

S. HRG. 107-1105

**PROMOTING LOCAL TELECOMMUNICATIONS
COMPETITION: THE MEANS TO GREATER
BROADBAND DEPLOYMENT**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

MAY 22, 2002

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ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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PROMOTING LOCAL TELECOMMUNICATIONS COMPETITION: THE MEANS TO GREATER BROADBAND DEPLOYMENT

WEDNESDAY, MAY 22, 2002

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:30 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

The CHAIRMAN. Good morning. If we can save a little time, one of the witnesses, Congressman Cannon, wanted to be recognized first, in that he has a markup at 10:00. But let me start with my opening statement. I'll file for the record.

This is Part II of Tauzin-Dingell—oh, there's the distinguished Congressman. We welcome you. This is Part II Tauzin-Dingell. At the time, my good friend, Congressman Tauzin said, "Wait a minute there. You've got Markey and these other witnesses. You're sandbagging me." And before he was cancelling out, I cancelled him back in by saying, "Look, we'll just have you and Congressman Dingell, because we're not trying to sandbag anybody." So thus, we have Part II. I'll complete my statement for the record.

As we all know, we did our best to promote local competition, which is the subject of this hearing, in that we followed the AT&T pattern back in the eighties, whereby Judge Greene opened up AT&T and made available their particular networks, in addition to separating out the seven RBOC's. We provided that with 251 access to the local exchanges. Otherwise, we had 271 written by the Bell companies. We said, you've got access anywhere in the country, except where you've got a monopoly, and we both agreed they didn't want to extend their monopoly, so they outlined a 14-point checklists before they could have that access.

As of now, 6 years later, there are only 13 states where they are qualified. The others have tried, namely the long-distance folks. I'll never forget, MCI spent about \$600 million, and the British Telecom that had merged with them said, this is too expensive an association, and they quit. Bob Allen and AT&T spent a little over \$4 billion, and they got a new president, and AT&T spent another \$100 billion trying to go around there in the cable way.

But what has happened is, they have been slaughtered, particularly the CLEC's, at every particular turn. For example, Bell South has been fined \$20.5 million. Quest has been fined \$878.7 million for violations of these opening up. SBC has been fined \$639.1 million, and Verizon \$300.4 million. You can understand why they treat their fines casually when, for example, with a \$300 million fine, Verizon actually has a net income of \$67.19 billion, so even Chairman Powell has said we've got to increase fines.

We think there is a better approach perhaps than increasing the fines. Let us see if we can get order out of chaos with a functional separation. If that is not adhered to or obeyed, then we might have to move to a structural separation. That is provided in S. 1364 that I introduced last August, and this is the first discussion of it. Otherwise, we can understand that broadband services are really available in 85 percent of the homes in America. Actually, the Bell companies have had it since the early eighties, and they are only now deploying it.

I was very interested in Mr. Whitaker of SBC coming to the office earlier this spring and said for the first quarter he has got 183,000 broadband customers he is going to put on in the first quarter. Well, we know there is no prohibition. There is no restriction whatever, but the various bills, namely Tauzin-Dingell, you would think there was some restriction or prevention to it. It is a matter of demand.

With that said, let me yield first to Senator Burns.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

The over riding principle that has govern telecommunications policy during the past three decades has been competition. Congress, regulators, and the courts since the 1970's have all held fast to the principles of competition, and as a result we have a dynamic and vibrant telecommunications marketplace—one superior to that of any other country.

However, we are at a crucial juncture in telecommunications policy—are we going to hold steadfast to the goal of competition, and allow it to continue guiding our decision making, or are we going to allow groups with other objectives in mind to guide our actions? These groups include today's local market monopolies, who are seeking to use the issue of broadband to stave-off implementation of competition policy, so as to preserve their local market monopolies, while simultaneously working to extend that monopoly into the emerging advanced services markets, such as broadband.

As we fight legislatively to promote competition, last week the supreme court re-affirmed its own commitment to competition. In support of the claims of the FCC and competitors, the supreme court rejected arguments of the Bells and upheld the FCC's methodology for establishing the rates Bell companies can charge competitors for access to their network. The Bells had argued before the Supreme Court as they have argued before Congress that the FCC established rates are too high. Justice Souter stated that the existing investments of over \$100 billion by the Bells affirm the common sense conclusion that so long as the FCC's rate structure brings about some competition, the incumbents will continue to have incentives to invest and to improve their services to hold on to their existing customer base.

I most certainly support the deployment of broadband nationwide and it can be accomplished without compromising competition. In fact, I believe it is through a combination of policies such as—competition, loan programs, tax credits, consumer privacy protections, and addressing the “demand” problem—that broadband can be achieved. There is no silver bullet here, and an approach that destroys competition will undoubtedly undermine the deployment of broadband and other innovations. Such an outcome would set communications policy back for decades.

We have come too far to regress at this point. The 1970's became a turning point in telecommunications policy. It was at this point that legislators, regulators, and the courts began to work to limit the power of AT&T's monopoly and promote competition. In 1984, the court took the step of requiring AT&T to divest its local network creating 7 regional Bells. As a result of this action, consumers obtained improved service quality and lower prices in the long distance market, and AT&T invested heavily in its network upgrading its lines from copper to fiber.

Congress continued this competitive approach when it passed the Telecommunications Act of 1996. As we expected, the work Congress did in 1996 to promote competition has driven the monopolies to innovate and provide broadband service. According to Probe Research Inc., Verizon already has 79 percent of their lines DSL capable, BellSouth has 70 percent and SBC and Qwest have 60 percent. Bell companies have invested over \$100 billion and competitive carriers have invested over \$56 billion in deploying new facilities and upgrading their existing facilities. As a result of these investments as well as the investments of cable companies, approximately 85 percent of U.S. households have access to broadband.

However, as competitors have exited the marketplace, incumbent Bell and cable monopolies have increased prices and have demonstrated no real desire to compete head to head. Recently, when asked whether Verizon would lower the price for broadband service from \$50 to compete with cable which charges about \$40, Ivan "Seidenberg said no, that Verizon wouldn't 'discount' to match cable prices."

With that said, my concern is twofold. First, that we not accept the unfounded legislative and regulatory proposals of the bell companies that destroy competitors and have nothing really to do with broadband deployment. Congress and the courts certainly did not conclude that AT&T had to maintain its monopoly in order for it to upgrade its long distance network from copper to fiber. In fact in the 1980's, AT&T was under a consent decree to divest its local network when it spent millions of dollars to upgrade its copper network to fiber. Incumbent cellular companies began upgrading their networks from analog service to digital service when Congress introduced competition into the marketplace from PCS carriers who built new digital networks. Wireless companies are now seeking to provide third generation service. They haven't based this facilities upgrade on gaining some new regulatory scheme from Congress.

My second concern is that policy makers commit to maintaining competition as the cornerstone of communications policy and that we conduct an honest examination of what it will take to really ensure that competition takes hold in the local telecommunications market.

- Congress took the mildest approach to promoting competition in the Telecommunications Act of 1996—that is it outlined what monopolies needed to do to allow competition to emerge. In response, Bell companies broke their promises, and have spent their time litigating the act, stonewalling their competitors, and misleading policy makers that somehow eliminating their competitors will result in the deployment of innovative new services. Even though the Supreme Court has upheld the competitive provisions of the Act, Bell companies have not slowed down their anti-competitive conduct.
- In contrast, in 1984, in order to foster competition, the court required AT&T to divest itself of its local facilities. This had the result of irreversibly introducing competition in the long distance market.
- Also, the FCC has from time to time imposed structural separation such as when it required, Bell companies to provide cellular services through a separate subsidiary in 1981 and enhanced data services through a separate subsidiary in 1980. It has also required companies to divest properties during mergers when competition would be harmed.

As policy makers, we are protectors of consumers and the public interest. It is our duty to pursue and adopt real options that have been proven to promote competition in the local telecommunications market including functional separation. It is also imperative that we stay the course now that the Supreme Court has provided legal certainty by resolving that last major legal issues with respect to the 1996 Act.

With that said, I welcome, our witnesses who will share the challenges faced by policy makers in promoting local competition and broadband deployment.

**STATEMENT OF HON. CONRAD BURNS,
U.S. SENATOR FROM MONTANA**

Senator BURNS. Mr. Chairman, thank you for this hearing, and I appreciate our witnesses today, and especially the first two—I am giving a quiz after you make your statement—and I look forward to hearing from the witnesses.

Thank you very much.

The CHAIRMAN. Thank you. Senator Breaux?

**STATEMENT OF HON. JOHN B. BREAUX,
U.S. SENATOR FROM LOUISIANA**

Senator BREAUX. I will put my statement in the record and look forward to hearing from the witnesses.

Thank you very much.

[The prepared statement of Senator Breaux follows:]*

The CHAIRMAN. Thank you very much.

Congressman Cannon and Congressman Markey, the Committee is indebted to you both for being with us this morning, and Congressman Cannon, I understand you have got, momentarily, a markup over on the House side, so we welcome you and would be glad to hear from you at this time.

**STATEMENT OF HON. CHRIS CANNON,
U.S. REPRESENTATIVE FROM UTAH**

Mr. CANNON. Thank you, Mr. Chairman, Senator Burns, Senator Breaux. I was interested to see, when I saw my draft of the statement this morning, that my staff had characterized this as one of my favorite subjects, broadband. And I guess, in a way, it really is. I believe that broadband, the point of the communications carriers, and cable companies and broadband adoption by businesses and consumers has the potential of bringing amazing things to our economy, our communities, and our homes. Whether we are talking about the potential for broadband to help improve the way the lesson plans are developed and brought to students of all ages, the potential for patients to remotely access the best that our healthcare system has to offer, both here in America and for folks abroad, the potential for businesses of all sizes to improve their efficiency and tap new markets, or the potential for residential customers to access new forms of entertainment, it seems that we pretty much all agree that broadband access is something that we want to encourage.

In my view, the best way for us to do that is to do two things. First, we should tread carefully when it comes to altering the basic framework of the 1996 act and, second, we can take steps to reduce the gap between broadband availability and broadband adoption. With regard to the first point, since the act was signed into law at the Library of Congress, we've seen a parade from the Jefferson Building to the FCC, and from the FCC to the courts all over the land.

In just in the last two weeks, some six years after the act became law, we finally saw the U.S. Supreme Court issue a decision in Verizon versus FCC in which the Court voted overwhelmingly to

*The information referred to was not available at the time this hearing went to press.

uphold the FCC's authority to adopt forward-looking pro-competitive pricing rules.

Hopefully, that will be the last word. I hope that is, and I urge that we now give the industry time to digest that opinion and take advantage of the certainty it should provide. I am not suggesting that we, the FCC, and the States should never ask questions about the pace at which local competition—long-distance entry in broad competition are progressing, but I am suggesting that when we ask questions merely for the sake of doing so, the industry and the financial community take notice and probably say, there they go again down there in Washington changing the rules in the middle of the game.

If we want companies to invest, they need to know they can do so with a reasonable expectation of a stable legal framework. If our questions suggest a radical alteration of that framework that picks winners and losers, like the Tauzin-Dingell Bill, rather than leaving that to the marketplace, we destabilize investor confidence and risk driving capital away from this critical sector at exactly the time we should be encouraging capital investment.

While legislators are, by our nature, impatient, we must acknowledge that in spite of the uncertainty wrought by the overhang of litigation, there has been a tremendous amount of progress toward making local markets competitive and broadband access available. In the face of legal uncertainty wrought by the bill's ceaseless lawsuits, and despite the daunting task of competing against entrenched monopolists, CLEC's have raised and invested \$65 billion, an investment that would be wasted if Congress changes the rules of the game without basis.

As the U.S. Supreme Court said last week, a "regulatory scheme that can boast such substantial competitive capital spending over a four-year period is not easily described as an unreasonable way to promote competitive investments in facilities." New entrants are not the only ones who have made big investments. In spite of the repeated arguments they cannot or will not make broadband available under the current regulatory regime, the incumbent local telephone companies have made very real progress toward making DSL available to their customers.

From a standing start in 1997, when the Bells had yet to make any significant commitment to broadband, a majority of Bells' central offices are now equipped to offer broadband access. Just how pronounced this progress has been, given the nature of the regulatory yoke under which the Bells claims they operate, according to publicly available documents, most often the materials that the Bells provide the financial community:

Bell South announced its first deployment in May 1998.

Today, Bell South is capable of offering DSL to 71 percent of the households.

SBC first offered commercial DSL in the fourth quarter of 1997, and today, DSL is available to 25 million of its subscribers, or 60 percent of its customers.

Verizon has a similar story, as does Qwest, which has a total of about 32 percent of its customers with access to DSL lines.

What is clear is that in spite of the willingness—in spite of the wailing about the current regulator regime, the Bells are four of

the ten largest broadband providers in the country. If you look only at the market for T1 and T3 services, they are the largest providers of those services.

Each of the Bells has told the financial community that they are benefitting from strong double-digit and even triple-digit growth rates in the broadband markets. They deserve credit for bringing broadband to a majority of their customers in just over four years, but we must also take note of the fact that they did so under the current statutory and regulatory regime.

Again quoting the Supreme Court, the incumbent's investment of more than \$100 billion since the act affirms the common-sense conclusion that so long as TELRIC brings about some competition, the incumbents will continue to have incentives to invest and improve their services to hold onto their existing customer base.

In the face of these facts, we hear that Congress should act to level the playing field and do more to promote broadband deployment. I want to comment on both of those notions.

We are all for fairness and even application of the law, but this claim I keep hearing about the need for regulatory parity when it comes to broadband strikes me as something of a canard, a sham, or a red herring. There may come a day when regulatory parity will be appropriate, but I believe that before we seriously start considering regulatory parity, we should insist first on parity of situation, and parity of situation does not exist today in the telecommunications industry.

No one would seriously argue that we should have absolute parity between the ILEC's and the CLEC's, because even though they both offer telecommunications services, they have very different levels of market power. Similarly, both cable and satellite companies offer video services, but we have not regulated them in exactly the same way because of the differences in their relative ability to leverage their market power.

We should recognize that this difference also applies to the broadband market, where the ILEC's have the ability to leverage their rate pair-funded bottleneck facilities, particularly the local loops between their central offices and consumers' premises. Access to the last mile between the central office and a business or a residence is every bit as critical as a CLEC as access to programming is to satellite companies.

Deregulating the ILEC's last-mile facilities in the name of promoting broadband deployment would threaten the ability of other parties to lease access to those last-miles facilities, to offer consumers innovative broadband service as well as traditional telephony. Put another way, deregulating as proposed by Tauzin-Dingell and Breaux is akin to a river-boat gamble. If we throw the States, who had a role in telecom for the past 70 years, out of the process, and we tie the FCC's hands and Tauzin and Breaux are wrong about the effect that deregulation will have, where does that leave us? Under both bills, it leaves us with little recourse, other than a subsequent act of Congress, and that is a very high standard.

Let us be clear, the real result of the regulatory period mandate in S. 2430 would relieve the Bells of the market opening requirements of the 1996 act and turn our backs on 30 years of Govern-

ment policy that has, in that time span, opened the entire telecommunications industry to competition.

In its effect, it is no different than the Tauzin-Dingell bill. Enacting S. 2430 would drive companies like Covad out of the market, and that is exactly contrary to what we should be trying to do. Additionally, deregulation of the sort proposed in S. 2430 would leave many consumers, including many of my constituents who live in rural areas, beyond the reach of cable, with but one choice of broadband service. I believe that leaving consumers with a choice of a single unregulated monopoly provider in any market is a bad idea.

So what can we do as policymakers to encourage this broadband revolution? First, we can commit to enforce the 1966 act and the antitrust laws, which provide a solid framework for the deployment of competitive broadband. We should stop attempting to bifurcate the market into broadband and narrow band voice and data segments. Time and technology are rendering these distinctions obsolete. The act is a good template by which to open markets, encourage investment and competition, and, when appropriate, deregulate. All the tools necessary to do those things are found in the act.

Second, to the extent that there remain pockets of the country where broadband is not available, some action may be necessary to help ensure that service does become available. There is a big contrast, however, in the various mechanisms that can be used to incentivize deployment of high-cost, hard-to-serve areas. Loan guarantees, universal service support, and targeted tax credits all help make high-cost service more affordable and, as policymakers, you know what you are getting. Companies do not get the support unless they use it to make service available.

In contrast to the type of deregulation proposed by Tauzin and Breaux, you get a promise of deployment, but without any guarantee, and high-cost areas are still high-cost areas. Deregulation does not change the fact that there are some areas where economics are tough, economics are tough, and the notion that deregulating—deregulating, either by eliminating TELRIC or by eliminating the unbundled access to loops will solve the problem is wrong.

Third, we can take steps to alleviate the growing demand gap between broadband availability and broadband adoption. Consumers will adopt broadband when prices move down closer to the prices consumers now face for dial-up service. The way to drive prices down is to encourage as much competition as possible across and within the various service platforms. Consumers want broadband, but there is probably a limit to the number of consumers who can afford to pay \$45 or \$50 a month for broadband access. As price comes down, adoption rates will rise, just as has been the case in markets like wireless telephone service.

Additionally, we can take steps to address critical issues like copyright protection, privacy, and music licensing that will make both consumers and content creators more comfortable in the broadband space. Consumers want access to a myriad of products, and content producers want to be able to benefit from their creativity. We should make sure the copyright, privacy, and music licensing statutes written in the 20th Century make sense in the 21st.

You, Mr. Chairman, have certainly been active on the cutting edge of these issues. If we can find solutions in these areas and content creators from the single entrepreneur to the largest movie studio begin to make compelling content available to consumers online, we will see broadband adoption rates grow at exponential rates.

Thank you again for the opportunity to share my views with the Committee. I apologize that I have to run to a markup in the Resources Committee, but I truly appreciate your willingness to accommodate my schedule.

The CHAIRMAN. Well, we are very grateful to you, sir. Are there any questions?

Congressman we really appreciate your appearance here this morning, and you can excuse yourself, as you wish, because—

Mr. CANNON. Thank you, Mr. Chairman.

The CHAIRMAN.—I think Congressman Markey will take you past your time. I hope so.

Congressman Markey?

**STATEMENT OF HON. EDWARD J. MARKEY,
U.S. REPRESENTATIVE FROM MASSACHUSETTS**

Mr. MARKEY. Thank you, Mr. Chairman, very much, and I thank all the Committee Members for the invitation to be here today.

Just a brief review of how we got here today. When I arrived in Congress in 1976, we were still in an era, or, in my house, and I think in your houses as well, when you were on the phone making a long-distance call, if it went over 2 to 3 minutes, somebody in the house used to yell, hurry, hurry to the phone to talk to Grandma. It is long distance. You know, we cannot afford to be talking any longer than another minute.

Now, AT&T had had 100 years to figure out how to bring down long-distance rates, and then somebody named Bill McGowan started to visit our offices to explain how you could actually have competition in long distance. That was a difficult concept, that there could be another company providing phone service, since one company provided all of our phone service, and it had 1.2 million employees, and the idea was difficult, for me, at least, to grasp, because, in my mind initially I saw, like, a 3-foot telephone pole going down the street competing against the tall telephone pole that AT&T had. How can you compete in long distance?

And as McGowan explained it to Congress and to the regulators and to the courts, it became clear that if AT&T was forced to share its switches, its wires, you could actually have competition, and beginning on January 1st, 1984, with the decision to break up Ma Bell, all of a sudden once the local Bells no longer had a stake in long distance, they gave access, not only to MCI, but to Sprint and dozens of other companies, and across the country, cross-crossing the highways and byways of our country, we saw multiple fiberoptic networks being built by all of these companies and, finally, AT&T decided to invest in its first square foot of fiberoptic, but that was 1984. Fiberoptic had been invented by Corning decades before.

Now, what forced them to do that? It was, without questions, the paranoia that someone else might now deploy a new technology

and take their business. They did not have a monopoly, and once all these competitors got into the market, the price of long distance plummeted.

The same thing happened when Congress and the regulators, in the early 1990s, decided to move over 200 megahertz of spectrum for cell phone competition. There had been a duopoly, two companies, that had cell phone service in each region of the country, but prices still were very high. It was an analog technology. There was very small penetration of the marketplace. We, as a matter of policy, decided that we would introduce a third, fourth, fifth, and sixth license into each marketplace, and the first two incumbents for that one market could not compete for those new licenses.

Well, what happened? Well, the new licensees deployed digital. The old two licensees were still stuck in analog with very high prices. By 1994 and 1995, the prices of cell phone service started to plummet until we reach a point right now where 90 percent of the people sitting in this room have a cell phone in their pocket, walking around—oh, it is some kind of monthly pricing package that AT&T, the Bells, could never quite figure out how to provide to us before there was actual real competition, because the monopoly was broken up.

The same thing is true when it came to equipment. AT&T was the only real manufacturer of equipment. It had a monopsony, it sold to itself, so you can imagine that was no surprise that we all still had black, rotary dial phones in our houses in 1980, because they did not have an incentive to develop the new technology. But once it was broken up in 1984, boom, out into the marketplace comes all of this new equipment, from Northern Telecom, from Siemens, from all of the rest of the companies that now had an opportunity to sell into the marketplace.

That is our legacy. It is a very brief legacy. It is only 25 years, but it has transformed our Nation and has made us the global leader in these technologies.

Then, in 1996, this Committee, and on the House side, decided that they were going to take on the last monopoly, local telephone service. How do you provide the incentive to have that kind of a competition breakout and to force the deployment of broadband? We knew, going into 1996, that the Bells already had DSL, digital subscriber line service in their laboratories. Remember, for each one of these inventions, the Bells had already won Nobel prizes for basic research, but never for applied research, getting it out to consumers, because why would they? They always had monopolies in each one of these fields.

So, in 1996, in its wisdom, the Congress decided that it would mandate that the Bells could now get back into long distance, because we now had so many companies providing long distance, and the prices had plummeted, if they would open up their local marketplace, and there would be a 14-point checklist that would prove that they had opened up their marketplace. And maybe, just maybe, if they felt the paranoia of more competition in the local marketplace, they would finally deploy DSL. Paranoia.

Well, what has happened? Well, since 1996, when there was no broadband to anybody, we now have somewhere between 70 and 85 percent of all American homes, depending upon how you want to

analyze it, with broadband going down their street. Is that a crisis, or is that a remarkable event that you go for 100 years, make you progress in providing broadband services to Americans, and then in 6 years you create a situation where the new competitors spent \$60 billion, and the Bells, in response, have to spend \$100 billion?

Now, what is the crisis? The crisis is, in fact, for consumers, that they cannot afford it. The Bells are charging, or the cable companies are charging \$60, \$70 a month. For what, e-mail? Well, to get your local newspaper online? Well, we can still have narrow band for 25 bucks. So there is a crisis, but it is a crisis in price and in the content.

Now, some people argue that the answer is to remove the protections which the competitors have been given so that they can get into the marketplace, and somehow or other we will have even greater subscription to broadband. I think it is just the opposite. I think we should put our faith in competition. It worked for cellular. It worked for long distance. It will work here as well. The more competition is the lower the prices and the greater the increase in technological innovation, so yeah, the CLEC's, the DLEC's, they have a tough marketplace right now.

Part of it is the legislative cloud which has been created over it. Part of it is the collapse in the capital markets. Part of it is that there was an overbuild. There is a whole myriad of reasons why it has occurred, but let us not kid ourselves for a second. This is a huge success story. Now, we are waiting for the public. Only 12 percent of the public subscribes to the broadband going down the street right now, although 70 to 85 percent could subscribe if they wanted to, because it was available.

So Bill Gates says people will only subscribe the broadband when it is at \$30 or \$35 a month. Now, how do you get it to \$30 or \$35 a month? Do you remove competition, and hope that the Bells will lower the price, or do you try to create more competition so that the Bells have to continually try to beat their competitor? Which is the smarter way of going?

Now, if you have got a problem out in rural America, we can deal with that. If there are, in the most rural parts of the United States, just absolute, impossible to overcome logistical obstacles in deploying broadband, let us talk about that. We could have tax policies, universal service policies, State-Federal Government cooperation to deal with that, but let us not take away an urban, suburban, and for a good chunk of rural America a policy that is already working, 6 years, and by the way, for most of those 6 years, the Bells were in court.

Their first action after the 1996 act passed was, (1) we are going to the Supreme Court to say we do not want to comply with the requirements to open up the local market, that took all the way up to 1999, and (2) in the State courts and in the FCC we are not even going to provide for any of these market-opening opportunities, so that New York, in December of 1999, almost the beginning of 2000, was the first State where the Bells had actually complied with the 14-point checklist. In other words, it has only been in place now for 2 years. That is the first State. We are up to 13 States right now.

So let me say this in conclusion.

(1) The bill is unnecessary. We have a policy which is working. It is in place. Broadband is out there. People are not subscribing, though, because it is too expensive for the services which are being provided. If there is a rural problem, let us deal with rural, but no more than that. Competition is where we should place our faith.

(2) It is unfair. We have dozens, scores of companies who have gone to the capital markets, risked their economic lives to get out there into the marketplace in now very difficult economic times. It would be wrong to just pull the rug out from underneath all of these people who have, in fact, given the incentive to the Bells to finally go out and deploy broadband themselves.

(3) It is undigital. You cannot separate voice and data from a regulatory perspective. The world of zeroes and ones would create an impossible regulatory burden upon the State or Federal regulators. There is a mechanism in place that has already been satisfied in 13 States for the Bells to get into voice and data simultaneously. We should continue to stay the course. It is not a crisis. In fact, it is quite remarkable, what has happened since the Telecommunications Act has passed in 1996, despite the Bells' first 4 years of foot-dragging. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Burns.

Senator BURNS. I do not have any questions. I congratulate you, and appreciate your remarks this morning, Mr. Markey. I have a question with regard to the parity bill that has been offered by our good friends Mr. Breaux and Mr. Nickles. Would you care to—and if you do not have all the information on it, I understand that, too. Would you care to comment on that and how that impacts what you believe to be a noncrisis?

Mr. MARKEY. If by parity you mean that the Bell companies do not have any responsibilities to open up their markets, their switches, their wires because the cable companies do not, I do not think the answer is to move in that direction, but, rather, to more fully implement the 1996 act, which said that all telecommunications services should be regulated in a way that guarantees equal access, and we should wait for the California Federal court decision that is looking at whether or not the cable companies have to open up to competitors, so that ISP's and CLEC's can gain better access to the cable wires rather than shutting down the access which ISP's and CLEC's and DLEC's have to telephone wires, because if you move in the parity direction you are basically creating once again a duopoly, and we know that when the cable guy and the telephone guy coexist in a community, all you wind up with, and we are seeing it right now, is higher and higher broadband prices, higher and higher phone rates, and higher and higher rates for every other service.

You need the third, fourth, and fifth competitor in the marketplace. We saw it in cellular. We saw it in long distance, and we are seeing it here as well, as the CLEC's flounder in economic difficulty, we are seeing the reduction of the pressure on the existing duopoly, and as a result prices are going higher, and ordinary people cannot subscribe.

So I guess my answer would be that in almost all instances we will see the cable guy and the telephone guy having a stake in

some kind of digital detente, where they both kind of coexist, getting a huge share of the market, and knowing that there is not going to be anyone else coming down the street. In the long run, that stifles job growth, it stifles innovation, and it stifles the kind of environment which will lower prices and increase services to consumers.

Senator BURNS. Is it your opinion that neither bill, either Tauzin-Dingell and the Breaux-Nickles approach would not get us to where we want to be?

Mr. MARKEY. Well, again, we have a success story in the deployment of broadband, but we do not have a success story in the adoption of it by consumers, whose streets these wires now go down, or the switches have been deployed, so I think the only way that is going to happen is if the prices Bill Gates says drops down to \$30, \$35 a month. If you can get narrow band to \$20, \$25, but you have to spend \$70 a month for broadband with no really significant additional services right now, you are just not going to have a success story.

So yes, I think it is critical to ensure that the declining cost base of these new technologies continues to be given an incentive, and that each one of these companies be forced to deploy it in a way that benefits consumers. The consumers should be king here, and unfortunately I think two industries have a stake in trying to continue to increase the charges to consumers, and that is completely a historical in terms of what has happened in every other area of telecommunications services.

Senator BURNS. I thank the Congressman.

The CHAIRMAN. Senator McCain.

**STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA**

Senator MCCAIN. Congressman Markey, what would be the immediate effect of the passage of Tauzin-Dingell, in your view?

Mr. MARKEY. I believe that whatever is left of the competitive telecommunications marketplace would suffer such a serious blow that we would wind up with a de facto duopoly in the country, and we would have lost the benefits for the next 5 to 10 years of this paranoia that would throw both of those industries to deploy.

Senator MCCAIN. Thank you, and I thank you for your rather eloquent testimony today.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman. Thank our colleagues from the House for being with us. How are you doing with Tauzin-Dingell over there? Do you all talk?

Mr. MARKEY. Oh, no, no, no, we love each other over there.

[Laughter.]

Senator BREAUX. Well, we had the pleasure of having both of them over here a little earlier. I would just, Mr. Chairman, thank Ed for his statement. It is eloquent. He obviously knows his subject matter very well. We differ on the conclusions, but his intelligence in this matter is unquestioned.

Senator—I mean, Congressman Cannon was not here. I almost said Senator Cannon, former Chairman of this Committee, and he

used the term, Tauzin-Dingell and Breaux-Nickles almost interchangeably, and while Congressman Dingell is a great friend of mine, and Tauzin is like a brother, the legislation is not, and I would just say very quickly, our bill is only three pages if you take out the findings, which I am always happy to do. Findings are laudatory and sound good, but they do not really have a legislative effect, so the bill that we have, Breaux-Nickles, is only three pages long.

It basically just says the FCC, the independent regulatory body, is instructed to come back with regulations and rules within 120 days to establish parity between the providers of broadband services, whether it is a telephone company, whether it is cable company, whether it is a wireless company, or whether it is a satellite company. That is it.

It tries to take the politics out of it. It tries to take the politicians out of it, so that the decisions on this new and very exciting type of technology is, in fact, made by an independent regulatory agency. They are not politicians, and making political decisions based on our constituents, and I think that is probably the only way we are going to resolve this issue. I do not think that we are going to be able to do the nitty-gritty sentence-by-sentence, paragraph-by-paragraph, word-by-word, have the ability to establish a level playing field, so we say to the regulatory body do it with 120 days. That is it, three pages.

What the bill does not do, and why I wanted to point this out, because of what Congressman Cannon was saying, that they are all the same. They are not. Our bill, for instance, does not affect section 271, which has been mentioned here this morning. The regional Bells will still be required to obtain FCC approval after getting approval from their respective States to provide any type of interLATA data or voice services. The bill will not affect the 271 checklist of 251 provisions that are required, will not affect that at all.

The bill would not relieve the Bell Operating Companies of their obligation to open their local telephone markets to competition as a condition precedent to receiving the interLATA approval. It does not affect the e-rate, which Senator Rockefeller has worked on so long, to require that schools and libraries be able to have access. It does not affect the universal service obligations.

So I mean, if you look at what Tauzin-Dingell attempted to do and pass the House, and what our bill, that simply instructs the FCC to come back with rules creating a level playing field among people that provide broadband services, that is it, and I think that is a vast difference between the two, and I just wanted to raise that, since Congressman Cannon had sort of implied that they were both the same bills. I do not know how many pages Tauzin-Dingell was, but it was a little bit more than three, and ours is not.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, the Chairman then will take his time right now.

What happens, and Congressman Markey, I think you and I agree on this parity as Senator Breaux, but I am reminded of Adlai Stevenson's comment. He says, it is not a question of whether I am a liberal or whether I am a conservative, but whether I am headed

in the right direction. Now, that is exactly what is wrong with the Breaux bill. It heads us in the wrong direction. I think you and I, trying to open it up to competition, and Tauzin-Dingell categorically does away with 251 and 271, the access and the requirements for the opening up in order to get the parity, everybody open, everybody competing, and I am ready to move—it is a timing matter with respect to cable. Cable has given the only competition. That is why they putting out the DSL. I do not want to kill off the little bit of competition to what, to the monopoly, because they have got 90 percent of that last line.

Now, looking at the reality, and where it all exists today with that monopoly, when you go in the Breaux bill of parity, then what you do is you bring in and by gosh tell the cables they can have a monopoly, too, and one has about 70 percent of business, I think the Bells, on broadband, and I think cable has got about 70 percent of the home, or domestic personal use, and what we are trying to do is get competition into both.

This Committee has just won out with the administration relative to the Federal Trade Commission, I think—and you can comment on it, that when the Federal Trade Commission approved the merger of AOL-Time-Warner, they put in there an opening up requirement, not a close-down requirement, and similarly, Comcast has opened up voluntarily some of it, not all of it, but as a move, they have been opening up, and that is the direction, as I say, we want to go in, and there is a difference between the Justice Department antitrust looking for crime, and the Federal Trade Commission, which has a broader mandate, looking for the public interest, so if you want to comment on that, I think that is the fundamental difference.

And we agree with Senator Breaux on parity, but not a parity of a monopoly, let everybody have a monopoly. I mean on the contrary, we are trying to open it up and get the competition. Do you have a comment?

Mr. MARKEY. Well, it all depends on how you see the revolution.

The CHAIRMAN. Yes.

Mr. MARKEY. If you see the revolution as being the same two companies that have had wires going down the street over the last 50 years, in the telephone company's instance for the last 100 years, then parity between the two of them sounds fair, but if you see the revolution as being hundreds, thousands of smaller companies whose names we never heard of before 1996, that all went out into the marketplace, raised some capital, had a new technology, took some risks, and changed this country, then that notion of parity will ultimately stifle innovation.

If you believe that parity means that all these young people with these great ideas who are out there have an equal shot at reaching all of the customers in the United States, and as a result they can convince some people to invest in their concepts, then that is a concept of parity around which I think our country can grow and thrive, so this ISP CLEC, DLEC revolution is really what the future is about.

The Bells have been laying people off for the last 30 years, and they are going to continue to do so. That is not where the job growth is. The job growth is going to be in these thousands of

smaller companies that are in Virginia, they are in Oregon, they are in Massachusetts, they are in every State now, all across the country, and they are the ones that have really transformed the country, and only by ensuring that the smaller, newer companies whose names we do not know today but will in the future, will make a difference.

We made a decision as a Government in 1987 to protect a little company called AOL, along with CompuServe and the couple of other information service companies so that they could not be put out of business by the Bells, which is what they were trying to do. Now, today, only 15 years later, look what happened because we made a decision we were going to not just allow the large single companies to control information services.

So that is where I think we have to plant our flag. It is with the future. It cannot be about the past. The past is a duopoly, parity between two old monopolies. The future is parity in which thousands of companies can compete, and I think that is really what our country has to do.

The CHAIRMAN. Senator Rockefeller.

**STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA**

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Congressman Markey, that was superb testimony, but I expected no less from you.

[Laughter.]

Mr. MARKEY. A tribute from Caesar. Thank you.

Senator ROCKEFELLER. Yes, that is right.

As John Breaux indicated, I am obsessed by universal service, and I would like to get some of your views on this, and it is obviously because of e-rate, but it is a lot more than that, and it has to do with the subsidization of little, poor States by bigger States, and it gets into many aspects. It is not just K through 12 and e-rate. It is a lot more than that.

Now, you commissioned a GAO study which said in part that Internet technology may eventually become—I am quoting—an attractive alternative to voice service, and could affect the revenue base from which universal service programs are funded.

Can you kind of walk us through how that happens, number 1, and number 2, can you describe what happens as you get a combining of voice, video, and interactive, and its effect, just using a plain old phone, and can you describe what the FCC can do without—if they can, in your judgment—can do without any congressional intervention at all through rules and regulations to undermine universal service, which I hold to be very sacred?

Mr. MARKEY. Thank you, Senator. The concept of universal service, going back to the 1930's, was originally thought of as good social policy so that the most rural parts of the country would be connected to the most urban parts, and the urban parts would connect the rural by subsidizing.

Now, it turned out to be not only good social policy but good economic policy as well, as we created national markets for all companies to reach all people in the country, and it turned out to be quite a brilliant policy, as did rural electrification and other policies of

its sort, so we all have a stake, and obviously if you come from Boston we have been subsidizing the rural parts of New England for the last 60 or 70 years. It has been good for us, as well.

The question here now, as the Internet develops, is whether or not, as voice migrates over to Internet, there can be a way in which there is an escape from the responsibilities of ensuring that there is a contribution made to the universal service pool, and that was the reason that I asked for the GAO report, so that we could measure the time frame over which this is likely to happen, and then the impact of the quantitative size of that migration.

I think that for our purposes we have to make sure that there is no escape from the responsibility of contributing to the universal service pool. As I said earlier, making these distinctions in zeroes and ones between voice and data is not going to be easy, but where companies are committed to providing voice service that can be clearly identified as those that historically would have been levied with the universal service charge, I think that we have to begin now to have the discussion before the revolution really unfolds so that the FCC is clearly instructed by Congress to extract the levy from them so that the schools, the libraries, the rural medical services and rural phone service continues to be subsidized.

Senator ROCKEFELLER. Congressman—

Mr. MARKEY. Yes, I am sorry.

Senator ROCKEFELLER.—we had the commissioners before us for confirmation and for a hearing, and in each case I asked them individually, would they pledge to do nothing to undermine the universal service fund, and they all said, Powell, all of them said that they would do absolutely nothing. I do not trust that, and it makes me very nervous, because of the power of rules and regulations, and because of what I think I see as their intuitive disposition towards this.

Mr. MARKEY. Well, here is what I would say, that I do not think it is the fear of God which motivates the FCC. I think it is the fear of the Senate on universal service—

[Laughter.]

Mr. MARKEY.—and it was my observation during the 1996 Telecom Act deliberations that the wonderful compromise which Massachusetts and Virginia and Pennsylvania made in 1787 in allowing for each one of these smaller States to have two Senators apiece has now emerged as something which is a powerful protector of universal service for all of those rural States that are so well-represented, I might note, on this Committee, so if I were a member of the Federal Communications Commission, I would move forward with only the greatest of caution in undermining the historical commitment which our country has made for 70 years to that concept, so I just do not think it is likely to happen.

What I would fear is that there was a legislative effort to remove the responsibility for contribution to universal service. I do not think the FCC has the nerve, apart from a congressional mandate, to allow for a depletion of the universal service pool.

Senator ROCKEFELLER. Thank you, Congressman. I have got the data before me which is put out by companies, and it shows that there are 16,697 users of high speed lines in West Virginia. That is mind-boggling to me if it is true. We have to accept those figures

in the sense that those are the only ones that we have, but you indicated that 85 percent of—and you phrased it nicely, but you know, right down the middle of the street, 85 percent of American streets—

Mr. MARKEY. 70 to 85 percent.

Senator ROCKEFELLER. Yes. It is not even close to the fact, not even close to reality, and in West Virginia they sort of pick five most populous counties which all happen to be contiguous and say, this is what we are going to do, and then they shoot an occasional thing up to our university, or maybe up to some other place to sort of keep people happy, like railroads do with captive shippers. They will pick out an individual person who could cause some problem and settle with them, but then ignore the rest of the Staggers Act.

So my question to you is this. In order to have that more effective, Senator Hollings has a bill which would do grants, and I have a bill for broadband which would do tax credits, 10 percent, 20 percent, depending upon what you are uploading or downloading, and how fast it was, and all the rest of it, and it just occurs to me as I sit here that maybe neither one of them does it by itself, but joined they might, and I am interested in your view.

Mr. MARKEY. They might. I mean, I am not an expert on rural America, but here is what I do know. In an urban and suburban America, where it is deployed, and it is available, only 12 percent of those who have access to it actually subscribe to it, so what have we really gained, in other words, if we do have a tax bill or a grant program that then deploys this wire out into the most remote parts of our country, and then only 12 percent subscribe to it? I do not think we are going to see a move here in the Congress to subsidize it like it was electricity or phone service.

So you get into, again into this market situation, where I am willing to be very open, as we have always been in telecommunications policy, in kind of acceding to what the rural Members of the House and Senate want for their 10 percent, the rural part of the country. I just do not want a policy to be put in place which affects the other 90 percent, where the success story is quite palpable.

So I do not know the answer and again, I would have to rely upon your expertise, looking at analogies in other areas that may have been used to deploy other types of services in rural America, but just understand that at \$70 a month, we see very small percentages subscribing in urban and suburban, so do not expect it to perform a miracle out there, unless we have some way of getting the price down to the \$30 or \$40 range.

Senator ROCKEFELLER. Thank you, Congressman.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Smith.

**STATEMENT OF HON. GORDON SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Thank you, Mr. Chairman. I wonder if I can have included in the record my opening statement.

The CHAIRMAN. By all means.

Senator ROCKEFELLER. Same here.

The CHAIRMAN. The same for Senator Rockefeller.

[The prepared statement of Senator Smith and Senator Rockefeller follows:]

PREPARED STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Mr. Chairman, thank you for this hearing today and continuing to discuss the important issues surrounding broadband deployment. As we move further and further into the new world of technology, access to broadband will determine whether a community flourishes in the new economy or is left behind.

Since our last hearing on broadband, I want to once again underscore the importance of widespread affordable broadband on consumers and businesses. Broadband deployment is especially essential to the future of the information technology and the telecommunications sectors which are continuing to suffer thousands of layoffs. Broadband deployment is absolutely vital to our economy.

We need to be working toward closing the Digital Divide and help ensure that all Americans have choices for high-speed Internet services. I am still concerned that as broadband is deployed to some cities, service disparity may be growing wider and wider throughout this country and potentially affecting rural areas and inner-city neighborhoods.

Public policy needs to encourage all potential providers to deploy new last mile broadband facilities—and that includes the incumbent telephone companies and the competitive local exchange carriers. We need to continue to debate the issue to find ways to encourage more investment and competition.

It will be a particular interest for me to find out the opinions of the other technology industries affected by the deployment of widespread affordable broadband. We need to hear from industries like: consumer electronics, personal computer and semiconductor manufacturers, software companies, and telecommunication equipment manufacturers. Because at the end of the day, these companies only benefit from broadband if it is widely available to the consumer and the consumer sees real value to buy it.

PREPARED STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA

Mr. Chairman, I would like to thank you for holding this hearing on how best to promote broadband deployment.

Why Broadband is Important

It's become fashionable lately in some quarters to suggest that broadband isn't terribly important. A fad, some call it, important only to dot-corn speculators.

This is short-sighted. Broadband is important not because some stock analysts or tech gurus say it is. It's important because it will be the great opportunity equalizer of this century. To take just one example, broadband promises a student in Mingo County, West Virginia, access to the very same educational materials as a student at MIT, which has announced that it will make nearly all its course materials available free on the Internet. With broadband, limits that have constrained West Virginians for generations will disappear.

This is why today's hearing is so important. And this may help explain my perspective on the issues we're going to discuss.

Competition and Other Ways to Promote Deployment

Today, we're going to talk about the relationship between telecom competition and broadband deployment. And it is clear that this is an important subject. Bell companies claim that rules in the 1996 Telecom Act hinder them from deploying broadband facilities in rural areas of West Virginia. And competitors to the Bells claim, with just as much force, that only through vigorous enforcement of these rules will there be any chance for deployment of broadband facilities such areas.

I find this debate incomplete. What neither side seems to want to discuss are the rural and underserved communities where broadband facilities (apart from maybe satellite) are unlikely to be deployed *regardless of how the deregulation debate turns out*. These communities are the ones for whom broadband has the most to offer. And these communities are why I chose to address the problem of broadband deployment directly through tax credits, rather than indirectly through regulation or deregulation.

My Broadband Internet Access Act of 2001 would provide tax credits for those who bring broadband to places where the market, unaided, will not. It has 65 co-sponsors from both sides of the aisle, including 17 Members of this Committee. If

we're really concerned about the hardest-to-serve communities, our approach strikes me as a pretty good way to solve the problem. Senator Hollings, in his Broadband Telecommunications Deployment Act, takes a similar approach—using loans and grants instead of tax credits. I think his approach is a good one as well, and that is why I am an original cosponsor of his legislation.

Deregulation and Universal Service

There is, however, one aspect of today's deregulation debate that concerns me a great deal. That is how deregulation would affect universal service. Congressman Markey a few months ago requested a GAO study that described the challenges to universal service posed by the advent of Internet technologies. I am troubled by this report, and would like to explore whether broadband deregulation would exacerbate the challenges it describes.

Proponents of deregulation argue that we should have “old rules for old equipment” and “new rules [or, perhaps more accurately, no rules] for new equipment.” A challenge arises, however, because it is possible to offer “old equipment services” over new equipment. In other words, it is increasingly possible to offer *voice* services over unregulated *data* networks. In some cases, it's more efficient to this, so some companies are “migrating” voice services onto data networks.

Would such “migrated” voice traffic still be subject to universal service contributions? The lawyers tell me that this is not an easy question, particularly if voice is combined with other capabilities, such as video or interactive data. If not, how can the Universal Service Fund—and, indeed, the idea that technology must be made available to *all* Americans—be preserved in the coming years?

This is not a universal service hearing—that is in two weeks. But this is becoming a serious problem, and one that, in my view, has not been sufficiently examined in the broadband debate. I look forward to hearing the views of both proponents and opponents of deregulation on how to address this problem, both today and over the coming weeks.

Senator SMITH. Thank you for your testimony. I share Senator Rockefeller's concern about getting to rural places. I am from a rural part of this country, and I guess my question was first what forces are in play to get more than 12 percent to sign up?

Mr. MARKEY. The forces were in place to get more than 12 percent to sign up at the point at which—I will be honest with you—the NASDAQ hit 5,000 in March of 2000, and we had companies that could raise capital. There was an incentive to continue to deploy by multiple competitors to the Bells and the cable companies.

The question is, given the success story that we did have in making it accessible, at least, if not affordable for 70 percent, at least, of the country, do you want to pull the plug, or do you want to hold tight, let the companies that are still out there know that we are not going to remove their legal right to gain access to all of these companies at affordable rates, while compensating the Bells for the reasonable use of those wires? Otherwise, I am just afraid that the vision of the future becomes the past.

So a lot of these companies are in bankruptcy. Some of them are not, but a lot of them are. They are coming out of bankruptcy with new management, new owners. They are committed to continuing along on the same course, but I think they are looking for some regulatory certainty that the rules under which they played over the last 6 years, notwithstanding the Bells going to the Supreme Court for the first 4 years—and by the way, last week the Supreme Court basically upheld the 1996 act, two decisions. They said it was right on the money in terms of the way in which those rules were being implemented. We have won every single decision so far on the act, and I think we must keep the course if we want to be successful.

And again, I am willing, Senator, and I think every urban Member is willing to defer to the rural representatives in the Congress on the best way of dealing with that issue, but it is unlikely to produce a good result if all we rely upon is one company to go out there, because you will not get a low enough price so that the rural American can subscribe to it.

Senator SMITH. It truly is an enigma, how we get that done, when you have only got 12 percent signing up in the urban places of our country, but it does seem to me that if broadband is the way in which much of our communication will occur in the 21st Century, that it in fact is closer to electricity than we might think, so that is a factor that is governing my sentiments in this whole issue in coming to a conclusion.

Mr. MARKEY. Can I say, Senator, here in Washington I have narrow band at home. It costs \$25, you can do your e-mail. I can pick up the Bostonglobe.com and read the Globe on line. I have a few other prosaic uses for it. But if I go to broadband, it costs \$75 a month, I had better get a lot more than that, and right now it is hard to identify what those additional services are that really makes it a desirable service, so at \$35, maybe I will pay for the extra speed. Maybe there are some little extra gilded edges to it that make it worthwhile, but at \$70 it is really not a realistic option for a family making \$40,000 or \$50,000. That is a big additional expenditure per month.

Senator SMITH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Brownback.

**STATEMENT OF HON. SAM BROWNBACK,
U.S. SENATOR FROM KANSAS**

Senator BROWNBACK. Thank you, Mr. Chairman. Thanks for holding the hearing. Congressman Markey, thank you very much for being here. You have answered all the questions eloquently and quite well, even though we may disagree on some of the conclusions that we come to on this point.

The broadband issue I think is critical for our future growth as a country, and so how we wrestle with this is going to be very important.

Mr. Chairman, I want to use a brief bit of the time that I have to talk about an equally, I think, important issue that is the wireless equivalent of broadband is 3-G services, and I will just make a quick observation, if I could, about an auction that we have coming up in 6 days on a number of the 700 Mhz area that is being put forward.

There are competing bills that have been put forward in the Senate. Senator Stevens has a bill that will proceed forward with the auction now. Senator Kerry and Senator Ensign have bills to delay the auction. The House has passed a bill virtually unanimously to delay the overall auction, and you have got an issue that I think is very key for us for the future of these types of services, and the reason I raise it, Mr. Chairman, is I think there is a compromise there to be had, where I think Senator Stevens is looking at the rural interest which I am a part of and a number of other groups, members on this dais are, to try to get this moved forward for rural

deployment of some of these future services, and getting this spectrum out there, and I think that is laudable.

I think as well Senator Ensign and Senator Kerry are saying, we need a future plan. We need an overarching architecture for the deployment of these megahertz, these services, and to do that, we are going to need some time to do that.

I think there is a compromise to be had here where you would allow a certain portion of the auction to go forward on certain of the megahertz and delay the rest of it so that the deployment of this spectrum can be allocated in the rural areas but not in others while we are developing the overall architecture of the future of where should these spectrums go to.

I understand some of the parties to the different bills are trying to work through this compromise effort, but it would auction, as I understand it, the C block licenses, the 734 RSA and MSA licenses contained in the lower 700 megahertz band, as well as possibly the unencumbered E-block licenses. It seems to me to be a pretty attractive sort of auction that we could move forward with, to where you get some of the spectrum out here and deployed, but yet you maintain the bulk of it that people are interested in for an overarching plan of how we deploy this.

It is a big issue, it is an important issue, it has a rural component to it that is very important, as well as a very important national component to it, and I sit in the spot of being both a representative of a rural State, and then chairing the Wireless Caucus, or cochairing the Wireless Caucus, both of which have some competing interests on this, and that is why I am interested in trying to weave through this in a way that we can make this work.

Mr. Chairman, I would urge us to take this up, if we could, and maybe work on pulling something together that could get these interests to pull together. In 6 days the auction is supposed to occur. It has been delayed previously a number of times. It could be delayed again, but I think maybe there is a compromise that could be had to where most interests could be met with this, and yet maintain this generally for the future deployment in the 700 megahertz area.

I did not mean to take your time up with this, Congressman, but this is an issue that is in front of us, and it does involve the future.

The CHAIRMAN. Senator McCain.

Senator MCCAIN. Could I have Congressman Markey respond, and then I would just like to make one comment.

Mr. MARKEY. Could I just say in 1 minute, I think we should be open to compromise on that issue, and it is something that I think we have to be flexible on. I have not seen it, but I think it is something that is very important in terms of our ability to resolve it in a way, though, that creates the right policy, but I think we should be open to it, but in a larger sense you just have to keep a focus on the fact that because the digital TV transition has not occurred, that every one of these television stations in America has six additional megahertz that is locked up, and you cannot move to a 3-G revolution until you get back that 6 megahertz from every television station.

So what you have got is a failed digital TV strategy and a failed 3-G strategy simultaneously. The one impacts the other, so we

have just got to get moving on a policy with the broadcasters, the cable industry, the television set manufacturers, the satellite industry, to resolve this digital television transition, because it is delaying the return of all of the rest of that spectrum.

Senator BROWNBACK. Undoubtedly it is doing that. What I was putting out in front of you is what I thought a narrow possibility.

Mr. MARKEY. I can compromise on that. On that I can compromise.

Senator BROWNBACK. Because you put your finger on the point. We have not got the digital—HDTV, the deployment is not out there to the degree that is required under the Act, and we need to maintain that spectrum. It should not be allocated until we get it back and we can do it in a national architecture policy, but there are some of these rural areas that I do not think would be competed on broadly that we could, I agree with you, move forward with now.

Mr. MARKEY. I agree with you, Senator.

Senator MCCAIN. Mr. Chairman, just briefly, as we know, the revenues were supposed to be realized by September of 2002. The auctions have been delayed five times. I wrote a letter to Chairman Powell asking him not to delay and not to do it, but to make the decision that he believed was in the best interest of the taxpayers of America. We have a commission, the FCC, in which we place these responsibilities, and we placed these responsibilities, and I think the burden of proof is on those who would overturn Chairman Powell's decision to move forward after five delays with the auction.

I do not know what the right thing to do is, to be honest. I am not sure. It is a very complex and difficult issue. Will we realize more revenues if it is delayed in the future? What is the future of the telecommunications industry as far as the value of the spectrum is concerned? The fact is, it has been delayed five times. There has to be the transition not only with the analog, but there also has to be an auction that takes place.

There are legitimate concerns about rural America, and I think your concerns are very well-founded, but the chairman of the FCC has made a decision, and I hold him in very high regard and with great respect, so before we overturn the decision of the chairman of the FCC, I would like to see some very strong evidence that this just would not result in another delay and another delay and another delay, but I am open to those arguments, and I think we should all be, but just to arbitrarily overturn a decision which was certainly well-thought-out by the chairman of the FCC, the burden of proof lies on us, I think, to make the case that that is necessary at this time.

I thank you, Mr. Chairman.

The CHAIRMAN. Senator Allen.

Senator BROWNBACK. Mr. Chairman, could I just, in brief, offer a quick response on that? I have spoken with Chairman Powell about this, and maybe it would be worthwhile to ask him to come up and see if he would address the topic, perhaps not, but I think there is a window, and I spoke with him just about this type of proposal it might be worthwhile to look at, because this is a current issue that is on us.

**STATEMENT OF HON. GEORGE ALLEN,
U.S. SENATOR FROM VIRGINIA**

Senator ALLEN. Thank you, Mr. Chairman. I want to associate myself with the remarks of Senator McCain on the previous issue, and I am not going to use my time on that, but obviously if any legislation is going to come forward, obviously we should have the chairman of the FCC, who I think is, for those of us who like judicial restraint, and people following the laws rather than making laws, I think he is almost compelled by the law to make the decision he did, based on evidence but also on the statutes, and clearly the statutes and this auction needs to be looked at.

Now, here we are talking about broadband, broadband Internet capabilities which are so important in education, medical services, health care, commerce, entertainment, and Government services, and it is obviously very important, looking at this landscape—and some have mentioned it already. You see that 11 million people subscribe to broadband services of some type. Two-thirds of them get it from cable modems, usually those are the ones at home, whereas the others get it from DSL.

The fact is, only one out of eight households that have access to broadband currently subscribe. Now, I am mindful of the competitive carriers and the State's concerns regarding S. 2430. The regulatory parity for DSL services can potentially create a monopoly for virtually all local telecommunications and voice services, as well as a monopoly in small to medium-sized business markets where cable modem services do not have a presence.

We see that about 70 to 75 percent of Americans have access to at least one type of broadband service, yet only 10 to 12 percent actually subscribe. This would indicate a significant lack of either corporate or business or even consumer demand, and I think that has to be addressed if there is going to be the investment needed for future broadband deployment.

This is not simply a question of, if you build it, they will come. We are eager to find ways to build out broadband capabilities, and there are a host of complex issues beyond S. 2430 that we have to address, such as the availability of compelling content, spectrum allocation reform, and also copyright protections. We will disagree on how those ought to be done, but those I think are all very much related.

I am Chairman of the Senate Republican High Tech Task Force, and we are all grappling with how best to do this. Senator Rockefeller's bill, the Broadband Internet Access Act I think is a good step of the Government providing incentives to rolling out broadband services in a technology-neutral manner. I also think there are some creative ways of marketing, and innovative approaches of doing this to encourage subscriptions to broadband services.

In Scott County, which is in rural Southwest Virginia—it is on the Tennessee border—a large portion of the county has access to broadband services, whether it is cable or DSL. However, very few subscribe, only 5 percent. The Scott County Telephone Cooperative has developed a price packaging bundled marketing approach for their customers to increase broadband penetration and use, and it comes down to only \$5 more. Now, for \$5 more, I think a lot of us

would like to have that, even if all you are doing is reading the newspapers and getting scores and stock updates and all the rest, and so they are coming up with a creative way of doing it.

Now, your bill, Mr. Chairman, is similar to the thrust of the Rockefeller bill, to help build out broadband, and it utilizes for a 5-year period one-half of what I always refer to as the luxury tax that was put into effect to finance the Spanish-American War. I made promises during my campaign that, we have won that war, and that Spanish American War tax ought to be repealed altogether.

Beyond the issue of whether this is really fair to this measure as far as the RBOC's to try to help put certain areas and certain governmental agencies to be running broadband services, maybe, maybe if you repealed the other half of that tax, Spanish-American War luxury tax, and then your half tax ends in the year 2007, which is the 400th Anniversary of the founding of Jamestown, the cradle of American liberty, there would be a conference of all sorts of historical approaches, and then that might be much more attractive to me, but my problem is, I think that the Spanish American War tax ought to be repealed, and maybe a partial repeal of it would be better, and maybe we can work out some of the other differences.

But the point is, there are a lot of interests here. We do need to work together as best we can to determine the best approach to encourage deployment of broadband, whether that is rural suburban or urban, and I would only ask our very articulate and knowledgeable witness here, could you comment whether DSL or cable modem services as far as what you would see happening in small and medium-size business markets? Would some of these measures be creating monopolies in those markets?

Mr. MARKEY. If I may, Senator, first I would like to respond, and this is a very serious point, on this historical debate between Jamestown, Virginia, and Plymouth, Massachusetts.

[Laughter.]

Mr. MARKEY. I cannot allow that to go uncommented on.

Senator ALLEN. Yes, when did the Pilgrims arrive—13 years later.

[Laughter.]

Senator ALLEN. And the Mayflower Compact, if you will read it—

[Laughter.]

Senator ALLEN. They thought they were landing in Northern Virginia.

Mr. MARKEY. Let us go back to John Cabot in 1501, coming down into New England and planting the flag right there—

Senator MCCAIN. The Vikings.

Senator ALLEN. This is the first permanent English settlement.

Mr. MARKEY. So I do not want to—Mo Udall used to say that everything has been said, but not everyone has said it, so I have got to be careful here, since I have already said it myself now twice, so for the third time, I do believe that unless we find ways of creating incentives for DLEC's, CLEC's, wireless-based companies to get into the marketplace, that we will not see an adoption of broadband technologies by consumers because there will not be

enough competition in price and new services that will command their attention. We already know that out in the marketplace, and my own opinion is that the answer is more, not less competition.

Senator ALLEN. I am in agreement with you there, but we do not also want to be creating monopolies in some of the smaller markets. Competition is important whether rural suburban or urban.

Mr. MARKEY. Monopoly is a rear view mirror view of the telecommunications marketplace. It has taken us a long time to get over this notion that it is a natural monopoly to have only one telephone company.

Having done that, having moved through this very difficult period, it would be an historic mistake to move back towards the model which did not lead to technological innovation or price competition. We should move in just the opposite direction, I agree with you, Senator.

Senator ALLEN. Thank you.

The CHAIRMAN. Senator Dorgan.

**STATEMENT OF BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, thank you. It will not surprise you, Congressman Markey, that I agree with you. I missed your presentation, but since you recited it at least three times in answer to questions, I apparently picked up most of it.

[Laughter.]

Mr. MARKEY. It is coming around again.

Senator DORGAN. I think just to make a comment, then ask you a question, in areas where there is robust competition I think we all understand you do not need regulation. Robust competition is not in need of regulation, but in areas where there is monopoly, or near monopoly, you must have some kind of effective regulation.

On the next panel is Ms. Loretta Lynch, who testified before this Committee or Subcommittee last week dealing with the issue of California electric prices. In that area, we had the development of near monopolies and no regulation, and the fact is there was price-fixing and price-rigging to the tune of billions of dollars in my judgment, and if we ever get to the bottom of that, I think it will represent one of the largest business scandals in this country's history, but having said that, it makes the case for effective regulation until we have the forces of competition that allow us to back away some.

Now, in North Dakota we have an incumbent Bell Company. They serve 24 exchanges. They in fact sold most of their local exchanges, the rural ones. They have 24 remaining, most of them in our cities, and in four of their 24 exchanges they are offering DSL service, only four. Why? They choose not to offer DSL services in the others, and do not seem to care much about it, so our experience here is not a very happy experience with the incumbent carrier, and my feeling is they either ought to serve these exchanges or sell these exchanges, one or the other, because in fact most of our local coops and independent telephone companies that are serving areas in the State that are less densely populated are moving much more aggressively to try to deploy broadband and advanced services.

I have a Blackberry with me today, as many of us do, and this works great most of the time, but when you get on the airplane in Minneapolis and go to North Dakota or South Dakota or places like that, there is no service at all, none, and they will advertise they serve 94 percent of the country. Well, that is not true, not in terms of geography—perhaps population—but in most of the country you cannot get Blackberry service, so in terms of the deployment of broadband, advanced services and other kinds of things, much of the country is being left behind.

Let me frame this question this way. Is it not the case that in 1996 we decided there are conditions under which you have to meet checklists in order to go and serve interLATA with long distance, and those conditions are described as conditions that we want to be met that describe local competition. What kind of competition in local exchanges exist today in the country? Does it in any way exceed your expectations, or have we fallen far short of having robust competition in local exchanges?

Mr. MARKEY. That is an excellent question. Again, the 1996 act was not a deregulation bill. It was a demonopolization bill, so counterintuitively, in order to break up a monopoly you actually need more regulations so that the new competitors have some confidence that the Government is going to open up the marketplace so that they can reach customers which they historically had never been able to reach. That is the famous 14-point checklist that would be put in place that competitors could rely upon going to the regulators and the courts in order to pry open these markets.

So since 1996, and after the 3 or 4-year battle by the Bells at the Supreme Court and other Federal courts that delayed implementation of that law, and beginning in December of 2000, unfortunately, when New York was certified as the first State which has been opened, we have moved to a point now where perhaps 7, 8 percent, 9 percent of the lines in the United States are now controlled by competitors, and that is a hell of a move after 100 years of zero.

Now, it is not as far, I have to admit, as I wish we had gone, but I could not have predicted that the first resort of the Bells would be to try to first consolidate amongst themselves. That would be their corporate plan, to go from seven down to four, and then to go to the courts to try to block the implementation of the act.

But given the fact that they did do that, 13 States are now open, 7 or 8 percent of the lines are controlled. If we hold the line, I could envision a day 5 or 10 years from now where we have got it up to 10, 15 percent of the lines, and every place that that happens the consumer is going to be a beneficiary.

Senator DORGAN. And in your judgment, what happens if Congress adopts Dingell-Tauzin, for example, or Tauzin-Dingell, whatever it is called these days.

Mr. MARKEY. I think that it would largely stop the current revolution in its tracks, and we would have to await some, perhaps wireless or satellite-based competition to manifest itself, but that is something that is now in the long distant future. It is not anything that is just over the horizon, and I think the consumers will be the loser.

Senator DORGAN. Well, at least they have stopped advertizing. You know, every morning on television here in Washington, D.C. you hear Tauzin-Dingell this, Dingell-Tauzin that, and you know, if you do not know much about it, you think it is either a law firm or a foot powder.

[Laughter.]

Senator DORGAN. I frankly am a little tired of the ad, so my feeling is, as yours, that if we were to proceed with legislation of that type, we will slow down the ability to see more and more competition in local exchanges.

Well, Congressman Markey, as always, the Senate is advantaged by having you appear, and I only regret that I missed your presentation, but I think I have been advantaged by hearing your responses to questions.

The CHAIRMAN. It was the best, Senator Dorgan, and I am not a bit surprised. I have been here going on 36 years, and that is as good as I have ever heard. We, not just the Committee, the entire Senate is indebted to you, because you have given us a sense of history and understanding of where we are headed and how far we have come. I cannot thank you enough.

If there are not any further questions, we have got a very important panel here to follow on. Thank you very much, Ed. We really appreciate it.

Mr. MARKEY. Thank you, Mr. Chairman. Thank you, Byron.

The CHAIRMAN. We now have panel number 2, Ms. Loretta Lynch, the president of the California Public Utilities Commission, Mr. Robert B. Nelson of the Michigan Public Service Commission, Hon. Mary Jo White, the Senator from Pennsylvania State Senate, and Mr. Paul B. Vasington, the Chairman of the Massachusetts Department of Telecommunications and Energy.

While they are taking their seats, the Committee will just note that the hearing really is on competition, how they got us off on broadband, if there was something wrong with it, that there was some legal barrier to getting into broadband, there was some prohibition or otherwise. It is just economics of it. It is just the lack of local competition. That is how to get more broadband, and that is why we have got these distinguished members of the panel here today. We welcome you, and we will start over with Mr. Vasington. We will start from left to right. We have your full statements in the record, and they will be included, and you can summarize them as you wish.

**STATEMENT OF PAUL B. VASINGTON, CHAIRMAN,
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS
& ENERGY**

Mr. VASINGTON. Thank you, Chairman Hollings, Members of the Committee, for the opportunity to testify before you on the important topics of local telephone competition and broadband deployment. My name is Paul Vasington, and I am Chairman of the Massachusetts Department of Telecommunications & Energy. My testimony will focus on the following three points:

First, there is no crisis in competition or broadband deployment.
Second, Massachusetts has had both competition and investment.

And third, investment does not require limiting or eliminating unbundling, but access to new infrastructure should be priced at market rates.

Some have recently said that there is a broadband crisis. I do not agree. Broadband is widely available, but there just are not enough valuable services to justify the higher cost for most customers. In terms of competition, the bankruptcies of a number of competitive local exchange carriers and the closing of capital markets to telephone companies has been seen as demonstrating the failure of competition. I do not agree with that assessment, either.

The number of CLEC's in business may have shrunk, but market share of CLEC's has continued to increase. Broadband services are available to a large majority of households, but subscription rates among that group are just over 10 percent. What we are talking about is not market failure. It is a situation where customers are not willing to pay more for the services that are offered, and that is perfectly normal.

All of this does not mean that the Government cannot or should not do anything for broadband policy, but it does suggest where the policy focus should be. Government should focus on removing barriers to efficient investment. That is the appropriate Government role.

Our experience in Massachusetts demonstrates that there is no crisis in competition, or broadband deployment. The Massachusetts Utility Commission has been promoting competition in all telecommunications markets since just after the break-up of AT&T, more than 10 years before passage of the Telecommunications Act of 1996. Competition has been present to some degree in Massachusetts since divestiture, and has continued to grow. Massachusetts was the fifth State in which the FCC authorized the local Bell company to offer long distance service, and at the end of 2001, CLEC served just over 20 percent of all telephone lines in Massachusetts, and of these CLEC-served lines, over three-quarters are facilities-based.

In terms of investment in broadband availability, Massachusetts has more high-speed lines per 1,000 residents than any other State. The vast majority of customers in the Commonwealth have access to either DSL or cable modem service. Verizon has invested almost \$4 billion in its Massachusetts network from 1996 to the end of 2001, and cable companies in Massachusetts have invested well over \$1 billion in their Massachusetts networks.

The policy debate about broadband investment and competition is too often framed as a choice. If you want more investment, you cannot have as much competition, or if you want more competition, then you cannot have as much investment. There is no need to choose between competition and investment. An open, competitive market, driven by decentralized decisions of consumers and suppliers should and will determine the most efficient pace and level of investment in broadband technologies.

Unbundling should not lessen the incumbent's incentives for investment. There should not be any objection from incumbents about sharing any facilities, as long as they earn a return on those facilities commensurate with the risk of that investment. Attempts

to eliminate unbundling requirements in the name of providing incentives for investment are solutions to a nonexistent problem.

There is not a problem with competition and investment for voice services, and what is currently viewed as high-speed services. There is a legitimate concern, however, about the next generation of broadband services, most likely fiber-based. Unless the prices charged for access to this new infrastructure adequately cover the risk of the investment, network companies will be reluctant to provide next-generation broadband services.

There are no legacy inefficiencies or monopoly profits associated with next generation broadband infrastructure, so it would be appropriate to price access to that infrastructure at market rates. Maintaining unbundling requirements, but allowing incumbents to charge market rates for new infrastructure, is a compromise that could form the foundation for a policy that truly promotes local telecommunications competition as a means to greater broadband deployment.

I thank you all for your consideration of my testimony.

[The prepared statement of Mr. Vasington follows:]

PREPARED STATEMENT OF PAUL B. VASINGTON, CHAIRMAN, MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

Introduction

- 1) There is no crisis in competition or broadband deployment.
- 2) Massachusetts has had both competition and investment.
- 3) Investment does not require limiting or eliminating unbundling, but access to new infrastructure should be priced at market rates.

There is no crisis in competition or broadband deployment.

Some have recently said that there is a broadband crisis. I do not agree. Broadband is widely available, but there just aren't enough valuable services to justify the higher cost for most customers. In terms of competition, the bankruptcies of a number of competitive local exchange carriers (CLECs) and the closing of capital markets to telephone companies has been seen as demonstrating the failure of competition. I do not agree with that assessment either.

The number of CLECs in business may have shrunk, but the market share of CLECs has continued to increase. The problem may be that we are trying to judge the success of competitive markets based on our expectations from our long experience in a regulated environment. Regulation is characterized by stability, continuity of rates, consumer protections, and solvency of major players. Markets, on the other hand, are characterized by "creative destruction." There is turbulence, customer dislocation, business failure, supply rushing ahead of demand and vice versa. Capital is abundant, and then it dries up completely. This creative destruction is not market failure, but the challenge for regulators is to sustain important customer protections while obtaining the dynamic benefits in terms of innovation, which we have been able to do.

The situation for broadband services is one in which services are available to a large majority of households, estimated at around 70 percent, but subscription rates among that group are just over 10 percent for DSL and cable modems. The so-called "problem" is that most people do not want to pay what it costs to deliver the services because they don't see the value as being equal to the cost. What we are talking about is *not* market failure, it is a situation where customers are not willing to pay more for the services offered, and that is perfectly normal. If government steps in to correct this situation to tell people that they are making the wrong choices, then we may make the situation worse and more costly. Deployment is better when it is driven by consumers and suppliers making decentralized decisions about what they want, when they want it, and how much they are willing to pay for it.

All of this does not mean that government cannot or should not do anything, but it does suggest where the policy focus should be. Government should focus on removing barriers to efficient investment. The question we should be asking is: Are there customers willing to pay what it costs to serve them who can't get services?

If so, we should look for the barriers that are keeping suppliers from these customers. That is the appropriate government role. Alternatively, if the issue is just that people are not willing to pay for services that we think they should want, then there is little role for government.

I think there is plenty to do to remove barriers. Some examples include:

- Create a sound economic foundation for competition and investment.
- Allow better access to content by dealing with copyright issues.
- Remove state and local barriers to use of rights-of-way for wired infrastructure and tower locations for wireless.
- Develop better spectrum policy.
- Adjust tax policy, with accelerated depreciation for technology with a short “shelf-life,” and reduced taxes on communications services.

Massachusetts has had both competition and investment.

We have had both competition and broadband deployment in Massachusetts. Massachusetts has been promoting competition in all telecommunications markets since just after the break-up of AT&T. In 1985, the Massachusetts Commission found that “there are benefits inherent in a competitive marketplace that encourage greater levels of economic efficiency and fairness than does a regulated monopoly environment.” DPU 1731, page 25. Since that time, we have pursued policies to make the regulatory environment more in tune with market incentives and structure. For example, we rebalanced rates significantly in order to reduce subsidization, we have reduced entry barriers, and we have aggressively implemented the requirements of the Telecommunications Act of 1996.

Competition has been present to some degree in Massachusetts since divestiture and has continued to grow. In 1991, Massachusetts became the second state to allow collocation, and was one of only seven states cited by the FCC as having switch-based local competition in 1996. See CC Docket No. 96–98, *Notice of Proposed Rule-making*, FCC 96–182, at par. 5 n.10 (rel. April 19, 1996). Massachusetts was the fifth state in which the FCC authorized the local Bell Company (Verizon in Massachusetts) to offer long distance service. At the end of 2001, CLECs served 21.1 percent of all land-line telephone lines in Massachusetts. And of these CLEC-served lines, 76 percent are facilities-based.

In terms of investment and broadband availability, Massachusetts has more high-speed lines per 1000 residents than any other state. Only the District of Columbia has more high-speed lines per 1000 residents. Verizon offers DSL to around 60 percent of lines in the Commonwealth, and, by the end of this year, AT&T Broadband’s cable modem service will be available to 95 percent of its customers. AT&T Broadband also now offers cable modem service to small business customers in over 100 communities. Verizon has invested almost \$4 billion in its Massachusetts network from 1996 to the end of 2001, with increased annual investment each year from 1993 to 2000 as competition grew. And cable companies in Massachusetts have invested well over \$1 billion in their Massachusetts networks. Rural areas in Massachusetts have benefited from innovative programs to aggregate customer demand and thus give suppliers greater incentives to compete for these customers. The first of these programs was called Berkshire Connect.

It is hard to underestimate how important telecommunications is to the health of the Massachusetts economy. In a 1994 article, then-Governor Weld said, “Telecommunications networks will be as important to Massachusetts in the coming years as roads, bridges, railroads, canals, and harbors were to Massachusetts when our economy was dominated by basic manufacturing industries such as textiles and leather.” The importance of telecommunications is related to the four clusters of industries in which Massachusetts has a competitive advantage, as identified in 1991 by Harvard Professor Michael Porter. Those four industry clusters are health care, knowledge-creation services, financial services, and information technology. All four of these industries create and trade in knowledge and information, which rely on advanced telecommunications networks for transport.

Investment does not require limiting or eliminating unbundling, but access to new infrastructure should be priced at market rates.

The policy debate about broadband investment and competition is too often framed as a choice—if you want more investment, you cannot have as much competition, or if you want more competition, you cannot have as much investment. It does not have to be this way, and it certainly is not consistent with the goals of the Telecommunications Act of 1996: “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all

Americans.” There is no need to choose between competition and investment. An open, competitive market driven by decentralized decisions of consumers and suppliers should and will determine the most efficient pace and level of investment in broadband technologies.

Unbundling should not lessen the incumbents’ incentives for investment. As we have seen, investment in Massachusetts has not been held back by the unbundling requirements of the Telecommunications Act of 1996. There should not be any objection from incumbents about sharing any facilities as long as they earn a return on those facilities commensurate with the risk of investment. Attempts to eliminate unbundling requirements in the name of providing incentives for investment are solutions to a non-existent problem.

Clearly there is not a problem with competition and investment for voice services and what is currently viewed as “high-speed” services, *i.e.*, 200 kbps in at least one direction. There is a legitimate concern, however, about the next generation of broadband services—most likely fiber-based—which will be capable of delivering much higher speeds to customers. Unless the prices charged for access to this new infrastructure adequately cover the risk of the investment, network companies will be reluctant to provide next-generation broadband services.

Current broadband services, DSL and cable modem, ride on the existing networks of telephone and cable companies. DSL works over the telephone companies’ copper wires, and cable modem service works over coaxial cable. The FCC has priced access to the telephone companies’ network elements based on a model that is designed to eliminate legacy inefficiencies and monopoly profits, which is a legitimate concern in terms of unbundling the existing network. New infrastructure is another story. There are no legacy inefficiencies or monopoly profits associated with next-generation broadband infrastructure, so it would be appropriate to price access to that infrastructure at market rates.

In order to provide incentives for investment in new services, telephone companies must have an opportunity to earn a return that compensates investors for that risk. And the risk may be significant. Competition for next-generation broadband services is coming from several areas, including cable, satellite, and wireless. A Massachusetts-based company called Amperion is even working to provide broadband services over lines used to transmit electricity.

Maintaining unbundling requirements but allowing incumbents to charge market rates for new infrastructure is a compromise that could form the foundation for a policy that truly promotes local telecommunications competition as the means to greater broadband deployment.

The CHAIRMAN. Thank you very much. Ms. White.

**STATEMENT OF HON. MARY JO WHITE,
SENATOR, PENNSYLVANIA STATE SENATE**

Ms. WHITE. Thank you, Senator. By the way, I am not the Mary Jo White who is U.S. Attorney for Manhattan. That is my disclaimer.

In my testimony, I note that several years ago when someone in Pennsylvania was looking for a catchy slogan someone suggested two big cities with a lot of trees in between, and that is because Pennsylvania is largely known from Philadelphia and Pittsburgh, but I am here to tell you that in those trees is the largest rural population of any State in the country. I represent about a quarter-million of those people in the Pennsylvania Senate.

I do not have to tell you here how important the Internet and broadband capability is to people. However, I am not really talking about just reading the newspaper or using your computer for your e-mail. I am talking about small business economic development, the kind of thing that is really the lifeblood to a community such as the one I represent.

I live in the former GT service area now called Verizon North. We do not even have reliable telephone service, much less affordable access to broadband technology, and this is particularly frustrating because Pennsylvania has been a leader in promoting util-

ity competition. I myself am a free market type person, so this is a rather unusual role for me.

We were one of the early States to successfully deregulate electricity and natural gas, and in 1993, well in advance of the Federal Telecommunications Act, the Pennsylvania General Assembly enacted the alternative form of regulation of telecommunications services—we call it chapter 30—and the intention of that act was to foster, and I am quoting here, the accelerated deployment of universally available state-of-the-art public-switched broadband telecommunications network in rural, suburban, and urban areas of the Commonwealth.

The Incumbents were offered an alternative form of regulation if they committed to the construction of a broadband network. Unfortunately, the legislature made a few mistakes. We let the companies set the timeline, and they picked 2015 as their final date for compliance. We may all be using brainwaves by then. We also neglected to set interim milestones and timetables for the reports.

Competitive pressures have accelerated the progress in the profitable urban and suburban areas, while rural improvements are proceeding at a snail's pace. Chapter 30 did not specify a technology, merely a performance standard. Currently, the Chairman of the Pennsylvania Public Utility Commission has instituted a proceeding to determine whether Verizon has repudiated its obligations by substituting DSL.

In March of 1998, our PUC held a hearing on the state of local competition in Pennsylvania, and they found, not surprisingly, that the incumbents, the ILEC's controlled 97 percent of the lines in their service territory. There were complaints by would-be competitors that they were being denied access to lines and services, and there was a log-jam of cases. Virtually every issue was being appealed at the commission or before the courts. Competition was stalled.

Consumers who switched competitive service experienced service interruptions, billing nightmares, and some even found their business numbers left out of the telephone directory.

The commissioners attempted a global settlement, but after several months the process collapsed. They then began—and this was very innovative. They wanted to consolidate all of the myriad of cases that were out there just miring us down. In a global proceeding we had 6 days of en banc testimony, 32 bound volumes, almost 10,000 pages of testimony, cross-exam and exhibits.

The global opinion and order which was issued in September 1999 resolved 19 proceedings before the commission that generated 12 State and Federal court proceedings. Among other things, the PUC found in their findings that Verizon had a virtual monopoly in the local exchange market, and had abused its market power by providing competitors with less than comparable access to its network, or engaged in other discriminatory conduct that deterred customers from switching.

As a remedy, it ordered structural separation. It concluded that for purposes of this docket structural separation was the most efficient tool to ensure competition where a large incumbent monopoly controls the market.

Now, I cannot possibly describe the course of that ruling in the time here. It has been through the courts, and ultimately our State supreme court upheld our power to issue such a structural separation order. Nevertheless, after a massive advertising campaign and a change in commission membership, the commission reversed itself and adopted for what it is calling functional separation a code of conduct and fines for noncompliance.

I am here to suggest that that is not a particularly effective method of changing behavior when fines are regarded as a cost of doing business. I remain convinced that structural separation makes sense. Before you can allow free market forces to work, you have to deal with the de facto monopolies which we still have in our local telephone markets.

Listening to discussion of parity, Representative Cannon very eloquently talked about something he called parity of situation. You have to have parity of situation, and I am reminded of a quote—I believe it is Anatole France—who said the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges. I suppose that is a sort of parody.

I think it is too much to understand, or to believe, or hope, that companies that learn monopoly at Ma Bell's knee will cooperate with their competitors to benefit consumers. I think we need effective regulation until we have real cooperation, and I would urge you to hold the course.

Thank you.

The CHAIRMAN. Very good. Mr. Nelson.

**STATEMENT OF ROBERT B. NELSON, COMMISSIONER,
MICHIGAN PUBLIC SERVICE COMMISSION**

Mr. NELSON. Thank you, Mr. Chairman, Members of the Committee. I want to thank you for calling this hearing and inviting me to testify on behalf of the National Association of Regulatory Utility Commissioners, as well as my own State of Michigan. My name is Robert Nelson, and I am commissioner with the Michigan Public Service Commission and covice chairman of the Telecommunications Committee of NARUC.

As you know, NARUC is the Association of State Utility Commissioners, and has supported the goals of the 1996 Telecommunications act since its inception 6 years ago. NARUC believes that the essential provisions of the 1996 act are working, and that neither Congress nor the FCC should make wholesale changes in them at this time. After 6 years of arbitrations, contested cases, and costly court battles, local competition is beginning to flourish because of the vigorous enforcement of the act by the States. Now is not the time to tinker with this act.

A recent report of local competition in Michigan shows that the number of access lines provided by CLEC's almost doubled from year end 2000 to year end 2001. In Michigan, we are approaching, if not exceeding 20 percent CLEC access lines in Ameritech, Michigan's territory. Approximately 70 percent of those lines are provided through leasing of unbundled network elements, as specifically provided for in the 1996 act.

Moreover, the percentage of Ameritech service lines provided by CLEC's dwarfs the percentage of those in the territory of the other

Michigan RBOC, Verizon, where less than 1 percent of access lines are provided by CLEC's. This, in my judgment, is due to the leverage provided to the States in section 271 of the act, which requires Ameritech to seek State approval to provide interLATA long distance service in Michigan, but does not apply to Verizon, which does not need such a program in my State.

As you know, NARUC strongly opposes the Breaux-Nickles bill, S. 2430, and the Tauzin-Dingell bill. It has serious concerns with several proceedings pending before the FCC. These proposals are intended to undo the work of State commissions in facilitating non-discriminatory access to the public telephone network.

S. 2430, for example, preempts States from asserting their jurisdiction over facilities and equipment used to provide broadband services. Although the purpose of this provision is intended to promote regulatory parity between DSL and cable modem service, it relies on a false presumption that voice and Internet traffic, and the facilities on which they travel, can be easily distinguished and regulated differently. The truth is, they cannot.

The same facilities used to provide DSL are the same facilities and equipment used to provide voice service. Preempting State jurisdiction over these facilities would, in my view, reverse the efforts of States to implement the 1996 act and raise a myriad of cost allocation and universal service issues. Federal legislation and rules which so clearly favor just one class of providers does not reflect the even-handed public policy heritage which we tend to depend on in this country. It runs counter to the sense of fair play which permeates our public and private character, and it decimates the balance of interests that were crafted into the 1996 act.

Instead of the preemptive approach of these bills, NARUC supports the use of loans and tax credits to spur demands and investment in broadband services in a competitively neutral manner, which is the approach of S. 2448, the Broadband Telecommunications Deployment Act of 2002, sponsored by Chairman Hollings. This is similar to an approach that was just taken in Michigan to provide low interest loans and tax credits for broadband deployment. It is also similar to Senator Rockefeller's bill.

Incumbent carriers argue that it is too costly to make the necessary investments in the network to deploy fiber to the home. If the deployment barrier is cost, many of you on this Committee have wisely responded to this claim by creating a broadband loan program that was included in the recently enacted farm bill. We appreciate all your hard work to make our U.S. broadband program a reality.

NARUC does not believe that Congress or the FCC will achieve the desired goal of stimulating demand in the broadband market through State preemption or deregulation of the bottleneck facilities, but rather through creative policies like the Hollings bill.

Again, on behalf of NARUC, we applaud your efforts, Mr. Chairman, as well as many of your esteemed colleagues for their leadership in crafting a sensible procompetitive bill that promotes investments in all broadband platforms, not just DSL. It complements and does not undermine the 1996 act.

The U.S. Supreme Court recently affirmed policies for pricing unbundled network elements and combining those elements

through competitors. The goal of those policies are now being realized, with 13 States having received 271 approval, and increasing numbers of residents and businesses enjoying the benefits of local competition in the form of carrier choice envisioned by the 1996 act.

The telecommunications industry has suffered through 2 years of extraordinary financial distress, and our Nation's economy has been adversely affected as a result. Investors need certainty before they will provide the capital necessary for this industry to recover. That certainty is available now in the existing policies of the FCC and the enforcement of those policies by the States. Now is definitely not the time for Congress and the FCC to change the rules of the game. As someone who was in the trenches presiding over arbitrations and pricing decisions and doing the hard work of implementing the act, I can tell you that we do not need 6 more years of costly and time-consuming litigation, 6 more years of uncertainty, 6 more years of foot-dragging, and 6 more years of waiting for the promise of widespread broadband deployment.

Thank you for this opportunity to address you.

[The prepared statement of Mr. Nelson follows:]

PREPARED STATEMENT OF ROBERT B. NELSON, COMMISSIONER, MICHIGAN PUBLIC SERVICE COMMISSION

Mr. Chairman and Members of the Committee, I am Robert B. Nelson, Commissioner of the Michigan Public Service Commission and co-Vice Chairman of the Telecommunications Committee of the National Association of Regulatory Utility Commissioners (NARUC). I would like to thank you for providing me the opportunity to testify today on behalf NARUC. I will focus my remarks on the status of local competition in Michigan and my thoughts on how best to foster competition and investment in broadband infrastructure in Michigan and elsewhere. I will also discuss specifically NARUC's positions on several proposed congressional initiatives regarding broadband and competition and some related initiatives pending before the FCC.

I would like to start by highlighting some basic facts: local telephone competition is much stronger in the service territory of one Regional Bell Operating Company (RBOC) serving Michigan, SBC Ameritech, than it is in the service territory of another, Verizon. The strength of local competition in the SBC Ameritech region is due, in large part, to the tools given to our Commission by the 1996 Federal Telecommunications Act (1996 Act) and by our State legislature. The anemic condition of local competition in Verizon's Michigan territory is, in my opinion, due in part to the fact that Verizon is not subject to the market opening requirements of Section 271 of the 1996 Act in my State.

I believe the approach of the Breaux/Nickles bill contain provisions that are similar to several related proposals currently pending before the FCC. This approach to broadband deployment could well undermine several of the provisions of the 1996 Act, which we have used to open markets throughout the State of Michigan to benefit consumers. I am not alone. NARUC is on record opposing Breaux/Nickles and has filed comments at the FCC detailing the Association's concerns about the tentative conclusions in the related FCC proceedings.

Our Commission recently released a report to our Governor and Legislature entitled "Report on the Status of Competition in Telecommunication Service in Michigan." The report, which is attached to my testimony, indicates that for calendar year ending December 31, 2001, 12.8 percent of the access lines in Michigan were served by competitive local exchange carriers (CLECs). This is a significant increase in the number of access lines provided by CLECs at year-end 2000, when 6.5 percent of the lines were provided by CLECs and year-end 1999, when only 4 percent of the access lines were provided by CLECs. The report also concludes that CLEC market share is approximately 17 percent of Ameritech lines. Although not detailed in the report, our staff investigation reveals that less than 1 percent of the Verizon service area lines are served by CLECs. The vast difference between the percentage of Ameritech lines provided by CLECs and Verizon lines is due in my view, in large part to the fact that Ameritech has been attempting to secure approval for long distance authority in Michigan pursuant to Section 271 of the 1996 Act and Verizon,

because they purchased the facilities of GTE, has not had to do so. Our experience demonstrates that the 1996 Act is working in Michigan!

Moreover, the Michigan report reveals that of the 896,023 access lines served by CLECs at year-end 2001, almost half, or 411,404 lines were served via the unbundled network element platform (UNE-P). An additional 213,585 lines were served by unbundled network facilities. Service via UNE-P or unbundled network facilities, which account for nearly 70 percent of the CLEC access lines served in Michigan, are a direct result of the Michigan commission's implementation of the provisions of the 1996 Act which require RBOCs to provide to CLECs nondiscriminatory access to unbundled network elements. (See, *e.g.*, 47 U.S.C. § 251(c)(3)).

The UNE-P rates that we have adopted in Michigan are based on TELRIC cost models and are among the lowest in the nation. The results are impressive. In a resolution passed this February, NARUC also endorsed the concept of UNE-P as a viable business model for market entry. NARUC's position is based on the principle that one form of entry should not be favored over another.

A majority of States, including Michigan, have utilized Sections 251 and 252 of the 1996 Act to assure UNE-P is a realistic option for market entry. Any congressional or FCC initiatives that ultimately limit the State's ability to facilitate UNE-P would, in my view, undo all the progress we have made to create local competition.

Specific legislation introduced this Congress will hinder the ability of States to ensure that the public switched network is irreversibly open. Both the Tauzin/Dingell bill (HR 1542) and the Breaux/Nickles bill (S. 2430) allow RBOCs to circumvent the market-opening requirements of the 1996 Act. HR 1542 exempts DSL services from the requirement that all local telecommunications services provided by an RBOC, including DSL services, be considered in determining whether the RBOC has met the 14 point checklist in Section 271, even though data services are an increasing part of the telecommunications services provided by RBOCs. S. 2430 would effectively remove all State commission authority to ensure there is non-discriminatory access to the public switched telephone network, currently required by § 251 of the 1996 Act.

Both bills incorrectly assume that voice and Internet traffic can easily be distinguished and, as a result, the underlying facilities can be regulated differently. The reality is that both voice and data traffic travel over the wire-line network in the same form, *i.e.*, in packets of ones and zeros. They are indistinguishable. Eliminating State oversight of the facilities that carry both voice and data traffic raises a host of cost allocation and universal service issues that will take years to sort out.

I am also concerned by the approach of several proposed rulemakings currently pending before the FCC because I believe they could also undercut State efforts to implement the 1996 Act. The FCC's NPRM on wireline broadband services tentatively concludes that broadband services offered by telecommunications companies are not "telecommunications services" and therefore should not be subject to the market-opening requirements of the 1996 Act. This, and related proposals re-examining the rules for what network functionalities should be unbundled and available to competitors, seek to promote broadband deployment by minimizing the regulation of DSL and other Internet platforms. This is a laudable goal. New broadband investment should not be subject to the same degree of regulation as the existing network. However, in pursuit of this goal, the FCC's wire-line broadband services rulemaking threatens to erode the line-sharing requirements for the existing network designed to allow multiple providers to compete. It is ironic that in the wake of the recent U.S. Supreme Court opinion in *Verizon v. FCC*, which upheld the FCC's rules that require RBOCs to combine unbundled network elements for competitors, and the methodology for pricing those elements, that there should be any consideration of backtracking on a method of entry (UNE-P) envisioned by the 1996 Act, even as it relates to advanced services. The FCC has been vindicated in its implementation of the 1996 Act and it should use the tools Congress has given it to promote competition. It should not remove advanced services from the list of services that Congress so wisely found to be subject to network-opening requirements in 1996.

We are at a critical stage in our efforts to implement real competition in the residential telephone and broadband markets in both rural and urban communities. We are currently faced with a choice of whether we want to stay the course and enforce the non-discriminatory access provisions of the Act or endorse proposals that undo those provisions for the benefit one set of dominant providers.

The competitive industry is struggling today, in part because it has been denied access to network facilities and has struggled to remain an attractive investment opportunity to financial analysts and institutional investors. Federal broadband policy should not enhance the market power of incumbent carriers.

In the broadband market in particular, the bankruptcy filings of Covad, Northpoint, Rhythms and countless others have contributed to the modest levels of broadband DSL take rates that we are witnessing today. I believe DSL penetration can indeed keep apace with and could even surpass cable modem subscribership if incumbent carriers are willing to take certain steps to boost demand. Incumbent carriers have long argued that it's too costly to make the necessary investments in the network to deploy fiber from the remote terminal to the home. If the deployment barrier is cost, Congress has responded accordingly with the recently enacted farm bill, which provides up to \$750 million in loans for broadband investment. Many of you on this Committee worked hard to make the broadband section in the farm bill become a reality and on behalf of NARUC, we applaud your efforts.

In addition, the Chairman of this Committee, along with many of you introduced legislation a couple of weeks ago that would authorize the use of technology-neutral loans, grants, tax credits and pilot projects to stimulate investment and demand in broadband services. NARUC supports this particular approach to broadband deployment and has advocated the merits of this method for the last three years as per our resolution, which is attached. We do not believe that Congress or the FCC will achieve the desired goal of stimulating demand for broadband services through State preemption or deregulation of bottleneck facilities, but rather through creative policy proposals like S. 2448, sponsored by Senator Hollings.

Furthermore, promoting multiple competitors in the broadband market will also drive down the price of broadband and make it more affordable to millions of Americans. In Michigan, we have recently enacted comprehensive legislation, which, among other things, creates a financing authority that will make low-interest loans to private and public entities for backbone and last-mile solutions and everything in between. Multiple providers will not only reduce the cost of telecommunications services and spur innovation; they will enhance the security of our networks by building in needed redundancies.

States have made great strides, pursuant to the 1996 Act, to enhance competition and deploy advanced services. Although progress has been uneven, it has been steady, as evidenced by the competitive landscape in Michigan and other States like New York, Texas, and Georgia. We should not respond to the statements issued by those who were ordered by Congress in 1996 to open their systems that doing so will threaten our nation's economic and national security. Congress should continue to have faith in the market-opening tools it crafted 1996 and give deference to the wisdom of the Supreme Court in affirming the States role in setting the rates and terms for access to the network. The evidence in Michigan indicates that vigorous enforcement of Section 251 and 271 of the 1996 Act stimulates investment in broadband across all platforms and reduces prices for consumers.

Resolution Supporting Legislative Proposals That Encourage the Deployment of Broadband Technologies and Advanced Services

WHEREAS, The deployment of infrastructure to provide broadband deployment has become a concern for several states and consumers; and

WHEREAS, Several bills have been introduced in the House and Senate that seek to encourage deployment of advanced services. While NARUC has opposed S 877 and HR 2420 and similar bills, other proposals seek to address the issue of ensuring that markets remain open to competition pursuant to the 1996 Act; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners ("NARUC"), convened at its Summer Meeting in Los Angeles, California, supports legislation that would encourage the deployment of broadband technology and advanced services to underserved areas (areas without affordable broadband deployment) without removing RBOC incentives to meet Section 271 requirements; *and be it further*

RESOLVED, Any legislative proposal promoting the deployment of broadband technologies and advanced services to rural and underserved areas should consider the following concepts:

- low-interest, technology and carrier neutral loans to those seeking to deploy broadband services to rural and under served communities;
- additional financial incentives, such as tax credits, to carriers that are deploying advanced services where existing incentives and support, including high cost loop support, are inadequate;
- effective enforcement tools to ensure that carriers meet their obligations with respect to broadband deployment; *and be it further*

RESOLVED, Legislation should keep intact the market-opening requirements contained in the 1996 Act.

Resolution Concerning the States' Ability to Add to the National Minimum List of Network Elements

WHEREAS, The States have traditionally provided the leadership needed to advance local competition and have evaluated a variety of approaches; *and*

WHEREAS, The Federal Communications Commission (FCC) has previously recognized the important contribution of State Commissions to local competition, expressing its intention to "foster an interactive process by which a number of policies consistent with the 1996 Act are generated by the States" which may then be incorporated into national minimum requirements; *and*

WHEREAS, The FCC has initiated a triennial review of which network elements shall be included in the national minimum list of unbundled network elements ("UNEs") on a going-forward basis; *and*

WHEREAS, The level of local competition in each State is directly affected by which UNEs are available in that State; *and*

WHEREAS, The analysis to determine which network elements should be unbundled in a State is fact specific and must consider conditions in each particular State; *and*

WHEREAS, The State Commissions are in a better position to consider other factors, including the level of competition presumed by that State's system of retail price regulation; *and now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its February 2002 Winter Meetings in Washington, D.C., urges the FCC to recognize that States may continue to require additional unbundling to that required by the FCC's national minimum; *and be it further*

RESOLVED, That such additional unbundling is consistent with the purposes of the federal Telecommunications Act of 1996, and in accordance with State or federal law; *and be it further*

RESOLVED, That the NARUC General Counsel be directed to provide the FCC comments consistent with this resolution.

REPORT ON THE STATUS OF COMPETITION IN TELECOMMUNICATION SERVICE IN MICHIGAN (APRIL 2002)

Section 103 of the Michigan Telecommunications Act (MTA) as amended in July of 2000 provides that the Commission submit an annual report describing the status of competition in telecommunication service in this state, including, but not limited to, the toll and local exchange service markets in this state. The report required under this section shall be submitted to the Governor and the House and Senate standing committees with oversight of telecommunication issues. This is the second report pursuant to Section 103.

Prior reporting of this nature occurred as a result of information gathered in Case No. U-10177 and Case No. U-10085 in 1992. The information was presented as part of the *Final 1994 Report to the Governor and Legislature*. Last year's report was submitted as part of the Commission's Annual Report to the Legislature. This year, in order to provide results with the latest and most current data, the report was delayed to capture 2001 data and information.

TOLL MARKETS

The toll market is commonly referred to as long distance and the providers of such services are referred to as interexchange carriers (IXCs). In 1994, it was reported that the IXCs who owned their own facilities were required to provide very little information to the Commission related to their operations. The Commission does not license them and the primary requirement is that they file tariffs consistent with the provisions of the MTA. IXCs providing toll service via resale were exempt from this tariff filing requirement as well. As a result, there is little information available regarding market share, customer numbers or revenues.

The same analysis holds true today for the toll/long distance marketplace. Last year it was reported that on May 1, 2000, the Federal Communications Commission (FCC) ordered the detariffing of the interstate, domestic interexchange services of non-dominant IXCs to become effective after a transition period. Detariffing means that the IXCs do not file their rates and terms of services with the FCC. Beginning

July 31, 2001, interstate long distance companies began providing service without filing tariffs with the FCC. They provide information to consumers via other means such as their websites. The FCC concluded that detariffing would enhance already vigorous competition among providers of interstate, domestic, interexchange services and promote competitive market conditions.

In Michigan, there are more than 45 carriers registered as facilities-based toll carriers for the year 2001. The reselling of toll services is unregulated and the Commission has registered more than 490 carriers as resellers of toll service in Michigan. This is a self-registration process but it does indicate that there are numerous providers of this service. The Commission's web site provides a link for rate comparisons among providers. This information is largely consistent with the FCC's findings issued on January 24, 2001 in its report, *Statistics of the Long Distance Telecommunications Industry*.

This year's analysis is basically the same as last year's in that information available to the Commission indicates that despite an increase in the number of toll providers, prices of basic toll schedules have in fact increased in the last several years. Results of competition appear to be more evident in the number of toll package alternatives available and the number of providers who offer them as well as declining prices for higher usage customers who do not utilize basic toll schedules. It is worth noting that innovative bundling of services and new pricing plans are blurring the distinction between toll and local services. Some providers are offering unlimited local and long distance services plus unregulated features at one combined price.

BASIC LOCAL EXCHANGE MARKET

The Commission issued a report and made recommendations to the Legislature and the Governor in February 1998 involving the issues, scope, terms, and conditions of telecommunication providers offering basic local exchange service. This report concluded that the participants in the telecommunications market appear to be relying more on the regulatory and judicial process than market forces to determine the availability, prices, terms and other conditions of telecommunications services. The marketplace for local telecommunication services in Michigan continues to be dominated by Ameritech Michigan (an affiliate of SBC Communications, Inc.) and GTE (now Verizon) and a truly competitive marketplace still remains a goal, not a reality.

To get a more accurate picture of the competitive marketplace in Michigan for local service, the staff of the Commission has conducted surveys of Ameritech Michigan and all licensed Competitive Local Exchange Carriers (CLECs) for 1999, 2000, and again this year for 2001 data which included incumbent local exchange carriers (ILECs) that also operate as CLECs in Michigan. CLECs are providers that compete in the same geographic area as ILECs. This year's survey was sent out to 173 licensed CLECs in the state of Michigan as of January 1, 2002. The survey was conducted as an information/data request. The data collected was for the period ending December 31, 2001. This information was gathered to assist the Commission staff in evaluating the scope of local competition in Michigan.

The survey vehicle was developed through a collaborative process set forth in the Commission's order in docket U-12320. Through the surveys the staff requested some information that the companies considered confidential. The results of most portions of this survey were reported as total CLEC numbers to maintain the confidentiality of the individual company numbers. For 2001, of the 173 CLECs that the survey was mailed to, 102 companies filed a response with 52 of those companies reporting that they were actually providing local service. Of that group of 52, 42 CLECs reported actual local customers (the 10 companies that reported no customers had just begun to offer service and had no lines to report for 2001). The individual staff reports for 1999, 2000 and 2001 can be found on the Commission's website.

From the data compiled through this year's survey for 2001, staff found that the number of lines provided by CLECs (including over their own facilities or through resale of incumbent providers services) was 896,023. The staff report indicates that the total number of lines provided in Michigan (ILECs including Ameritech and CLECs) was 7,014,263. The number of CLEC lines compared to total lines represents 12.8 percent. Ameritech's share is 72.2 percent (5,071,300 lines) while GTE's share is 11.5 percent (803,728 lines). The small independent telephone companies represent the remaining 3.5 percent (243,212 lines) of the total lines in Michigan. The survey responses indicate that the geographic areas covered by CLEC lines encompass primarily the Detroit, Grand Rapids, Lansing and Saginaw areas with the majority of the competitive lines being provided in the Detroit vicinity. From the data that Ameritech provides, 63 percent of the competitive lines are provided in

the Detroit area, 23 percent of the competitive lines are provided in the Grand Rapids area, 6 percent of the lines are provided in the Lansing area, 6 percent of the lines are provided in the Saginaw area and 2 percent of the lines are provided in the Upper Peninsula area. It should be noted that virtually all of the CLEC activity is in geographic areas that are served by Ameritech. As a percent of this market, the CLEC market share is approximately 17 percent of Ameritech lines.

The Commission continues to license new CLECs, and at the end of 2001, the CLECs were serving 12.8 percent of the lines provided to customers by telecommunication carriers in Michigan. This is an increase over the previous year and indicates a positive trend in the competitive basic local service market in Michigan. These numbers are consistent with the trend that is represented in an analysis done by the FCC on information gathered through June of 2001. On February 27, 2002, the FCC released its report on *Local Telephone Competition: Status as of June 30, 2001*. For the Michigan companies that are required to report this data to the FCC, the ILECs reported 6,027,730 lines, and the CLECs reported 583,653 for a total of 6,611,383 lines. From the FCC's data, the CLEC share was reported at 9 percent. This data gathered by the FCC is from 6 reporting ILECs and 11 reporting CLECs for Michigan, and would represent the larger providers and a majority of the lines.

The 2001 Survey Results Show That:

CLECs With No Lines	60
CLECs 1-1,000 Lines	16
CLECs 1,001-10,000 Lines	12
CLECs over 10,000 Lines	14
Total CLECs Responding to Survey	102

The above information categorizes the CLECs according to the number of customer lines that they served in 2001. The data indicates that of the 102 CLECs reporting, 60 were serving no customers in 2001 and this represents almost 59 percent of the group, while the second group served 6 between 1 line and 1,000 lines, a group of 16 CLECs or almost 15.5 percent. The third group served between 1,001 and 10,000 lines each and is comprised of 12 CLECs for an 11.8 percent share and the last group of CLECs served over 10,000 lines each and represents 14 CLECs for a 13.7 percent share.

A portion of the data gathered by the Commission for the last three years is presented below in a table format to allow a more comprehensive presentation for analysis.

Michigan Public Service Commission CLEC Survey Results:

	Survey of 1999	Data Survey of 2000	Data Survey of 2001 Data
Licensed CLECs	120	167	173
CLECs responding to survey	59	69	102
CLECs actually providing service	25	37	52
CLECs with actual line counts	23	31	42
Lines Provided by CLECs	268,385	446,164	896,023
Total Lines in Michigan	6,726,971	6,901,813	7,014,263
CLEC %	4%	6.5%	2.8%
Ameritech %	81%	78%	72.2%
GTE %	11.5%	12%	1.5%
ILECs %	3.5%	3.5%	3.5%

As is shown, the actual number of CLEC providers and CLEC lines in Michigan has grown over the last three years that this information has been gathered and has grown from a 4 percent share to a 12.8 percent share at the end of 2001. These lines are mostly being provided by a smaller group of the licensed CLECs in Michigan.

AMERITECH INTERLATA APPROVAL

Ameritech has been working for some time toward obtaining approval to offer interLATA toll service in Michigan. The Federal Telecommunications Act of 1996 requires 7 Ameritech to comply with five conditions regarding interconnections with

competitors and with a 14-item competitive checklist before the FCC can grant this approval. The consulting firm of KPMG has been working on conducting a test of Ameritech's Operations Support Systems (OSS) to help determine whether Ameritech complies with the federally mandated checklist requirements. This testing process has met with some delays and the final report on OSS testing is now expected later this year. After testing is completed, Ameritech intends to file its application for interLATA toll service in Michigan with the FCC. The Commission will have 30 days after the application is filed to provide comments to the FCC.

CONCLUSION

In conclusion, based on available data that staff has gathered through its surveys over the three-year period, there is continued growth in the percentage share of CLEC lines in Michigan from a 4 percent share in 1999 to a 6.5 percent share in 2000 and a 12.8 percent share in 2001. This is a positive trend. However, at the same time during 2001, the Commission had 21 CLECs go out of business in Michigan and surrender their licenses. As noted, of the 102 CLECs responding to the survey, 60 CLECs were not serving any customers in 2001, which represents almost 59 percent of the CLEC group that responded to the survey. Competition in the basic local exchange industry in Michigan is emerging. However, this has occurred with regulatory oversight to ensure that competitors are able to obtain the access to needed elements of the ILEC network without ILEC interference or obstruction. This indicates that the process that the Commission has established under the guidelines of the MTA is working to provide a smooth transition of the telecommunications market for basic local exchange service in Michigan to a viable competitive one.

The CHAIRMAN. Very good. We thank you, and we welcome you again, Ms. Lynch. You are getting to be a regular here before our Committee, and we are indebted to you.

STATEMENT OF LORETTA M. LYNCH, PRESIDENT, CALIFORNIA PUBLIC UTILITIES COMMISSION

Ms. LYNCH. Thank you, Mr. Chairman and Senators. I appreciate the opportunity to testify about telecommunications competition with the view from California. Over the past year we have seen a variety of initiatives, both in the form of proposed legislation and in the form of new rules proposed by the Federal Communications Commission that have as their stated purpose to increase the deployment of broadband telecommunications services.

I think we all agree that that is a good goal, but many of these proposals have a common theme which I do not agree with, which is that to spur broadband deployment we need to deregulate DSL and the other high-speed services offered by incumbent local companies. I believe that deregulation is the wrong way to go to promote broadband deployment. Deregulation will have dangerous consequences, certainly for the residences and businesses in California and, I believe, also in other States.

Deregulation would provide a license to monopoly, or at best, duopoly, broadband providers who are going to run roughshod over their customers, through poor service quality, inflated prices, anti-competitive conduct, and violations of basic norms of consumer protection.

I would like to focus on the serious consequences of preempting the States in this Federal regulation, particularly from the perspective of a State that is still reeling from the debacle of electricity deregulation. I do not know if you received a color copy of the charts attached to my testimony, but if you look at chart 1—I will just hold it up. It is a green and red chart.

It shows that in California only a small portion of the State, 13 percent of the State, can choose between DSL and cable modem service. The remaining red, all the people in the remaining red only have either one choice, or no choice at all. Of course, broadband deployment, as you can see from the map, is clustered in urban areas, but even so, only half of the population in California, or over half the population in California must take broadband services that are available from the monopoly.

But unlike in other States, California has many more DSL customers than cable customers. Based on the latest FCC data, DSL has 57 percent of the market, compared to 43 percent for cable modem, so DSL is doing well in California, and the company, of course, that has most of these DSL customers in California is SBC Pacific Bell.

There is now only one significant competitive DSL provider in California, and that is COVAD Communications, but SBC owns a stake in that company, which is hardly a prescription for vigorous competition. In SBC's service territory, which is most of the State, SBC has 85 percent of the DSL lines, so in California, deregulating DSL would confer additional advantages on SBC, the company that already successfully dominates the broadband market.

But the thing that I am most concerned about is that deregulating monopoly broadband providers will leave consumers unprotected from a number of abuses, some of which I list in this second chart. Deregulation under both Tauzin-Dingell and under Breau-Nickles means that there is no ability for the State regulators to restrain prices, and once broadband has become a tool that customers cannot live without, deregulated providers I believe will hold their residential and business customers over a barrel and charge truly exorbitant prices.

Deregulation also means that State regulators will be precluded from serving their traditional role of ensuring reasonable service quality. Under these bills, State regulators could not either make or enforce fundamental consumer service protection, for example, the time it should take to install or repair a service, or the quality of data transmission over broadband networks.

Deregulation under these bills would prevent California from taking basic steps to prevent mistreatment of customers. Under these bills, California could not stop fictitious DSL-related charges on bills. California could not stop intentional and unintentional overcharges on bills. California could not mandate and enforce full and fair disclosure of rates and terms and conditions of service in marketing materials, and California could not prevent providers from disconnecting service without notice.

Let me tell you what the impact is. The California PUC has received over 750 customer complaints against SBC Pacific Bell for fictitious charges, overcharges, and misleading promotions and, as a result, we have opened a formal investigation to look into those charges.

In addition, the California PUC's requirements to give fair notice before you get disconnected to customers I believe has provided important customer protection in this era of bankruptcies and troubles with certain communications providers. In fact, as DSL providers have pulled out of the California market, they have threat-

ened to leave their DSL-dependent customers, who are often small businesses, without any Internet access service.

California's rules about fair notice have been crucial to those small businesses to make sure that they did not suffer business harm in transmigrating from one company to another. Of course, the harm from deregulation increases when we recognize that likelihood of deregulation would apply not just to broadband services but in the future also to traditional voice telephone service.

Tauzin-Dingell and Breaux-Nickles provide incumbent local telephone companies the incentive, in fact, to migrate these services from traditional circuit switch networks to deregulated broadband services. Unfortunately, I speak with first-hand experience of the dangers of deregulating markets where the market participants retain significant market power. Of course, I am referring to the electricity deregulation nightmare that California has experienced.

The architects of deregulation in California gave away the State's authority to regulate wholesale prices and protect their consumers, but, like electricity deregulation in California, both Tauzin-Dingell and Breaux-Nickles forces the States to give up their ability to regulate services that are essential to the State's economic well-being.

Tauzin-Dingell I think is even worse, because it prevents both the States and the FCC from regulating most aspects of DSL services, but those bills would force all the States in the Nation to learn the lesson that California does not need to learn again. A market should not be deregulated where the firms in that market retain significant monopoly power, and I would urge you, Senators, to make sure that the States can protect their own businesses and families.

Thank you.

[The prepared statement of Ms. Lynch follows:]

PREPARED STATEMENT OF LORETTA M. LYNCH, PRESIDENT, CALIFORNIA PUBLIC UTILITIES COMMISSION

Mr. Chairman, Senators, thank you for the opportunity to speak to this Committee about some very significant telecommunications legislation that you are considering.

Over the past year, we have seen a variety of initiatives, both in the form of proposed federal legislation and new rules suggested by the Federal Communications Commission (FCC) that have as their stated purpose to increase the deployment of broadband telecommunications services. Two of the bills, the Tauzin-Dingell legislation that passed the House and the Breaux-Nickles bill that was recently introduced in the Senate, as well as the recent FCC proposals, have a common theme: to spur broadband deployment, we need to deregulate DSL and the other high-speed services offered by incumbent local telephone companies.

I am not going to mince words: Deregulation is the wrong way to promote broadband deployment. Deregulation will have dangerous consequences for the residents and businesses in California and other states as well. Deregulation would provide a license to monopoly, or at best, duopoly, broadband providers to run roughshod over their customers through poor service quality, inflated rates, anticompetitive conduct, and violations of basic norms of consumer protection. I will discuss these serious problems in a moment, particularly from the perspective of a state that is still reeling from the debacle of electricity deregulation.

Proponents of deregulation offer it as a solution to a telecommunications problem that has not been well diagnosed. Why is broadband deployment lagging behind expectations? Part of the answer is limited demand. As Senator Hollings noted in a recent letter to his colleagues, the majority of Americans do not see sufficient benefits from broadband to add \$50 per month to their telecommunications bills. Deregulation does not address or remedy some Americans' reluctance to embrace this technology—certainly at this price. However, as Senator Hollings also stated in that let-

ter, we as a nation need to do a better job of deploying broadband in rural and less affluent areas, so that educational institutions, health care centers and businesses in these areas can better serve their populations. Uneven broadband deployment is a specific problem that calls for a specific solution, not the crude deregulation of an industry with the hope that some benefits will trickle down to the currently underserved. Targeted grants, loans, tax credits and other funds, such as Senator Hollings has proposed in S. 2448, are the right way to bring broadband to the institutions that need it in rural and underserved areas.

Broadband Deregulation Harms Residents and Businesses

To understand the dangers and downsides of deregulation, we need to examine what the market for broadband service looks like to the basic residential or small business customer. If these customers are lucky enough to have a choice, they can choose only between DSL service and cable modem service in California. Although satellites and fixed wireless technologies are mentioned as possible competitors, operational and economic problems prevent them from being a viable option for most customers. And wireless handheld phones are still a long way from providing true high-speed service at comparable prices.¹

If you look at slide one accompanying my testimony, you will see that in California, only a small portion of the state, 13 percent, can choose between DSL or cable modem service. The remaining areas either have only one broadband option, or in some instances, no choice at all. Of course, broadband deployment has clustered in urban areas. Even so, half of the population in California must take broadband service from a monopoly. Regulatory commissions such as the California PUC came into being precisely because of the dangers of allowing monopoly providers of essential services, such as train transport, electricity, gas and telecommunications to be unchecked in the market. Before I elaborate on some of the many problems a deregulated monopoly broadband provider can cause, let me share a few basic statistics about the broadband market in California.

Unlike most other states, in California, there are many more DSL customers than cable modem customers. Based on the latest FCC data, DSL has 57 percent of the market compared to 43 percent for cable modems. So DSL is doing well in California. And the company that has most of these DSL customers in California is SBC Pacific Bell. There is now only one significant competitive DSL provider in California, Covad Communications, and SBC owns a stake in that company, which is hardly a prescription for vigorous competition. In SBC's service territory, which is most of the state, SBC has 85 percent of the DSL lines. So, in California, deregulating DSL would confer additional advantages on SBC, the company that already successfully dominates the broadband market.

Deregulating monopoly broadband providers will leave consumers unprotected from a number of abuses, which are illustrated in slide 2. Deregulation under Tauzin-Dingell or Breaux-Nickles means there is no ability for state (or even federal) regulators to restrain prices. Right now, the broadband providers are trying to build a market for a service that has not yet become essential for most households. As a result, broadband providers have not attempted huge price increases yet. Even so, I would note that the goal of building a market has not stopped some providers from raising rates—SBC Pacific Bell has raised its DSL prices 25 percent in the last year. Once broadband has become a tool customers cannot live without, deregulated providers will hold their residential and business customers over a barrel and charge truly exorbitant prices.

Deregulation under Tauzin-Dingell or Breaux-Nickles also means that state regulators would be precluded from serving their traditional role of ensuring reasonable service quality. State regulators could not either make or enforce fundamental customer service protections—for example, the time it should take to install or repair service or the quality of data transmission over broadband networks. Monopoly providers would provide customers the level of service quality that providers deemed to be in their interest, not the public interest. From the inception of DSL service, the California PUC has received a high volume of complaints about installation delays and service breakdowns.

Deregulation under these bills also would prevent state regulators from taking basic steps to prevent mistreatment of customers.

- California could not stop fictitious DSL-related charges on bills.
- California could not stop intentional and unintentional overcharges on bills.

¹Most wireless phone offerings charge based on the size of the file transferred, when customers send large files, which is the point of broadband service, they will rack up huge bills quickly.

- California could not mandate and enforce full and fair disclosure of rates and terms and conditions of service in marketing materials.
- California could not prevent providers from disconnecting service without notice.

The California PUC has received over 750 customer complaints against SBC Pacific Bell for fictitious charges, overcharges, and misleading promotions. As a result, the California PUC has opened a formal investigation into these allegations. In addition, the California PUC's requirements to give fair notice before disconnection have proven to be an important consumer protection. As DSL providers have pulled out of the market, they have threatened to leave their DSL-dependent customers, often small businesses, without any Internet access service.

The harms from deregulation increase when one recognizes the likelihood that deregulation would apply not just to broadband service but also to traditional basic voice telephone service. Tauzin-Dingell and Breaux-Nickles provide incumbent local phone companies the incentive to migrate all services, including basic phone service, from traditional circuit-switched networks to deregulated broadband networks. Once migrated, these currently regulated services would be deregulated, and local phone companies would have a, free hand to engage in all of the unsavory behavior that is depicted on slide 2, not just for broadband service, but plain old telephone service as well.

Unfortunately, I speak with first-hand experience of the dangers of deregulating markets where the market participants retain significant market power. Of course, I am referring to the electricity deregulation nightmare in California. The architects of deregulation in California essentially gave away the state's authority to regulate wholesale prices of a fundamental and essential commodity. When generators and traders gamed the market to drive up wholesale prices to exorbitant levels, California was forced to plead with federal regulators to restrain the ridiculous prices, pleas which fell on deaf ears for many months. As a result, one of the nation's largest utilities declared bankruptcy and we were forced to impose large rate increases.

Like electricity deregulation in California, Tauzin-Dingell and Breaux-Nickles force states to give up their ability to regulate services that are essential to the states' economic well-being. Breaux-Nickles leaves it to the FCC to decide what if any regulations to impose on monopoly broadband providers. Of course, that would force California and all of the other states to plead their case before a federal agency in order to protect their citizens and their economy from the unrestrained exercise of monopoly power. Tauzin-Dingell is even worse. It prevents both the states *and the FCC* from regulating most aspects of DSL services. Both bills would force states to learn a lesson California does not need to learn again—a market should not be deregulated where the firms in that market retain significant monopoly power.

Effective State Consumer Protection and Enforcement Must be Maintained

As far as customers are concerned, when they have a problem with the DSL service provided by their local phone company, they expect their state regulators to assist them with that problem. To customers, the installation and repair of DSL service looks and feels like the installation and repair of basic phone service, and the latter is clearly the responsibility of the states to regulate. Likewise, when the local phone company markets, sells, and bills for DSL, customers direct complaints about marketing and billing to the same state regulators who address complaints about local phone service.

The FCC appears to agree that state commissions, and not the FCC, should be responsible for assisting DSL customers with respect to these fundamental consumer protection issues. The FCC regularly refers to the California PUC written complaints from customers about DSL service with a note telling the customer to take the complaint to the California PUC.

In addition to the consumer protection areas enumerated in slide 2, state commissions play an important role in enforcing state laws against unfair discrimination and anticompetitive behavior. The California PUC is now addressing a formal complaint filed by an association of California Internet Service Providers (ISPs) against SBC Pacific Bell. The ISPs allege that SBC discriminates in favor of its affiliated ISPs and against non-affiliated ISPs. For example, according to the complaint, SBC tells customers who wish to leave a non-affiliated ISP and join SBC's affiliated ISP that the change can be made quickly. But if a customer wishes to move to a non-affiliated ISP, SBC says that the customer must disconnect its DSL service and wait for weeks before service can be restored. If these claims prove to be true, then California has a strong interest in preventing such behavior in order to prevent ISPs from being driven out of the market by unfair tactics and to maintain the benefits

of diversity of choice among ISPs in California. California would be precluded from this enforcement action if Tauzin-Dingell or Breaux-Nickles passes.

States should also continue to play the roles conferred by the 1996 Telecommunications Act of setting rates and rules to enable competitive DSL providers to share the lines of incumbent phone companies. Line sharing offers the hope of sorely needed increased competition in a broadband market that is now characterized primarily by monopoly and at best a duopoly.

Beginning last October, SBC has complained loudly that burdensome regulation has forced it to curtail broadband deployment, including Project Pronto. However, as slides 3 and 4 show, this assertion has been met with skepticism on Wall Street. Analysts view the cutbacks as a result of problems with DSL economics and SBC's own internal problems, issues that deregulation will not solve. In addition, some analysts view SBC's "regulation rant" as designed to pressure legislators to support the Tauzin-Dingell bill.

Wall Street does not accept the claim that regulation is the cause for limitations in broadband deployment, and I would respectfully suggest that Congress too take such claims with a very large grain of salt.

Targeted Programs Will Increase Broadband Deployment in Rural and Underserved Areas

I return to the question I posed at the beginning of my testimony: why is broadband deployment slower than was expected a year or two ago? The answer lies in large part with the downturn in the economy, coupled with the unwillingness of households to part with an additional \$50 per month just to send e-mails faster. Regulation is not responsible for this slowdown in consumer demand. Because regulation is not the problem, deregulation is not the answer.

However, as I stated earlier, in rural and underserved areas, broadband is not being made available to the hospitals, educational institutions, and businesses that need it. Uneven broadband deployment is a focused problem that calls for a focused answer. Our nation, and the individual states, need targeted programs that will spur broadband deployment for these types of institutions.

Senator Hollings' bill, S. 2448, takes the right approach. It uses a combination of loans and a variety of creative grants to funnel money directly into broadband deployment projects in rural and underserved areas. This approach wisely directs the money where it is needed, such as to build broadband infrastructure where phone lines are now too far from the central office to support DSL service. In this regard, S.2448 is vastly superior to the Tauzin-Dingell and Breaux-Nickles bills, which leave to chance that deregulation will somehow translate into more broadband deployment when and where it is needed.

The CHAIRMAN. Very good. Senator Burns.

Senator BURNS. Ms. Lynch, I am interested in your map of California. I notice you have competition in the Los Angeles area, the San Diego area, moving on up into the San Joachim, I would imagine around Kern County and on up to Fresno and Stockton, and then I see Sacramento, then the Bay Area, and I would imagine the northern reaches—what is that, Redding and Red Bluff?

Ms. LYNCH. Chico.

Senator BURNS. Chico, those areas up there.

I am interested in, if we deregulated, who is providing in those areas wireless services in the green areas, or in the red areas, both, to the wire lines?

Ms. LYNCH. You know, I would need to study that for the particular geographically based areas. Certainly they are aware of our services, but the red represents services where people may have access to broadband service, but they have no choice, they have no competition.

Senator BURNS. Well, that was not my question. I mean, does wireless direct compete with wired lines telephone?

Ms. LYNCH. You mean, cell phone companies compete with land line companies? Sure, although I do not know if we have entirely, entire cell phone coverage throughout California.

Senator BURNS. It would seem to me that we have got new services coming along in the wired area, and it will not be long before we have broadband wireless. In fact, we are going to take a look at that through broadband legislation, and it seems to me that if the wired companies want to deploy broadband through DSL or BDSL, then you also have a cable company that offers a modem service, and then you also have the wireless services, that I can get in my car and dial up a computer in my car on the wireless services.

Would you hold the regulatory burden on that telephone company?

Ms. LYNCH. Well, that may occur in the future, but the point is, that is not the California experience today, and just with electricity deregulation, where we all assumed that deregulation would then spur competition, with telephone regulation, where you have primarily one choice or no choice, and certainly the predominant choice is from your monopoly provider, I am concerned that you will kill competition by deregulation.

Senator BURNS. Tell me, would you subscribe to the thought that even though we are all very supportive of universal service, that there is a point of diminishing returns as far as the deployment and development of new technologies?

Ms. LYNCH. I am sorry, Senator, I do not understand your question.

Senator BURNS. Well, I mean, if I have got a company out here, and I am very complacent in what I do, and I receive universal service, what incentive do I have to invest in or deploy new technologies such as DSL and BDSL?

Ms. LYNCH. I am sorry to be so dense, but—

Senator BURNS. I am not communicating very good here. Let me see, how do I do this?

I am starting to develop an idea that—I am the only telephone company here, right here in Washington, D.C., right here in this 17 square miles of logic-free environment.

[Laughter.]

Senator BURNS. And I am receiving universal service. No matter what my wireless competitor may be doing, I am pretty comfortable. I can make my little 8 to 12 percent return for my investors, and I do not have to deploy new technologies or new devices, I do not have to do anything in order to turn a profit, because I am under your regulatory commands, so to speak, so I am not going to develop anything.

Now, they can, and they may have to get a return, but whenever you take that regulatory regime off of them, and I have got to compete with them, am I going to take a look at deployment of new technologies, and maybe bring down the prices in the marketplace, rather than make the appeal to—because I can come to you and say, okay, my taxes went up, I have got to have a return, so you are going to grant them an increase in charges.

Ms. LYNCH. Well, I do not know how it works in Washington, D.C., but in California we have a new regulatory framework which provides an incentive for the monopoly to have as low a cost as possible so that they essentially share the profits between the shareholders and the ratepayers, so that the monopoly has an incentive

to keep their costs low so that their shareholders get more of the profit.

Senator BURNS. I still do not—well, I am kind of coming down on the other side of the track on that, and we are not going to talk about your electric deregulation, because you did it and you did not do it, and kind of like that light bulb deal, but anyway, thank you very much, Mr. Chairman. I will listen to the rest of this, then I am going to go vote. I went to vote a while ago. I thought we had one light—we have got a bulb out.

The CHAIRMAN. We are going to vote. Go ahead.

Senator BREAUX. Thank you, Mr. Chairman, thank the panel members.

Let me maybe ask Mr. Nelson, who, I guess, represents an association of State regulators, I note that in your testimony, obviously you point to the BreauX-Nickles bill, the section that says that broadband services shall not be subject to the jurisdiction of any State and object to that.

Would you be all right if the BreauX-Nickles bill, instead of saying that broadband services shall not be subject to the jurisdiction of any State, that instead of saying that the bill would say that States would have exactly the same jurisdiction and authority to regulate cable modem services and DSL services in the future that you have today?

Mr. NELSON. Well, I think we would have to consider that, Senator. The language in the bill now is very disturbing because it says, notwithstanding any other part of the law.

Senator BREAUX. Suppose we just said you have the same regulatory authority in broadband services that you have today. Would that be okay?

Mr. NELSON. Well, again, we want to consider that in the context of the rest of the bill, obviously, but that would be an improvement, in my view, over the language in 262(b) right now.

Senator BREAUX. So if we say that you have the same regulatory authority to regulate broadband services today, what does that mean to you? What authority do State regulatory agencies have in the area of regulating cable modem or DSL services?

Mr. NELSON. Well, I think it varies. I think some States like California have gone further than States like Michigan and other States, but I think for most States what is important is that right now we have under section 251 of the act the ability to add unbundled elements to the list the FCC has developed.

Senator BREAUX. You are talking about voice transmission.

Mr. NELSON. In some cases the States have added access to broadband as part of that list.

Senator BREAUX. Let me ask you this question. Didn't the FCC determine in 1998 that DSL was an interstate service and should be regulated by the FCC?

Mr. NELSON. That was their initial determination—it has been challenged in court—that is correct.

Senator BREAUX. And didn't, in February of this year, they also concluded that the wire land broadband Internet access services were also interstate information services?

Mr. NELSON. Yes, and that is still a tentative conclusion on their part that we are challenging.

Senator BREAUX. And didn't, on March 14 of this year, the FCC determine that cable modem services were also to be considered interstate information services?

Mr. NELSON. They did, and I think that is subject to court challenge.

Senator BREAUX. Okay. So what I think we have here from your association that you object to saying that States would not have jurisdiction to regulate broadband services. I cannot find out any real place where you have that authority, because the FCC on several occasions have ruled broadband services are Internet services, both DSL and cable modem, and I am fine with saying look, you have the same authority you have today.

I do not think you have any authority today, because it is interstate. You cannot regulate radio stations in the States. That is interstate service. You do not regulate television stations, even though they may be located in one State. That is interstate in nature. You have to have a national policy.

Mr. NELSON. Well, the FCC did, Senator, say in 1999 that the incumbent carriers had to provide line-sharing to competitive carriers.

Senator BREAUX. I understand that the FCC said that.

Mr. NELSON. And let the States implement those policies.

Senator BREAUX. Yes, the FCC said you had that authority, but the FCC, right now, as we sit here today, I mean, you can say we are appealing, we are negotiating, and everything else, but the fact remains that today broadband Internet services have been determined by Congress and through the FCC that it is an interstate service. It has to be regulated by the FCC.

I am fine with saying, look, you have the same authority as you have today. I do not think you have a lot of authority today, and you object to legislation that says broadband services shall not be subject to the jurisdiction of any State.

I am saying, look, let us say, okay, you have the same authority to regulate broadband services that you have today. Is that not all right?

Mr. NELSON. Well, the other problem with that is that the way the language reads in the bill today, and again if you change it it might differ, but it says any facilities and equipment used for broadband, which would include facilities that are also used for voice, and if you preempt that, you preempt our ability to even regulate the voice network as well, and that undermines all of our ability to create competition.

Senator BREAUX. Well, you have jurisdiction over intrastate voice telecommunications, but you do not have it over interstate voice telecommunications, do you?

Mr. NELSON. No, but this provision goes to section 251, which does provide us—

Senator BREAUX. Okay, say we say we are not doing anything to affect 271 or 251 requirements, period, does that make it all right with you? Because what I am thinking I am hearing from you, you want more authority than you already have.

Mr. NELSON. No, that is not the case.

Senator BREAUX. Because are you satisfied—exactly what the authority you have, if we say that in the bill?

Mr. NELSON. And I would dispute the fact that we do not have any authority over DSL.

Senator BREAU. Okay. If I say in the legislation that the States are going to have the same jurisdictional authority over broadband services that you have today, is that not all right?

Mr. NELSON. Yes. Assuming the rest of the bill does not change, yes.

Senator BREAU. Thank you.

Mr. NELSON. I think Ms. Lynch may disagree with that, though.

The CHAIRMAN. Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman.

Back in my State, the Florida Public Service Commission has said that FCC analysis of the national unbundling requirements might benefit from State-specific evidentiary hearings, and I would like to know what you think, and would you support such a process? Any of you. Go ahead, Ms. Lynch.

Ms. LYNCH. Well, certainly I think that it would benefit from State-specific evidentiary hearings, because the States are different, and the way both broadband and telephone services are deployed are different.

Mr. NELSON. I would agree with that.

Mr. VASINGTON. We have the same position in Massachusetts.

Senator NELSON. Now, according to the most recent advanced services report, the FCC determined that, quote, advanced telecommunications is being deployed to all Americans in a reasonable and timely manner, end of quote.

From your perspectives as a State commissioner, would you agree with the FCC's assessment?

Mr. VASINGTON. The only word in there I would object to is all, because I do hear from some of the few customers in Massachusetts who cannot get either DSL or cable modem who are real unhappy about it, so I would say it is not being deployed to all customers, but I think for the vast majority of customers it is reasonable and timely.

Mr. NELSON. I would add to that that in Michigan we have a situation similar to California in that most of our DSL is now provided by the incumbent, and so there is not real competition in DSL markets, and so that is why I think in part the prices are higher than they should be, and why people are not signing up for it.

Ms. LYNCH. While it may be being deployed, if the various providers just carve up the various States, and the only have one choice, that is not much for consumers. It certainly does not protect consumers.

But I do think for certain areas, and certainly the rural areas of California, Senator Hollings, S. 2448 would be helpful just for additional deployment.

Ms. WHITE. I think in Pennsylvania, outside of the typical suburban and urban areas, we have the typical situation where you have either one or no providers.

Senator NELSON. Some have advocated identification of local economic development initiative and public-private partnerships that have been effective in spurring broadband demand at the local level. Tell us about your experience in your State and whether or

not there have been any local initiatives to spur that broadband deployment.

Mr. VASINGTON. I can tell you in Massachusetts we have had a very successful initiative that started out in the most rural part of the State, the Berkshires.

This initiative was called Berkshire Connect, and it was a public-private partnership that was designed to aggregate demand of small and medium-sized businesses so that to the suppliers they would not look like small and medium-sized businesses. Together they would look like one big business, and that gave them a lot of leverage to go out and do a request for proposals and get some competitive bids to supply them with broadband services in a way that they might not have had if they had stayed separate, as just their own sized company.

That initiative has been copied now in several parts of our State, including Franklin County on Cape Cod.

Mr. NELSON. Yes, Senator, in Michigan we have just passed legislation which allows both public and private entities to take advantage of low-interest loans through the State. This is intended to help underserved areas, because there is a provision that makes it easier for underserved areas to take advantage of this fund, and so we think that is going to be a big boon to broadband deployment and should be copied by other States as well.

Ms. WHITE. I am aware of some individual success stories within Pennsylvania and, in fact, to give Verizon credit, I have a meeting set up next week with a consortium of businesses and with a consortium of providers which they have graciously taken the lead to convene.

Ms. LYNCH. California has taken a wide variety of approaches. California has a—it is called the California Teleconnect fund, which provides specific grants and subsidies for schools and hospitals and public entities, and also we have several public-private partnerships, most notably one in the Silicon Valley that was spearheaded by Sun Microsystems, and then last year the California legislature passed a few pilot programs specifically targeted to rural development.

Mr. NELSON. Mr. Chairman, we have a vote, so I will cease, and thank you for the opportunity.

The CHAIRMAN. I do not want the commissioners to think that their brief appearances will only be given brief consideration. On the contrary, let me thank each of you for the State commissions holding the line. With respect to trying to develop competition, there is no question, as Congressman Markey pointed out, it was not a deregulation bill, it was a demonopolization bill.

You see, we had the experience of so-called deregulation of the airlines, and at the time we did away with the CAV, and I just had the new chairman of USAir, that serves in my particular area, and I had the Secretary in the next room. I said, now, just call up, not this weekend, that is too quick a notice, but next weekend, get a round-trip ticket from Washington to Charleston, leave on Friday, come back on Monday, \$1,048. That is just coach class. It is dreadful.

I had way better service 35 years ago, or 36 years ago when I first came. The service has gone down, the price has gone up, and

the airlines have all gone broke, and they keep babbling around in the Congress, deregulation worked, deregulation worked. Look at all the people traveling. That is not the measure at all.

What happens is that we try to demonopolize on the one hand, and get you folks to implement on the other hand, and had you not held the line with respect to these combining rather than competing Bells, we would be in dreadful circumstances. You can see the arrogance. I mean, they come across with the tricky questions trying to equate data and disregarding the regulations with respect to price and everything else of that kind. It is just unforgivable almost, what they have attempted to do, and had it not been for the State commissions we would be in a heck of a soup, so our Committee is really indebted to you, and we will keep the record open for further questions by the Members who had to go to that roll call.

Thank you very, very much. The Committee will be in recess subject to the call.

[Whereupon, at 11:39 a.m., the Committee adjourned.]

A P P E N D I X

ERNEST F. HOLLINGS
May 1, 2002

Dear Colleague:

Our friend, Senator Breaux, is fishing for cosponsors for a so-called “parity” bill. While the arguments offered for cosponsorship are simple, the consequences of this legislation are anything but. This legislation in the name of “parity” is nothing more than a Trojan Horse to deregulate the Bells and extend their monopoly. The Bells and their CEOs are out and about arguing they need to be deregulated so they can fuel a broadband explosion and finally deliver on the promise of the Information Age. We’ve heard their promises before and we know the truth. There is not now, and there has never been, any prohibition on the Bells offering their customers broadband. In fact, SBC proudly boasts that it lined up 183,000 DSL customers in the first quarter alone this year—under the current rules the Bells decry. Their argument boils down to the claim that the Bell companies are regulated while cable is not, and Congress and/or the FCC should eliminate this “disparity.” But the Bells are comparing apples and oranges.

The two industries are markedly different, and have been treated as such by the Congress and the FCC for decades. If we are to up and change that now, we must look carefully at every area where the industries are treated differently, and not just pretend its only about regulatory “disparity” on broadband. Maybe the answer is to increase regulation on cable to create parity in the public interest. Maybe its not. Maybe we should look at parity between the Bells and the competitive carriers they want to squash. The Bells currently enjoy preferential access to buildings, local rights of way, quicker line provisioning and billions of revenues from their captive customer base. I’m sure competitive carriers would like parity in these areas. Regardless, the parity sought by the Bells is nothing more than their latest attempt at a monopoly grab.

While the Bells claim they need “parity” to catch up to cable, it is the Bells who have had broadband technologies the longest. For near 20 years, the Bells sat on a variety of broadband technologies—ISDN, xDSL,—you name it, all the while seeking deregulation at the state and federal level which they claimed would free them up to offer broadband services. A look at history shows their claims ring hollow. Prior to the 1996 Act, the Bells had no obligation to provide competitors access to their local networks. Their pitch to state regulators—let us raise prices, and we’ll roll out broadband. While they raised prices in states where allowed to, the broadband almost never came—costing billions to the ratepayers and providing dividends galore to the shareholders. In their annual reports they promised Wall St. they would wire tens of millions of American homes with fiber (which would allow broadband speeds 25 to 50 times faster than the services today). Today, almost a decade later, one analyst report finds only 33,000 homes served by fiber, of which only 300 are served by the Bells. Then, with the 1996 Act, the Bells begged Congress to let them into long distance, so they would open their markets and compete across America. We gave them that opportunity and they decided to combine and litigate, rather than compete. As for broadband, it was only after cable and competitive phone carriers entered the market (after we passed the 1996 Telecom Act allowing them to do so) that the Bells finally started offering broadband in earnest.

Now come the Bells calling again with their biggest charade. For those supporting deregulation in the name of “parity”, keep in mind that the Bell companies still control over 90 percent of the last lines into every home and business in America according to the latest figures from the Federal Communications Commission. While Verizon and SBC have opened some of their markets to competition, Bell South and Qwest have not, and today, more than six years after we passed the 1996 Act, the Bells have complied with the market opening requirements of the Act in only 11 states. What is so disappointing about this record is that the Bell lawyers wrote the pro-competitive requirements that they now flout.

And as if this were not enough, “parity” could have a devastating impact on universal service and a disproportionate impact on rural America, because broadband services will never be eligible for universal service support as contemplated by the 1996 Act. In 1996 we knew a broadband revolution was possible and didn’t want rural America left behind. That’s why we included universal service and built in an evolving flexibility to help rural consumers keep up with the information age. Under “parity” however, broadband may no longer be a common carrier service and, therefore, may never be eligible for universal service support.

Please don’t be misled by the Bell claims for parity. If there were ever a bait and switch, this is it. Their lawyers and lobbyists have been at this for some time. I know them well. With this parity push, they want to avoid opening their markets to competition when it comes to broadband. With this approach, we can kiss competitive telecom carriers goodbye and extend the Baby Bells’ monopoly into the lucrative broadband market for business customers. While cable may have an edge with residential broadband, only because they started first, they have never been a serious player in the business marketplace, where the Bells still dominate. Pass “parity” and you create *at best* a duopoly between cable and the Bells in residential America and an uncontrolled monopoly in the money rich business market. The result—higher prices, shoddy service and less innovation—the exact opposite of what the Bells claim and what Congress should be promoting.

With the exception of rural America and underserved areas, there is no broadband deployment crisis in America, notwithstanding the Bell claims. 80–85 percent of Americans have access to broadband, but only 10–12 percent are buying. Not many people want to pay \$50 a month for faster access to their emails. On the other hand, rural businesses, hospitals, and educational institutions ought not be denied access to services the rest of America may soon take for granted. I’m working on legislation to promote broadband in these underserved areas which I hope to introduce soon. Let’s focus on the real problems, and not those alleged by the Bell monopolies.

Sincerely,

ERNEST F. HOLLINGS

PREPARED STATEMENT OF HON. MAX CLELAND,
U.S. SENATOR FROM GEORGIA

Mr. Chairman, I would like to bring to this Committee’s attention to the issue ensuring that persons with disabilities have communications access equal to those without disabilities. The Internet has revolutionized this idea in a positive and exciting way. Today, I am privileged to introduce a report by Dr. Frank Bowe of Hofstra University which discusses the advantages broadband technology can bring to persons with disabilities. This report, titled “Broadband and Americans with Disabilities,” is being released today. I ask unanimous consent that a copy of this report be submitted for the record.*

I would also like to take a few minutes to highlight the findings of the report. For persons who are deaf or hard of hearing, the report finds that broadband technology can aid in delivering seamless signing ability or other interpretive services to that person. This communication can occur in almost real time as well. For those persons with visual disabilities broadband offers a medium over which information can be read to users, again in almost real time. Additionally, the Internet enables all users to virtually visit places and people without leaving their office, school, or home. This ability is especially important to the segment of our society who may not have the mobility that others take for granted. Likewise, the network effects of bringing more people online can mean breaking down barriers and dispelling misinformation about disabilities.

While the report is encouraging by stating that Internet use among persons with disabilities is increasing, broadband use among this group is lacking due to two factors cited by the study: affordability and accessibility. These are the areas in which I believe Congress can and must help out. I do not believe that we should rule out any angle from which to approach this problem but rather we must examine ways of combining several proposals to meet this important goal. Likewise, I believe we ought to be technology neutral in the policies we devise because there is not one method of delivering broadband that will work for all areas of this country.

One area of the study that is encouraging is the relatively same broadband “take rate” of persons with and without disabilities. Dr. Bowe states that about 16 percent of persons with disabilities who have Internet service use one of the two main forms

*The information referred to has been retained in Committee files, and can be found on-line at <http://www.newmillenniumresearch.org/archive/disability.pdf>

of high speed service—cable modem and DSL service. However, if barriers to this service were to be removed, I am convinced this percentage could be higher.

I agree with Dr. Bowe that the Internet can change the lives of persons with disabilities in a way that no recent technology has. Because of this “unprecedented value,” as Dr. Bowe puts it, the disability community can be a leader in pushing for high speed Internet service. Today, I would like to hear from our witnesses on what we can do to ensure no one is left behind or overlooked by broadband deployment. How do we in Congress and our counterparts at the State and local level address the issues of affordability and accessibility raised by this report, which are also faced by those outside the disability community as well? This is a question I have been concerned about since coming to the Commerce Committee, but I believe if we can do it with utilities and with telephone service, we can do it with virtually anything.

ALAMEDA POWER & TELECOM
Alameda, CA, June 3, 2002

Hon. ERNEST F. HOLLINGS
Chairman,
Senate Committee on Commerce, Science, and Transportation
Washington, DC
RE: MAY 22, 2002 HEARING RECORD ON BROADBAND AND LOCAL COMPETITION

Dear Chairman Hollings:

On behalf of Alameda Power & telecom, a locally-owned and controlled utility providing cable and Internet service to residents and businesses in Alameda, California, I respectfully request that the attached statement be included in the hearing record for the Committee’s May 22, 2002, hearing on broadband and local competition.

Living on the “bleeding edge” of broadband deployment, Alameda Power & Telecom has experienced first-hand the financial, technical and competitive challenges facing the industry. We look forward to working with the Committee in advancing telecommunications policies and programs that facilitate greater deployment of broadband, effective competition, and consumer service and protection.

Please feel free to contact the staff of Alameda Power & Telecom at (510) 748-3908, if we can provide you with any additional assistance.

Sincerely,

SEBASTIAN M. BALDASSARRE
President, Public Utilities Board

PREPARED STATEMENT OF ALAMEDA POWER & TELECOM

Alameda Power & Telecom applauds the Committee’s efforts to review the current state of the telecommunications industry and assess what, if any, additional steps should be taken to facilitate greater deployment, usage and competition in the provision of broadband services.

As the Committee proceeds, Alameda Power & Telecom would urge you to follow these guiding principles:

- Maintain support for the basic framework of competition established in the 19 percent Telecommunications Act;
- Resist efforts to limit or prevent municipalities or other governmental entities from providing telecommunications services;
- Limit the focus of federal regulation to consumer protection; and
- Provide widely available financial assistance to help defray the cost of infrastructure investment and promote more rapid deployment of broadband—particularly to the “last mile.”

Municipal Provision of Telecommunications Services

Municipal governments are traditionally cautious and risk averse. One could question, then, why Alameda and others have entered into what has become a high-risk business. The answer lies in another of the attributes of local government; we exist to provide the community with services that they want and need at a rate they can afford.

Customer dissatisfaction with incumbent providers led the citizens of our community to approve a ballot initiative amending the City Charter allowing Alameda

Power & Telecom to provide telecommunications services. As a result of that community initiative, Alameda Power & Telecom provides the following services that were not previously available—digital cable, higher-speed Internet connections for homes and businesses, and networking of local schools and government offices.

Municipal telecommunications systems provide needed competition and customer choice. Alameda Power & Telecom offers cable TV and Internet access of higher quality and lower cost than incumbent private providers. This competing service provides residents and businesses in Alameda with important alternatives and puts pressure on incumbent providers to improve service and reduce prices.

Some have questioned the role of local government in a business enterprise and claimed that municipal utilities are unfairly subsidized. A careful study of local government services shows that virtually every local government function—police and fire protection, schools, roads, water and sewer service, etc.—can be provided by private businesses. Yet, the availability of privately run alternatives does not diminish the appropriateness of local provision of these services. It is the local citizens that decide the shape and reach of their local government. When public service is chosen, the determining factors tend to be: local control, non-profit service and community responsiveness. The same holds true for municipal telecommunications services.

Nor are municipal telecommunications systems unfairly subsidized. While a portion of the Alameda Power & Telecom fiber-optic network was constructed using electric utility revenues for utility purposes, this is not a subsidy. The electric utility needs the fiber-optic system to monitor, manage and control its distribution system.

Nor do municipal telecommunications systems displace private business. In fact, they provide new opportunities for public-private partnerships. For example, a portion of our underwater conduit is leased to Pacific Bell—the incumbent private telecom company in Alameda. Alameda Power & Telecom’s investments will also pave the way for other, private competitors to enter the market and challenge the incumbent providers.

Restricting municipal telecommunications service would: (1) preempt the decisions of local voters, (2) restrict customer choice in service providers, (3) limit the services available to residential and business consumers, (4) run counter to the intent of the 1996 Telecommunications Act, and (5) threaten the investments made to date in municipal telecommunications facilities, and the private bondholders of those investments.

The Role of Federal Regulators

The Telecommunications Act of 19961cR to the states the primary role of regulating local telecommunications services. Alameda Power & Telecom believes this regulatory model is appropriate and allows for development of telecommunications policies that best reflect and respond to local conditions and needs.

However, we believe there is a continuing role for federal regulation in the area of consumer protection. While individual states can act to prevent fraudulent and abusive consumer practices, national standards are appropriate to ensure consumer protection and prevent shady telecommunications providers from escaping effective regulation. One by-product of the competitive market model is the emergence of opportunities for market manipulation and consumer abuse. Enron’s California trading practices is but the latest example of private industry exploiting the rules of an immature market. A strong federal hand in market oversight and enforcement of consumer protections is necessary and appropriate.

Financial Assistance Is Needed, But Must be Equally Available

There is a growing recognition that federal financial assistance is needed to encourage investment in telecommunications infrastructure. Some proposals focus on investments in rural communities to overcome the “digital divide,” while others seek to encourage private investment in next generation technology.

Alameda Power & Telecom believes that both approaches are sound—yet both are unfortunately limited. Alameda is located in the heart of Silicon Valley and its demographic profile is that of an urban community, with a mix of homeowners, businesses and industries. However, as an island, Alameda faces many of the same challenges to infrastructure investments as those faced by rural communities. It was many of those factors—a limited customer base physically remote from the main backbone, and connected only by costly submarine cables—that led our citizens to choose the “local option” for telecommunications service.

Similarly, our infrastructure needs and investment challenges are largely indistinguishable from those of private enterprise. Consequently, investment incentives—like tax credits—do nothing to address the needs of our community and our telecommunications system. We would encourage the Committee, as it considers investment incentives, to develop non-discriminatory mechanisms that provide comparable

incentives to all segments of the industry. A model for accomplishing this objective already exists in the Senate-passed energy bill; tradable tax credits for investments in renewable technology made by consumer-owned electric utilities. We would encourage Congress to include such a mechanism in any package of incentives for telecommunications investment.

Conclusion

As the Committee recognizes, high-speed broadband services have the potential to revolutionize commerce, education and government. Federal telecommunications policies should promote competitive entry, broadly available investment incentives and strong consumer protections.

Alameda Power & Telecom looks forward to working with Congress to advance these objectives.

NSTAR ELECTRIC
Boston, MA, June 3, 2002

Paul B. Vasington, Chairman
James Connelly, Commissioner
W. Robert Keating, Commissioner
Eugene J. Sullivan, Jr., Commissioner
Deirdre K. Manning, Commissioner

RE: 2002 SUMMER READINESS REPORT

Dear Chairman Vasington and Commissioners:

In accordance with the directives of the Department of Telecommunications and Energy (the "Department"), NSTAR Electric hereby files the 2002 Summer Readiness Report (the "Readiness Report").* In addition to providing an overview of the Company's preparedness to meet customer requirements during the summer of 2002, the Readiness Report encompasses the first Quarterly Report (due on June 1, 2002) and the Company's report on the value and feasibility of including certain factors in the long-range planning process, as provided by the Department in *NSTAR Electric*, D.T.E. 01-65 (2002).

Please do not hesitate to contact me should you need additional information regarding the Company's reliability initiatives. Thank you for your attention to this matter.

Sincerely,

MARK L. REED
Director, Public Affairs

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*The information referred to has been retained in the Committee files.