correct decision and rather severely criticizes the Conyers-Cannon legislation that has been introduced to overturn that decision. I ask that that be made a part of the record.

Chairman SENSENBRENNER. If the gentleman would yield, this is not all 18 volumes, is it?

Mr. GOODLATTE. No, it's only five pages.

Chairman SENSENBRENNER. Without objection.

Mr. GOODLATTE. Thank you, Mr. Chairman.

[The information follows:]

HERBERT HOVENKAMP
407 Boyd Law Building
Univ. of Iowa
Iowa City IA 52242
(319)-335-9079
fax: (319)-335-9098
Herbert-Hovenkamp@uiowa.edu

June 4, 2001

Honorable James Sensenbrenner, Jr.
United States House of Representatives
2332 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

I am the Ben V. & Dorothy Willie Professor of Law at the University of Iowa, where I teach antitrust law. I am also the author of *Antitrust Law* (Aspen, 18 volumes), formerly with the late Phillip E. Areeda and the late Donald F. Turner. I have worked as a consultant to BellSouth Corp. on this and other antitrust matters.

I am writing to you as an antitrust scholar concerned about the implications of a pending bill, HR1698 (Cannon-Conyers), for the rational and pro-consumer administration of the antitrust laws. Specifically,

> Section 28(1) of that bill requires a federal district court to refuse to dismiss an antitrust claim simply because the conduct is subject to the Communications Act of 1934 ("CA1934"); and section 28(2) provides that any conduct violating CA1934 may be considered by the "trier of fact" in determining whether there is an antitrust violation.
>
> Then, section 29 states that if "an adjudicatory body" finds that an ILEC violated sections 251, 252, 271 or 272, or any rules promulgated under those provisions, this violation shall be deemed to be an antitrust violation.

I have two principal concerns.

First, section 29 of the bill would improperly supersede and undermine the time-tested method by which the courts interpret the brief and general language of the antitrust laws. An essential part of that method is the rules that the Supreme Court has developed over nearly a century for determining the proper relationship between the federal courts and federal and state regulatory agencies. This system is designed to minimize the high social costs of duplicative and inconsistent -- and thus ultimately incoherent -- decision-making. HR 1698, however, would replace this flexible system with a regime where any violation of a broad array of detailed regulatory obligations would be irrefutably presumed to constitute an antitrust violation. Such an approach is unprecedented, unwarranted by present circumstance, and utterly inconsistent with the philosophy of the antitrust laws.

Second, HR 1698 appears to be a precipitous legislative response to the possible implications of dicta

in a single U.S Circuit Court decision (*Goldwasser*, in the Seventh Circuit).

More specifically, my concerns are these:

1. Section 28(1) requires a federal district court to hear an antitrust claim without in any way reducing or eliminating the regulatory oversight of either the state regulatory commissions or the FCC. I cannot think of another antitrust or antitrust-like provision that does this in this blanket fashion, and it would create an adjudicatory nightmare. This means:

> (a) that one or more antitrust proceedings could go forward with respect to conduct or disputes that were currently under consideration by a state or federal agency;
>
> (b) conduct could be challenged as an antitrust violation even though approved after full review by either a state or federal agency;
>
> (c) findings of fact made by a regulatory agency could and would be revisited and second guessed by juries.
>
> (d) a CLEC dissatisfied with the negotiation process toward reaching an interconnection agreement, or with an ILEC's performance under an interconnection agreement could simultaneously file an antitrust complaint in federal court, seeking a jury trial, while it pursues its regulatory remedies in the appropriate agency (subject to the dispute resolution provisions later in the bill).

In sum, this bill would completely upset the historically developed system for limiting chaos and reducing enforcement costs when conduct is arguably under the jurisdiction of a regulatory agency and subject to an antitrust action. That system, which applies to both fully regulated markets and those that are subject to partial deregulation, has developed elaborate criteria under which the antitrust court (1) yields in appropriate circumstances to the exclusive jurisdiction of a federal or sometimes state agency; or (2) stays its hand until the agency has made its determination; or (3) proceeds where the agency lacks the authority to assess the competitive consequences of a particular act or has failed to do so. See generally 1A P. Areeda & H. Hovenkamp, Antitrust Law ¶¶ 240-246 (2d ed. 2000). The bill would simply require that the federal antitrust suit proceed notwithstanding pending or dispositive action by the state or federal agency.

2. The bill would seem to do precisely the opposite of what Congress had in mind when it passed the 1996 Telecommunications Act ("TCA1996"), replacing a regime in which Judge Harold Greene largely administered interconnection agreements under the consent decree in the AT&T divestiture case. TCA1996 was intended to require interconnection aggressively, but with the terms managed by knowledgeable state agencies and the FCC rather than a federal court. To a very large extent, HR1698 will create a regime in which interconnection agreements will be governed by antitrust adjudication by courts of general jurisdiction and in jury trials. This would be a giant step backward from the Greene administration, which involved non-jury equity actions and a single decision maker who over the course of a decade became quite knowledgeable about the industry. Further, under the principles of collateral estoppel, which bind only parties, there could be multiple antitrust adjudications, depending on the degree to which such cases could be consolidated and transferred.

3. The incentive for a CLEC, a consumer group as in the Seventh Circuit's *Goldwasser* situation, or

some other aggrieved party to take the antitrust route rather than the agency route will be very strong, for the antitrust route will provide (a) a jury trial; (b) treble damages and injunctive relief; and (c) the prospect of attorneys fees to a prevailing plaintiff. Overall litigation costs will increase by a very large magnitude.

4. Under current procedures the interval from the filing of an antitrust complaint to an actual jury trial, including court adjudication of summary motions (mainly motions to dismiss, to exclude expert testimony, and summary judgment) is between one and two years or sometimes more. A jury trial in a complex case often takes a month, and some take much more. Although I do not have first hand knowledge of every state regulatory process, as a general matter it is safe to say that the agencies move with lightning speed in comparison with an antitrust jury trial proceeding in a federal district court.

5. The section 29 provision of HR1698 making a violation of sections 251, 252, 271 or 272 an automatic antitrust violation is ambiguous as to overall antitrust implications. Although no specific antitrust provision is specified, the conduct complained of is largely unilateral. So the assumption must be that TCA violations will be deemed to be Sherman section 2 violations. This creates what amounts to an unprecedented per se section 2 violation, which is particularly unwise because the various provisions of these four sections of TCA are highly technical and subject to a wide range of reasonable interpretations. For example, will it be unlawful monopolization if a separate Bell affiliate fails to "maintain books, records, and accounts in the manner prescribed by the Commission...?" (47 U.S.C. section 272(b)(2).

Under the most obvious reading the bill would turn violations of these provisions into antitrust violations without any separate showing of injury to competition, or even a finding that the conduct in question creates or threatens to create or perpetuate a monopoly; the plaintiff would have to prove in addition only its injury-in-fact and its damages. Under a narrower, but I believe less obvious reading, a violation of these telecomm act provisions would establish the power and conduct portions of an antitrust violation, but the private plaintiff would still have to prove antitrust injury or injury to competition, standing, cause-in-fact, and damages separately.

6. Under HR1698, section 29, a finding that sections 251, 252, 271 or 272 of the telecomm act has been violated is made by an "adjudicatory body." While the meaning of this phrase is unclear, it almost certainly contemplates that such a finding could be made by the antitrust tribunal itself, and perhaps by state commissioners or even arbitrators. Ordinarily, the question whether a statute is violated presents a question of law, although the jury may be asked specific fact questions whose answers will give rise to an inference of statutory violation (e.g., "was the defendant's speed in excess of 65 miles per hour"). In all events, HR1698 will produce the possibility and even likelihood of inconsistent adjudications vis-a-vis the regulatory agencies on the question whether certain conduct violates these TCA provisions.

7. It is not clear to me what the status of a simple violation of an interconnection agreement is under this provision. TCA1996 requires the good faith negotiation and execution of interconnection agreements and oversight of the administration of these agreements by state and in some cases a federal agency. Plaintiffs in cases such as *Goldwasser* and *Intermedia* in effect take the position that any ILEC action found to be in violation of the interconnection agreement is automatically in violation of TCA as well. However, if an interconnection agreement violation equals a TCA violation, and if a TCA violation automatically becomes an antitrust violation, as HR1698 contemplates, then every contract dispute about ILEC compliance with an interconnection agreement will end up as an antitrust dispute in a federal district court jury case. This would create a litigation surge of truly historic proportions. The

implications of the compulsory arbitration provisions that appear later in HR1698 are not clear to me, but those provisions do clearly state that while the arbitrator's decision is binding on the parties it will have no collateral estoppel effect in any other tribunal.

8. HR1698, section 29, makes its finding of an automatic antitrust violation depend on a violation of sections 251, 252, 271 or 272, or of "any rules promulgated pursuant to such sections...." This creates the extraordinary situation (at least, in my experience) that a technical violation of an agency rule is automatically turned into an antitrust violation to be enforced by treble damages jury trials. As anyone experienced with agency rule making knows, these rules are susceptible to changes in the politics or ideology of the agency in question, are often quite creative in their attempts to enforce the underlying statute, and are often extremely technical or ambiguous. Significantly, the "an adjudicatory body" language in HR1698 appears not even to require that the agency decide that its own rules have been violated before an antitrust suit could proceed. Hypothetically, the FCC might promulgate a detailed and technical rule governing compliance with trunk line requests. At that point a CLEC unhappy with an ILEC's performance could go straight to federal court claiming that the FCC's rule was violated and that this automatically constitutes an antitrust violation. The federal district court would then be obliged to sidestep a procedure under which the FCC would get to decide first whether the conduct in question even violates its own rule. This is bizarre and could have nightmarish consequences.

9. Overall, the bill seems to be predicated on the concern that the Seventh Circuit's *Goldwasser v. Ameritech* decision improperly created an implied regulatory immunity from the antitrust laws, when such an immunity was never intended by Congress when it passed the TCA1996. This seems to me to be both a misreading and an overreaction to a single Circuit Court decision. Although a few dicta in the Seventh Circuit's *Goldwasser* opinion can perhaps be read more broadly, its holding is clear:

Our principal holding is thus not that the 1996 [Telecommunications] Act confers implied immunity on behavior that would otherwise violate the antitrust law. Such a conclusion would be troublesome at best given the antitrust savings clause in the statute. It is that the 1996 Act imposes duties on the ILECs that are not found in the antitrust laws. Those duties do not conflict with the antitrust laws either; they are simply more specific and far-reaching obligations that Congress believed would accelerate the development of competitive markets, consistently with universal service (which, we note, competitive markets would not necessarily assure).

Goldwasser, 202 F.3d 390, 401 (7th Cir. 2000).

Clearly the Seventh Circuit was not creating nor recognizing any implied immunity. Rather, it was rejecting, as it should have, the proposition that the Telecommunications Act expanded the scope of antitrust liability to reach conduct not historically reachable under the antitrust laws, but which violates the more specific provisions of the Telecommunications Act.

An important case pending in the Eleventh Circuit (*Intermedia v. BellSouth*) promises to shed additional light on questions concerning the scope of antitrust liability for conduct that is governed by provisions of the Telecommunications Act. In that case the Justice Department has filed an amicus brief arguing that the TCA fails to create any antitrust immunity, and the defendant (Bellsouth) is not asserting immunity as a defense. Too date, no federal decision has concluded that such an immunity exists, thus making legislative action on this issue premature and ill-advised.

10. The implications of HR1698 for the "filed rate" (*Keogh*) doctrine are not clear. While the bill

declares violations of the Telecommunications Act to be antitrust violations, it says nothing about the extent to which various private groups can maintain an antitrust action. The filed rate doctrine operates to prohibit collateral attacks on rates that have been filed with a regulatory agency. The antitrust implication of the doctrine is that a party is prohibited from challenging a filed rate as an antitrust violation, or collecting antitrust damages based on an alleged monopoly or cartel overcharge contained in a filed rate. Rather, such disputes must be presented in the first instance before the relevant agency, and then they may go through whatever judicial appeal process the relevant regulatory provision prescribes.

The filed rate doctrine has been around since the 1922 decision of the Supreme Court in *Keogh v. Chicago & N.W. Ry.*, 260 U.S. 156 (1922) and re-affirmed by the Supreme Court in *AT&T v. Central Office Tel.*, 524 U.S. 214 (1998). The Seventh Circuit's *Goldwasser* decision is an orthodox application of the doctrine insofar as it prohibits a customer from mounting a collateral attack on a tariff that was duly filed before a regulatory agency. Abandoning the doctrine entails that any party who feels that it has been injured by a provision in an agency-approved tariff could go to a federal court, whether or not that person lodged an objection with the agency or pursued ordinary appellate remedies.

Thank you for the opportunity to present my views.

Sincerely,

Herbert Hovenkamp

Herbert Hovenkamp cer

CC: Hon. Henry Hyde
Hon. George Gekas
Hon. Howard Coble
Hon. Lamar Smith
Hon. Elton Gallegly
Hon. Bob Goodlatte
Hon. Steve Chabot
Hon. Bob Barr
Hon. William Jenkins
Hon. Asa Hutchinson
Hon. Chris Cannon
Hon. Lindsey Graham
Hon. Spencer Bachus
Hon. Joe Scarborough
Hon. John Hostettler
Hon. Mark Green
Hon. Ric Keller
Hon. Darrell Issa
Hon. Melissa Hart
Hon. Jeff Flake
Hon. John Conyers
Hon. Barney Frank
Hon. Howard Berman
Hon. Rick Boucher
Hon. Jerrold Nadler
Hon. Bobby Scott
Hon. Mel Watt
Hon. Zoe Lofgren
Hon. Sheila Jackson Lee
Hon. Maxine Waters
Hon. Marty Meehan
Hon. William Delahunt
Hon. Robert Wexler
Hon. Tammy Baldwin
Hon. Anthony David Weiner
Hon. Adam Schiff

Mr. GOODLATTE. Thirdly, I would ask to have made a part of the record a Precursor Group independent research statement by Scott Cleland which states a number of reasons why the CLEC industry is not doing well, quite contrary to the observations made by Mr. Glassman here today.

Chairman SENSENBRENNER. Also without objection.

Mr. GOODLATTE. Thank you.

[The information follows:]

Precursor Group®
Independent Research

"The Leader in Anticipating Change"℠

1801 K Street, N.W. Suite 315I. Washington, D.C. 20006-1301
Phone 202.828.7800 • Fax 202.828.7801 • www.precursorgroup.com

Scott C. Cleland
May 22, 2001

How Did So Much Go So Wrong So Quickly In Competitive Telecom?

Summary: **Investors need to make sense out the carnage in the "competitive" telecom sector to avoid repeating the same mistakes.** Precursor believes the telecom sector has experienced a "perfect storm" of economic misjudgments by Congress, the FCC, the market, bankers, companies and technologists. **Precursor offers the following investment lessons to remember when the capital crunch inevitably eases.**

(1) Economics Rule. Hype aside, the Internet, fiber optics, satellite phone, fixed wireless, and the 1996 Telecom Act, did *not* revolutionize the economics of competitive telecom. **(A) Size still matters.** Congress and the FCC made a heroic *assumption* that mandated competition enabled by new technology and government intervention could overcome long-understood "natural monopoly" economics. Mimicking Washington's "can do" approach, the market also assumed away the scale advantages of a pre-existing, high-fixed-cost, ubiquitous phone network. It was heresy to even question that competition, technology and entrepreneurial management could conquer "dinosaur" phone monopolies. **(B) Capital efficiency still matters.** Normally the market cares about how efficiently invested capital generates a return. Competitive telecom (CLEC) business models start out very capital inefficient and only get more inefficient over time as more capital is needed to serve fewer customers. **(C) Price elasticity still matters.** Congress wrongly believed that competition in an inelastic local market could develop like it did in the highly elastic long distance market after the breakup of AT&T. Few investors realized how dismally price-inelastic (~0.2) most local phone service is. Lower local prices from competition don't stimulate demand, but rather implode revenues. Industry double counting of resale revenues effectively hid this reality.

(2) Government Can't Mandate "Teletopia." The Telecom Act and the FCC's implementation policies were much more of a grand policy experiment than most were led to believe. **(A) "Regulatory capitalism" is an oxymoron.** The Clinton-Gore Administration FCC embraced an ambitious Telecom Act implementation strategy that some at the FCC dubbed "regulatory capitalism." The FCC would fast-forward past the tedious step of letting market forces determine prices and simply divine in advance what prices *should* be in a perfectly "competitive" market and set them from the start. The FCC called this regulatory omniscience "forward pricing"; the industry knows it as "TELRIC," "UNE-P," and "line sharing." The FCC's theory was that below-market prices would "jumpstart" resale competition, because the incumbent telco effectively would be subsidizing their competitors' entry into the market. The problem with these "teletopian," below-market prices was that they kneecapped any real market incentive to build competitive facilities from the start. Thus the Telecom Act largely became a government tele-entitlement program where regulators reallocated share from market share "rich" incumbents to market share "poor" competitors. **(B) Regulatory arbitrage isn't competition and doesn't last.** More than investors appreciated, the competitive telecom model was about skimming off government subsidies that were built into legacy pricing structures for other social purposes. The reality is that most early "competitive" revenues were some form of short-lived subsidy arbitrage—of business-residential prices, inflated long distance access charges, or voice-data interconnection. This regulatory "funny money" deceived many investors into believing the competitive model was built on a solid "competitive market" foundation and not one of shifting regulatory sands.

(3) Careful Whose Judgment You Trust. How could competitive telecom raise and then blow roughly $50B dollars so quickly? The voracious market appetite for growth stories meant too many investors too often trusted the judgments of less-than-disinterested parties. **(A) Too many bought the banker line.** The market swallowed whole the core investment banking pitch: "new technology changes everything" (even though the incumbent could buy the same technology much cheaper); "competitors' management is far superior to 'Bellheads'" (even though most were originally trained by the Bells or the former AT&T monopoly); and "the Telecom Act and FCC will 'create' a competitive marketplace" (even though the real competitive economics made little sense). **(B) Too many trusted false market signals.** Many mistook the overall market's overabundance of capital as an endorsement of competitive telecom business models. Many fixed income investors considered high competitive telecom stock prices as validation of the competitive telecom model. Meanwhile equity analysts simultaneously drew similar false comfort from the easy availability of debt. **(C) Too many blindly trusted in technology.** Skepticism of tech stories was also considered heresy in the bull tech market. Too many investors ignored the real practical gap between technology breakthroughs in the lab and ultimately profitable infrastructure deployment in the nettlesome "last mile." Much-hyped fixed-wireless technology (Teligent, Winstar, AT&T, WorldCom, Sprint) simply didn't deliver profits in the marketplace. Satellite phones, hyped to work everywhere, didn't work inside buildings (Iridium, Globalstar). The much-hyped AT&T-cable telephony mergers boomeranged into a third AT&T divestiture to salvage some value. And Cisco's "voice will be free" hype sold routers to the Internet backbone players, but did nothing to render phone networks obsolete. * * * * *

Mr. GOODLATTE. Well, first let me say——.

Chairman SENSENBRENNER. Anything else?

Mr. GOODLATTE. That will do it for now, Mr. Chairman. Thank you.

First, let me say to Mr. McLeod and Mr. Glassman, your definition of deregulation—and, Mr. Glassman, I have had the opportunity to read your piece in the Washington Times while I've been sitting here waiting for whom the Bell still tolls—your definition of deregulation is completely the opposite of mine.

To me, deregulation means cutting companies loose and allowing them to get into a market and compete and provide services. That's what we did in the Telecommunications Reform Act for the CLECs.

In fact, there are 150 CLECs in the market today, and they have now captured 35 to 40 percent of the business local telephone market. Now, they have not captured anywhere near that for the residential market, and that's because they haven't chosen for the most part to go after the residential market. Why? Because 40 percent of that market is subsidized by the telephone companies. Well, if you're subsidizing the market, if you're paying more to provide the service than you're getting in return, you are not likely to go into that market. And so, as a result, I think that the Telecommunications Reform Act is working very well in that regard.

Now, as to the capitalization of those companies, it is true that, along with a whole lot of other Internet related companies, the value of that capitalization has declined dramatically in the last year. A lot of those companies have absolutely nothing to do with providing local telephone service, and they declined as well.

One of the reasons why investors are cautious right now is that that whole downturn has taken place. The second reason is that, with 150 companies in the market, they're not going to succeed. Probably six out of seven, according to John Mallone who testified at the last hearing, are going to fail. There probably is room in this market for 20 to 25 CLECs competing on a national basis.

So, yes, a lot of companies have filed bankruptcy. That is because a lot of them have bad business plans. That's because they're competing with each other as well as competing with the telephone companies, and that's going to result in a huge market shake-out which is taking place right now. I hope Mr. McLeod's company is one of those that succeeds, but the fact of the matter is that most of them are not going to succeed, and that's what this is all about.

Now, let me ask you, Mr. Glassman, are you familiar with the testimony of Mr. Mallone, who testified at the previous hearing we had 2 weeks ago?

Mr. GLASSMAN. No.

Mr. GOODLATTE. He's a consultant to the CLEC industry, and he testified that there are 150 of these companies, and he expects because of the competition amongst each other and because of the bad market and because of the shake-out that's going to take place, many of them are simply going to go by the wayside. Would you dispute that?

Mr. GLASSMAN. Certainly, there has been a shake-out in high technology. There were 300 CLECs 5 years ago.

Mr. GOODLATTE. Is it going to continue?

Mr. GLASSMAN. Half of that now, and the big ones—the big ones are the ones that are going under, and there's no doubt—and I'm completely aware, by the way, since I have written for many years a column on the stock market, that there's been a big decline in high-tech stocks over the last year and a half, but what our research shows is that the decline for CLECs is far greater than that decline, and there's a good reason for it, and soon we're going to have zero CLECs, and I don't think anybody thinks that is a good idea.

Mr. GOODLATTE. I don't either, and I don't believe that's the case. I believe CLECs will be able to continue to compete in the market; and, quite frankly, I think that if the Bells are allowed to get into the long distance market and build out the backbone of the Inter-

net where there is not enough competition today that that will improve the market for CLECs because they will have the opportunity to do that.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

Let me be completely parochial first, Ms. Greene. BellSouth serves my congressional district, local service. I'm told by them that within a year or less they will have done whatever is necessary under the Telecom Act to allow themselves to be in the long distance market; is that right?

Ms. GREENE. Yes, sir. If I could take just——.

Mr. WATT. Wait a minute. Just then on a State of North Carolina basis, if that were the case, would there be a need for Tauzin-Dingell for North Carolina? If you had—if BellSouth had long distance, the long distance people have local, everybody's competing on the same basis in North Carolina, would there be a need for Tauzin-Dingell in North Carolina? X out the other 40 States.

Ms. GREENE. Well, I'll enjoy being completely parochial with you. Yes, sir, there would still be a need for that.

Mr. WATT. Why?

Ms. GREENE. And the reason is that Tauzin-Dingell has two parts to it. One of them is that it would give interLATA data relief; and if we were allowed in long distance in all of our States, that provision would not be as important to us.

But the second provision that it has is it gives a clear policy signal that the other pieces of investing in a broadband network, fully equipping offices, building out fiber into the network as much as possible, beginning to do fiber and copper loops and really deploying DSL vigorously, those components of the network which are new build and which are competitive with existing services today, those services would not be regulated. That's a clear signal——.

Mr. WATT. So I understand what you're saying is that you're looking for a signal or you're looking for content of a bill. I thought the signal to all private enterprise was to get in everything on an unregulated basis. You're looking for some additional signal other than that?

Ms. GREENE. Sir, today, we—our network today can be broken up into piece parts and sold at a discount. We are looking for a clear policy direction that says, on forward looking technology, the new Internet technology, that that will not be regulated in a way that's different from its competitors.

Mr. WATT. But once everybody is competing on the same basis, local, long distance carriers—historically, long distance carriers are in local markets. Historically, local carriers are in long distance markets. Why would there need to be any signal beyond just that the market is working?

Ms. GREENE. What we're talking about here is—you are talking specifically about the voice—what we're trying to do in North Carolina is get authority to offer long distance voice services. What the Tauzin-Dingell bill is about is unregulating advanced services, broadband services, Internet related services. They really are two different things.

Mr. WATT. All right. I think I heard pretty clearly—I'm going from parochialism to heresy now, since I've got a smidgen of time. Your testimony about control of residential rates impacting the willingness of companies to get into residential markets would seem to me to get you to a conclusion that residential rates should be deregulated by State utilities. Am I missing something in that?

Ms. GREENE. I was not giving you those numbers to make that point. I was giving you the numbers to show that——.

Mr. WATT. Well, how else would you ever get carriers to go into it if that does not happen?

Ms. GREENE. Well, I think that's a good question. That's not the question we're here to talk about today. But the Telecom Act had four purposes, one of which was——.

Mr. WATT. I'm here to try to get more service, and if that gets more service, why wouldn't we be here to talk about that?

Ms. GREENE. Well, I think that that is a question that's going to have to be addressed.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentlewoman from Pennsylvania, Ms. Hart.

Ms. HART. Thank you, Mr. Chairman.

I'm interested in what this bill would do to basically prevent or I guess prevent the concerns people have about antitrust with the Bells. And also I guess my question goes to Mr. Glassman as an economist, which I believe you are.

Mr. GLASSMAN. Well, actually, just play one on TV.

Ms. HART. Okay. Well, that's close enough.

Mr. GLASSMAN. I'm not a Ph.D. economist.

Ms. HART. That's okay. You don't have to be. I'm not a Ph.D. either.

What do you think the impact on business would be if the prospect for success in an antitrust suit would become better, which I guess would be a result if we do move forward with this legislation?

Mr. GLASSMAN. If the prospects for an antitrust suit would be better for plaintiffs who are arguing against the Bells, is that what you're saying?

Ms. HART. Right, against the Bells.

Mr. GLASSMAN. Well, I think it would be—I think it would improve business. I mean, right now—right now, under the act and under the *Goldwasser* decision, as I understand it, the plaintiffs are in a very difficult position. I mean, there are no teeth to this act. We are basically depending on the kindness of the Bells or the incentive—this carrot allowing them to get into long distance, and now we have a bill that lets them into long distance anyway. So you don't really have much left as far as enforcement is concerned.

Ms. HART. As far as the Bells go—and I guess either one of you could answer this one, either one of the Bells I guess. That would be Mr. Tauke—is that the way you say it?

Mr. TAUKE. Tauke.

Ms. HART.—Tauke or Ms. Greene. I was a State legislator when—in 1996, and we were just sitting back, kind of watching what was going on, expecting a lot of the areas in rural Pennsylvania to get all of this wonderful service and nothing has happened. And people are sitting around saying, back home, to me, no,

this is the only—don't support this, because this is the only hammer we have to force the Bells to do what they promised they would do. If we don't do this—I'm sorry, if we do pass this, tell me why you're going to go in and serve the rural areas better.

Mr. TAUKE. Since Verizon serves Pennsylvania, let me attempt to answer that question. First, the—at the current time, many rural areas of Pennsylvania are like rural areas that I referenced earlier in Virginia such as Mr. Boucher's district where there is the regional network that is needed to connect the last mile to the long haul broadband pipes are not in place, and we are unable today to deploy those services because of restrictions contained in the act, the interLATA restrictions. By lifting those restrictions, we would be able to deploy that kind of service.

Secondly, in rural areas we would be able to deploy more fiber into the network, which is necessary in order to be able to reach customers with DSL service who are further from the central office. In many rural areas—well, in order to get DSL service you have to be within three miles of a central office. In many rural areas a lot of customers are not within three miles of a central office. So what we do is deploy fiber out a ways, then have we what we call a remote terminal, and from that remote terminal we have copper that goes to the home. This would allow us to deploy fiber in and establish those remote terminals and deliver the DSL service to those customers.

In addition, this act as it's currently written requires deployment of broadband services in all central offices that we have, including those in rural Pennsylvania that you are referencing. So I believe that because of the regional network issue, the last mile issue, and because of the deployment requirements in the act, that you could be assured that services would be delivered to your district.

Ms. GREENE. And the only thing that I would add is that imbedded in your question is that somehow Tauzin-Dingell would take away the threat that we have or the incentive that we have under the 1996 Telecom Act to get into long distance. Tauzin-Dingell doesn't do anything to remove our incentives to get in the voice long distance market. It would prohibit us from being in the voice long distance market until we completed the checklist activities that are required under the '96 act. So it doesn't change those incentives at all.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

I have observed in some other areas that have been deregulated that there seems to be a certain path that we go through. First, you have a regulated monopoly, then you have deregulation, and then you have competition and better service and cheaper prices. Then you have mergers and acquisitions, and then you end up with a unregulated cartel, and you're back where you started except you lack the regulation. Although, if Mr. Glassman's comment proves true, Congress may then be tempted to come in and make it a regulated cartel, and you're sort of back where you started. It seems to me that we're well on the way in telecommunications, but let me ask the following.

Mr. Tauke mentioned the figures for competition in New York, and New York supposedly has a lot of local competition. I represent part of New York including Silicon Alley. I must tell you that the local telephone service is disgraceful. The largest single source of complaints in my office, after complaints about the Immigration and Naturalization Service, is complaints against local telephone service mostly by businesses where we have the competition, where Silicon Alley—I represent Silicon Alley. They're screaming. They can't get broadband. They can't get high-speed service.

We recently moved my own district office, and even though I could talk to—as a Congressman I could talk to appropriate people in the local telephone company it took almost a month to get the service moved—to get the Internet service moved. No one comments on that cheaper services garden.

Let me ask Mr. Glassman, with whom I seldom agree but find myself in agreement on this occasion, why do you think, given the fact that we have theoretically—whatever Mr. Tauke's figures were, I am sure they're correct—- some local competition, why has it gotten so bad, much worse than when we supposedly had just the regulated system?

Mr. GLASSMAN. Well, I guess even though we agree on this, I kind of disagree with your—kind of your overall theory that you necessarily——.

Mr. NADLER. I didn't say necessarily. I said it seems to go in a direction sometimes.

Mr. GLASSMAN. Okay, and I think it is going that way this time even if this bill passes or even if this bill hangs around for a long time.

Also, may I also say one other thing, Congressman? I, too, live in New York, as you know, and I try to run a small business in New York, and I have exactly the same problem. It's extremely difficult to get DSL service. I tried to get it from Verizon and ended up going to RCN, and now I can't even get that. Okay.

I really don't know the answer to the question except that when you get a kind of an effective monopoly in an area, normally the monopoly cuts back on service and raises prices. That's basically what they do. And why do they do it? Because they make a whole lot more money that way. And my worry is that this bill reinforces—actually extends the monopoly that the Bell——.

Mr. NADLER. I clearly agree. I must say that I was one of the 16 Members of the House who voted against the telecommunications bill of '96 because of a number of reasons, one of which was that I thought it would tend to increase concentration of ownership in the media and the telecommunications. But—so I don't have——.

Mr. GLASSMAN. You got that right.

Mr. NADLER.—so much possessory interest in keeping the bill as it is, but it does seem to me Tauzin-Dingell takes away the only enforcement mechanism we have on gaining some local competition which is one of the main purposes of the bill to start with.

Are you saying in effect, Mr. Glassman, that even though we have whatever the percentage of market penetration by CLECs, the control of the local Bell company of the last mile is such that effec-

tively they make it difficult for the CLECs to compete currently and that's why we're still getting the lousy service in New York?

Mr. GLASSMAN. Absolutely. Absolutely. I don't think there is any doubt about that. And you can hear from Mr. McLeod if you don't believe me.

Mr. NADLER. But even where you have——.

Mr. GLASSMAN. In fact, I kind of thought it was impolitic for Mr. Tauke to raise New York as an example.

Mr. NADLER. Certainly with someone sitting here representing southern Manhattan here, yes.

Mr. McLeod.

Mr. MCLEOD. Let my say that I disagree a little bit with your model as well, because I do believe we created a very competitive market in the long distance business, viable competitors in long distance, and they all had equal access to the last mile connection. That's what we're missing right now is equal access.

Mr. NADLER. The difference——.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from New York Mr. Weiner.

Mr. NADLER. Can I have 15 seconds?

Chairman SENSENBRENNER. I haven't extended anybody else's time.

Mr. NADLER. Can I have 15 seconds?

Chairman SENSENBRENNER. I would like to recognize the gentleman from New York. You can ask him to yield some of his time if he wants to.

Mr. NADLER. I wouldn't do that.

Mr. WEINER. Thank you, Mr. Chairman.

I thank the panel. I am particularly gratified to see former Congressman Tauke here. I always wondered whether having "Congressman" on your resume means you can never get a real job, and I'm glad to see someone landed on their feet.

Actually, I want to—you know, I think Verizon is an example here of what is the good and the bad in the present law. I think it's fair to say that Verizon and other Bells made a crucial mistake in not rolling out DSL more aggressively, faster; that one of the reasons you're behind cable is because you didn't for that period of time, however long it was, DSL—you know, 56K was as high as you were willing to go for most residences. Cable companies, on the other hand, said, you know what, we have these tubes going in; we're going to dig up all the streets of New York and other places, and we're going to try to get delivery.

But you're also the best in terms of the way you've complied with the 13 points in places like New York and four other States. You have gone through an arduous process. You have done it well enough that now consumer groups and unions and everyone else has rallied on the idea to give you a sign-off to expand your service. And in many ways you're the argument for keeping the present law, that you don't want to reward a company that says, all right, I'm not going to invest in high-speed broadband; oh, wait a minute, now I want to, let me get government to help push me. You seem to be, or Verizon seems to be, the case study for leaving things alone.

And before you answer, I also—I'm puzzled by all of this talk about service in rural areas. I will eat this desk if cable or DSL is servicing rural areas in 5 years or 10 years. There's a reason there are satellite dishes all across the landscape. It's going to be satellite of some form or some technology that we're not even thinking about that is going to service those areas. It's funny how 3 or 5 or 6 percent of your customer base is now driving 90 percent of this debate.

So I guess my question for you, Congressman, is why is it, looking at your experience in New York and my experience as a consumer where I now have Verizon DSL, which I got very quickly without any problems, but it stinks, so now I'm going to try out Cablevision, who just knocked on my door and said, we're ready to provide you, you know, cable service, I'm going to try that, too—isn't my experience and the experience in New York and Verizon's experience exactly why we should preserve the present law?

Mr. TAUKE. Well, first, Congressman, I think I would be remiss if I didn't ask that Mr. Nadler and you both raise your service questions. I have answers to what is going on in New York relating to those issues which is unique to your area of Manhattan, and it has to do with the build-out of facilities. But specifically to your question——.

Mr. WEINER. By the way, Brooklyn is the rural area to Jerry Nadler, by the way.

Mr. TAUKE. As we've talked about, there are two pieces to the Tauzin bill, and the piece that is most important to the State of New York is the piece relating to the last mile, and when it comes to what we need to do in Manhattan and what we need to do in many other areas is deploy more fiber into the local loop.

Why is it we can't deploy fiber today or are inhibited from deploying more fiber? The reason we're inhibited from deploying more fiber is that in order to deploy more fiber, we have to figure out a way in which to do line sharing over that fiber in order to meet the requirements of regulators as they currently stand, and which the FCC at one point tried to exempt us from but couldn't.

When we have to do line sharing over the local——.

Mr. WEINER. Forgive me, I have a very limited time. You're focusing on the microissue. Focus on the macroissue, why the present construct of the law the way it stands now doesn't get us the best of both worlds, get you guys to overcome hurdles that consumers benefit from, but allows the marketplace to kind of work fairly well.

Mr. TAUKE. It is a microissue, but the macroissue is this: That when you try to apply rules that were built for a copper network to a fiber network, it doesn't work. And so as a result, because you can't apply the rules, you're stuck with the copper network, and you are inhibited from deploying the fiber network.

If you want better services in Manhattan or you want services in a rural area, you got to get the fiber deployed in our network, and today the rules inhibit that.

Mr. WEINER. But let me interrupt because the yellow light is on.

I have DSL from Verizon. I have my cable provider. I have a Covat, whatever that is. I have these other guys that are providing DSL. It's working. We have all of these things. The State regu-

lators are happy. We have individual complaints about service, and we're going to shop around. The process seems to be working, at least in my neighborhood. I have all these choices, and I'm shopping around.

Mr. TAUKE. You're lucky, but it isn't working in every neighborhood, and that's part of the difficulty, because in every neighborhood they don't have all the options. In fact, some of them don't have any option at all.

Mr. WEINER. And part of it is——.

Chairman SENSENBRENNER. The gentleman's time has expired.

I would like to thank the witnesses for putting up with us for the last 2 hours plus. I'd like to thank the Members of the Committee for their very vigorous questioning. This is an issue that has been debated for the last 5 years. I don't know if it will be debated for the next 5 years, but we'll try to make some sense of it next week with the markup.

So thank you again, and the Committee stands adjourned.

[Whereupon, at 4:08 p.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you Mr. Chairman for holding this second hearing on competition in the telecommunications marketplace. I believe that the subject of this hearing and the impact of legislation known as the "Tauzin-Dingell" bill is one that deserves close examination by this Committee. However, I am hopeful that after hearing from our witnesses today, my colleagues on the Committee will agree that no further action is necessary by the Judiciary Committee on this piece of legislation that is so critically needed to address the digital divide.

As a sponsor of similar legislation in the 106th Congress with my colleague Mr. Boucher, I am a strong supporter of legislative efforts like Chairman Tauzin's that focus on addressing the digital divide by removing anticompetitive regulations from the incumbent phone companies that were never intended for the Internet. Our bill, which was referred to the Judiciary Committee in the 106th Congress, had significant support from Members on this Committee and from Members of both parties.

As many of my colleagues are aware, neither Goodlatte-Boucher nor a similar version introduced by Congressmen Tauzin and Dingell was considered by either committee of jurisdiction last year. However, as the new Chairman of the Commerce Committee, Congressman Tauzin has reintroduced his legislation this year as H.R. 1542. After lengthy consideration, a well-balanced version of H.R. 1542 was approved and reported by the Commerce Committee last month.

The Judiciary Committee has requested and has been granted a referral of this important bill for consideration. I agree that the Judiciary Committee has clear jurisdiction over several areas addressed in H.R. 1542, and I applaud the Chairman for holding a series of hearings on the bill. However, I urge the Chairman and the other Members of this Committee to take a close look at the carefully crafted compromise reached in the Commerce Committee before deciding to move ahead with a markup of this bill. A markup of this bill by the Judiciary Committee would only serve to slow or stop the progress of the bill through the legislative process, delaying its enactment and ultimately slowing the delivery of high-speed Internet service to rural America.

A markup of this bill by the Judiciary Committee would upset the balance currently achieved in the bill. While H.R. 1542 does remove barriers for the ILECs to enter the high-speed Internet marketplace, the Committee added language that sets out a firm timetable for deployment of broadband services by ILECs. The bill requires ILECs and their affiliates to 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. I am hopeful that Members of this Committee can walk away from this hearing today satisfied with the compromise approved by the Commerce Committee and agree that further action on this legislation is unnecessary.

The qualities that made the narrowband Internet infrastructure a revolutionary tool for both business and consumers—competition, low barriers to entry, and consumer choice—must remain fundamental components of the new broadband Internet infrastructure as we enter the new millennium. This is the only way that areas like the Shenandoah Valley of Virginia, the rural communities of the South, or the great plains of the Midwest can compete in the new economy while at the same time maintain the quality-of-life factor that has made them some of the best places in this Nation to live, work, and learn. Mr. Chairman, thank you again for holding this hearing today. I look forward to hearing from our witnesses.

○