104

COMMUNICATIONS LAW REFORM

Y 4. C 73/8: 104-34

Communications Law Reform, Serial N...

KF27
.E555
1995b

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
TELECOMMUNICATIONS AND FINANCE

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MAY 10, 11, AND 12, 1995

Serial No. 104–34

Printed for the use of the Committee on Commerce

SUPERINTENDENT OF DOCU...
DEPOSITORY

JAN 23 1996

BOSTON PUBLIC LIBRARY
... DOCUMENTS DEPART...

COMMUNICATIONS LAW REFORM

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
TELECOMMUNICATIONS AND FINANCE

OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MAY 10, 11, AND 12, 1995

Serial No. 104–34

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE

92–967CC WASHINGTON : 1995

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-052079-7

COMMITTEE ON COMMERCE

THOMAS J. BLILEY, Jr., Virginia, *Chairman*

CARLOS J. MOORHEAD, California, *Vice Chairman*
JACK FIELDS, Texas
MICHAEL G. OXLEY, Ohio
MICHAEL BILIRAKIS, Florida
DAN SCHAEFER, Colorado
JOE BARTON, Texas
J. DENNIS HASTERT, Illinois
FRED UPTON, Michigan
CLIFF STEARNS, Florida
BILL PAXON, New York
PAUL E. GILLMOR, Ohio
SCOTT L. KLUG, Wisconsin
GARY A. FRANKS, Connecticut
JAMES C. GREENWOOD, Pennsylvania
MICHAEL D. CRAPO, Idaho
CHRISTOPHER COX, California
RICHARD BURR, North Carolina
BRIAN P. BILBRAY, California
ED WHITFIELD, Kentucky
GREG GANSKE, Iowa
DAN FRISA, New York
CHARLIE NORWOOD, Georgia
RICK WHITE, Washington
TOM COBURN, Oklahoma

JOHN D. DINGELL, Michigan
HENRY A. WAXMAN, California
EDWARD J. MARKEY, Massachusetts
W.J. "BILLY" TAUZIN, Louisiana
RON WYDEN, Oregon
RALPH M. HALL, Texas
JOHN BRYANT, Texas
RICK BOUCHER, Virginia
THOMAS J. MANTON, New York
EDOLPHUS TOWNS, New York
GERRY E. STUDDS, Massachusetts
FRANK PALLONE, Jr., New Jersey
SHERROD BROWN, Ohio
BLANCHE LAMBERT LINCOLN, Arkansas
BART GORDON, Tennessee
ELIZABETH FURSE, Oregon
PETER DEUTSCH, Florida
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
RON KLINK, Pennsylvania
BART STUPAK, Michigan

James E. Derderian, *Chief of Staff*
Charles L. Ingebretson, *General Counsel*
Alan J. Roth, *Minority Staff Director and Chief Counsel*

Subcommittee on Telecommunications and Finance

JACK FIELDS, Texas, *Chairman*

MICHAEL G. OXLEY, Ohio, *Vice Chairman*
CARLOS J. MOORHEAD, California
DAN SCHAEFER, Colorado
JOE BARTON, Texas
J. DENNIS HASTERT, Illinois
CLIFF STEARNS, Florida
BILL PAXON, New York
PAUL E. GILLMOR, Ohio
SCOTT L. KLUG, Wisconsin
CHRISTOPHER COX, California
DAN FRISA, New York
RICK WHITE, Washington
TOM COBURN, Oklahoma
THOMAS J. BLILEY, Jr., Virginia, (Ex Officio)

EDWARD J. MARKEY, Massachusetts
RALPH M. HALL, Texas
JOHN BRYANT, Texas
RICK BOUCHER, Virginia
THOMAS J. MANTON, New York
EDOLPHUS TOWNS, New York
GERRY E. STUDDS, Massachusetts
BART GORDON, Tennessee
BOBBY L. RUSH, Illinois
ANNA G. ESHOO, California
RON KLINK, Pennsylvania
JOHN D. DINGELL, Michigan (Ex Officio)

CONTENTS

Page

Hearings held:
May 10, 1995 1
May 11, 1995 219
May 12, 1995 369
Testimony of:
Allen, Robert E., Chairman and CEO, AT&T Corporation 21
Anderson, John, Executive Director, The Electricity Consumer's Resource Council 107
Annunziata, Robert, Chairman, President, CEO, Teleport Communications Group 36
Bingaman, Hon. Anne K., Assistant Attorney General, Antitrust Division, Department of Commerce 219
Binz, Ronald J., National Association of State Utility Consumer Advocates 301
Boaldin, Robert, President, Elkhart Telephone Company 180
Brown, Richard, Vice Chairman, Ameritech Corporation 135
Carroll, Julie H., Director of Governmental Affairs, The American Council of the Blind 328
Chapman, Gary, President, LIN Television Corporation 387
Colbert, Terry, President and CEO, Communication Central Inc 465
Cullen, James, Vice Chairman, Bell Atlantic Corporation 84
Decherd, Robert, Chairman, President and CEO, A.H. Belo Corporation 453
Deutsch, Don, Director, Strategic Standards, Sybase, Inc 478
Devlin, Richard, Executive Vice President, General Counsel, Sprint Corporation 88
Easterling, Barbara J., Secretary-Treasurer, Communications Workers of America 333
Eigner, Michael, Executive Vice President, WPIX-TV 392
Ferguson, Dick, President and CEO, NewCity Communications 410
Ford, Joseph T., Chairman, President, CEO, ALLTEL Corporation 44
Galvin, Chris, President and Chief Operating Officer, Motorola, Inc 456
Gooch, Tom, Executive Vice President, Storage Technology Corporation 483
Goodman, Dean, President, Paxon Communications Corporation 374
Grossman, Sherwin, President, Sherjan Broadcasting Company 413
Harris, Laurence, Senior Vice President, MCI 142
Harrold, Robert E., Manager, Strategic Programs, ARI Network Services, Inc 346
Hendricks, John, Chairman and CEO, Discovery Communication, Inc 475
Holland, Royce J., President, CEO, MFS Communications Co., Inc 92
Hooks, Bennett W., Jr., Buford Television, Inc 192
Houser, Charles, CEO, Corporate Telemanagement Group, Inc 195
Hundt, Hon. Reed E., Chairman, Federal Communications Commission 266
Irving, Hon. Larry, Assistant Secretary for Communications and Information, Department of Commerce 228
Katz, Stephen, Chairman and CEO, Nationwide Cellular Service, Inc 472
Levin, Gerald, Chairman, CEO, Time Warner, Inc 74
Lund, Peter, President, CBS Broadcast Group 369
Patterson, Gail Thoma, President and CEO, Proxy Message Centers 461
Perry, Wayne, Vice President, McCaw Cellular Communication, Inc 188
Reilly, Edward, President, McGraw-Hill Broadcasting 381
Roberts, Brian L., President, Comcast Corporation 33
Rosenblum, Lisa, Deputy Chairman, New York Public Service Commission 296

Page

Testimony of—Continued
Schwartzman, Andrew Jay, Executive Director, Media Access Project 416
Scully, Jane, City Council Member, Falls Church City, VA 308
Shockley, Thomas V., III, Executive Vice President, Central and South West Corporation 99
Siegel, John, Senior Vice President, Chris Craft Industries 378
Sonnenstrahl, Alfred, Executive Director, Telecommunications for the Deaf, Inc 352
Specter, Rochelle, Councilwoman, City of Baltimore and Member, Board of Directors, National Association of Counties 312
Stillman, Bradley, Telecommunications Policy Director, Consumer Federation of America 336
Synk, Jim, Executive Director, National Burglar and Fire Alarm Association 450
Thompson, H. Brian, Chairman, CEO, LCI International, Inc 39
Weyrich, Paul, President and CEO, NET—The Political News Talk Network 447
Whitacre, Edward, Chairman and CEO, SBC Communications, Inc 30
Material submitted for the record by:
American Public Power Association, prepared statement of 536
Ameritech, letter dated May 17, 1995, to Hon. Jack Fields 538
Barton, Hon. Joe, a Representative in Congress from the State of Texas, prepared statement of May 11, 1995 359
Communications Workers of America, letter dated September 28, 1995, to Hon. Jack Fields, enclosing response for the record 367
Entertainment Made Convenient, prepared statement of 540
Hundt, Hon. Reed E., Chairman, Federal Communications Commission:
Letter dated May 12, 1995, to Hon. Jack Fields, responding to questions for the record 360
Letter dated May 16, 1995, clarifying letter of May 12, 1995 363
Irving, Hon. Larry, Assistant Secretary for Communications and Information, Department of Commerce, letter dated October 5, 1995, to Hon. Thomas J. Bliley, Jr., enclosing response for the record 366
Minority Media and Telecommunications Council, prepared statement of 530
National Association of Broadcasters, prepared statement of 519
National Center for Law and Deafness, letter dated September 22, 1995, to Hon. Jack Fields, enclosing response for the record 365
National School Boards Association, prepared statement of 526
New Orleans City Council, prepared statement of 364
Oshman, M. Kenneth, Chairman, President and CEO, Echelon Corporation, prepared statement of 469
Reilly, Edward T., letter dated May 18, 1995, to Hon. Jack Fields, responding to subcommittee questions 539
Rural Telephone Coalition, prepared statement of 528

COMMUNICATIONS LAW REFORM

WEDNESDAY, MAY 10, 1995

House of Representatives,
Committee on Commerce,
Subcommittee on Telecommunications and Finance,
Washington, DC.

The subcommittee met, pursuant to call, at 10:06 a.m., in Room 2123, Rayburn House Office Building, Hon. Jack Fields (chairman) presiding.

Members present: Representatives Fields, Oxley, Moorhead, Schaefer, Barton, Hastert, Stearns, Paxon, Gillmor, Klug, Cox, Frisa, White, Coburn, Bliley [ex officio], Markey, Hall, Bryant, Boucher, Manton, Towns, Gordon, Rush, Eshoo, Klink, and Dingell [ex officio].

Also present: Representatives Lincoln and Deal.

Staff present: Michael Regan, majority counsel; Catherine Reid, majority counsel; and David Leach, minority professional staff member.

Mr. Fields. First of all, I would like to welcome everyone to the first day of 3 days of hearings. Members of Congress can rarely say that a piece of legislation is truly historic, that it truly evidences a watershed moment, that one piece of legislation can truly unleash the investment of capital to build the infrastructure and technology that gives enormous benefits to the consumer and propels this country into the 21st century, but it is fair to say that the Communications Act of 1995 is just such a piece of legislation.

Building on the 14 months of negotiation between Ed Markey and myself, during the last session of the 103d Congress, the Communications Act of 1995 gives definition and certainty as we move into this time of convergence and technological innovation. It recognizes that the 1934 act is outdated and that the consumer could be denied the benefits of modern technology and advanced applications; it creates an atmosphere of legislative parity so that the rules are fair to all competitors as new lines of business are entered; it fashions a legislative model that is dynamic so that it can evolve with new technologies and their applications; and, finally, it is predicated on the model of competition and opportunity rather than government control and management.

I will be the first to say that this legislation is not perfect. I am very proud of this legislation but am not so enamored with pride of authorship to think that it cannot be improved. I welcome the expert testimony of our witnesses over the next 3 days and the comments of any interested party, be it government, industry, or consumer group.

With the 26 members of the Commerce Committee now cosponsoring this bill, it is safe to say that this legislation will pass this subcommittee and this full committee. This legislation will then pass the House. It will come out of a conference committee with the Senate and be presented to the President for his signature. I am going to advance this legislation as fast as humanly possible, and it is my hope to be in the Rose Garden this summer when the roses are still in bloom.

I would be remiss, however, if I did not give special recognition to my friend, Ed Markey, the ranking minority member. We would not be at this historic juncture were it not for the many years that Ed has dedicated to telecommunication policy and its development, and while Congressman Markey and I have not always agreed on every issue, he has always been the consummate gentleman. I had the distinct pleasure and honor of serving with him and calling Ed my friend.

I also must acknowledge the hard work of our Chairman, Tom Bliley, who has encouraged, cajoled, and counseled me during these important times, and I can say the same thing for John Dingell, who has provide stellar leadership and inspiration through our years of service together. And Tom, John, Eddie, and myself are always the ones up front who get the credit when things go well, and it is Christy Strawman on my personal staff and Cathy Reid and Mike Regan, majority staffers, and David Leach and Colin Crowell, minority staffers, who only get the credit when things go bad. As all of us on this panel would acknowledge, they are really the ones who deserve much of the credit for the countless hours of consultation and drafting that produced this historic legislative product. On behalf of this subcommittee to them I offer our sincere thanks.

My time has expired. The Chair would now like to recognize the ranking minority member, the distinguished member from Michigan.

Mr. MARKEY. I thank the gentleman from Texas very much, and I very much appreciate the extremely kind words which he used to describe my participation in this area over the years and in the last several months with you and with the other members of this committee, and I can't allow for your comments to go unanswered because it would open too large of a graciousness gap between us, and I have to close it now by praising you for your tremendous effort on behalf of the important concepts which are advanced in the legislation which we have before us here today and for the spirit of cooperation that you have dealt with these tough issues.

Many of the concepts that are in this bill are agreed upon by the consensus of this committee, there is no question about that, and so it is to your everlasting credit that that is the case. So it is with a mixture of anticipation and disappointment that I come here today, because I share with you the conviction that our country needs to reform the Communications Act to reflect the revolutionary changes we have seen in the telecommunications marketplace as the language of digital bits has emerged as a new worldwide technological Esperanto.

Our mutual anticipation of accomplishing this urgent task and our mutual respect for a process that could bring this about not just on a bipartisan basis but on a consensus basis has helped this

subcommittee craft a bill which is, in many respects, a thoughtful, a thorough, and a balanced product.

At the same time, I am deeply disappointed that our attention to detail and to balance, our commitment to the competitive model, and our rejection of the myriad pleas to preserve and to protect monopolies broke down as we reached the final stages of the drafting process in a couple of issue areas. This unfortunate and ominous development has required me to withhold cosponsorship while we attempt to put those portions of the bill back on track.

It is my hope that once the members have a better understanding of what is at stake we can resolve our differences and move ahead expeditiously. But if the bill is not amended to remove protections for unregulated cable monopolies and to restore the concept of open, transparent, and interoperable communications networks so that entrepreneurs everywhere can reach every consumer at any time without paying tribute to a monopolist, we will regret this undertaking.

Cable consumers should be on red alert. The bill would lift all rate regulation on cable programming either immediately if your cable company is not one of the largest national companies or 15 months after the bill becomes law if your cable companies happens to be one of the few largest companies. DBS will not hold them back as long as it is a $700 alternative. The telephone companies won't hold them back until they show up and start delivering the goods.

The cold reality is that no telephone company is currently offering cable service on a commercial basis in competition with a cable company. To pretend that 15 months from now this world will have suddenly changed to one of widespread delivery of commercially competitive cable service from a telephone company is sheer folly. At best, the telephone companies will cherry pick a few promising towns and test whether they know what they have been doing.

So let's not fool ourselves. The cable industry wants to be deregulated before effective competition arrives, and if it is, the bad actors in the industry will see their unrelated monopoly opportunities and they will take them; that's human nature. Just prior to the passage of the Cable Act in 1992 the average cable company was raising prices more than three times the rate of inflation and gouging people on equipment. This bill says to the industry go ahead, do it again, to the consumers of this country.

It is my hope that is spirit of consensus can prevail in our deliberations on these issues. I'm committed to working with Chairman Fields and my colleagues on the committee to achieve a completely procompetitive, a completely pro-consumer bill this year. We expect long-distance rates to continue to go down. We expect local rates to go down. We want cable rates to go down as well. This bill, as it is presently constructed, does two-thirds of that job; one thirds remains to be completed.

I congratulate the chairman, and I hope to work cooperatively over the next 3 weeks towards the goal of resolving these final issues, and I yield back the balance of my time.

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

The Chair will now recognize the chairman of the full committee, the gentleman from Virginia, Mr. Bliley.

Mr. BLILEY. I thank the chairman of the subcommittee.

Today we begin hearings on the Communications Act of 1995, one of the most sweeping reforms of communications law in history. I want to commend Chairman Fields, my good friend Ed Markey, and John Dingell for their leadership in producing this bipartisan bill which recognizes the need for fundamental changes in our communications law.

But the significance of the bill extends beyond the telecommunications industry that it will so significantly invigorate. Indeed, the Communications Act of 1995 will do more to dissolve monopoly power and do more to promote competition than perhaps any other single piece of legislation that Congress has ever undertaken.

In no other instance have mandated monopolies been so completely open to competition. When the history is written of the failed experiment of excessive government regulation of industry, the Communications Act of 1995 may well be the central story.

Current law, based on the Communications Act of 1934, is premised on the misguided idea that government, through regulation and the construction of artificial monopolies, can best serve the interests of consumers. The Communications Act of 1995 is the triumph of common sense over this disproved notion.

Where current law prohibits competition, this bill promotes competition. Where current law generates regulation, this bill ends regulation. Where current law retards innovation, this bill accelerates innovation. Where current law works to the detriment of consumer interest, this bill elevates consumer interest.

Most Americans cannot choose a local telephone service. The problem is not that the local telephone companies are run by evil people intent on destroying competition or by unusually clever people who provide a service that no one else can match. The problem is that antiquated laws have created the monopoly situation. Lots of companies would like to have the opportunity to compete for local telephone service, but the laws and regulations of this country effectively prohibit them from competing for business and offering innovative services, higher quality services, and lower price services. American consumers want the choices that competition provides. The Communications Act of 1995 will give them those choices. The Communications Act of 1995 will promote competition in practically all telecommunications markets.

But the mere presence of many firms competing in the current American telecommunications would not be enough to make consumers as well off as they could be. American telecommunications markets today are burdened with excessive regulations. Firms that offer telecommunications services in the United States have artificially high costs because of, one, the high cost of complying with regulation; two, the length of licensing procedures; and, three, the uncertainty of the outcome of licensing procedures.

Who pays for the high cost of regulations? As always, it is the poor American consumer who pays the price. These costs of regulation are passed along to telecommunications consumers in the form of high prices for services, a lack of responsiveness to new market conditions, and a slow rate of innovation.

The Communications Act of 1995 would harness and substantially reduce Federal regulations of telecommunications. The act

streamlines licensing procedures for broadcasters. The act creates temporary rules that promote a transition to competition. After the transition, most of the act sunsets. The act requires the Federal Communications Commission to forebear from, or to stop, regulation. Much of the act would be largely administered locally rather than Federally. The act would prevent States or the Federal Government from requiring costly rate of return regulation. Once telecommunications markets are competitive, price regulation would be banned altogether.

Telecommunications, perhaps more than any other segment of the economy, holds the key to our future. If America is at the forefront of telecommunications, revolution prospects for our country are bright, all Americans will win. If instead we do not lead this revolution, our prospects are dimmer. The telecommunications revolution in America is threatened not by foreign powers but by our own antiquated communication laws. They were originally written in 1934. Telecommunications technology has changed dramatically since then. Our laws have not kept pace.

The key to the telecommunications revolution, like any other technological advancement, is competition. Competition breeds innovation. Competition leads to lower prices. Competition is what has made America great. American telecommunications consumers will be the beneficiary of the Telecommunications Act of 1995. Less regulation will lead to lower cost. More competition will lead to greater innovation, greater choice of services, and lower prices, and all of these are ultimately what consumers want.

Obviously, no introduced bill is perfect. I look forward to the comments and suggestions of this week's witnesses. Again, I want to commend Chairman Fields, John Dingell, Ed Markey, and all the members of the subcommittee who worked long and hard to produce this bill. We are off to a good start.

I thank the gentleman for yielding me the time.

Mr. FIELDS. I appreciate the chairman's statement.

The Chair would now recognize the gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I want to commend you and our good friend, Mr. Bliley, for the fine cooperation and the fine work that was done in drafting what is a landmark piece of legislation. I believe the process that we have undergone in the construction of this legislation is a fair one, it has been open, and I believe for that fact alone you deserve the congratulations of the members of the committee.

It is my hope that the legislation, which closely tracks the legislation overwhelmingly passed by the House last year, will continue to have the same level of support when it passes this committee and goes through the House.

This is a good bill, but like any other piece of legislation, it has possibilities for improvement. I am troubled by some of the provisions that end regulation of cable rates on the day that the Federal Communications Commission issues its rules governing the offering of cable service by telephone companies. My concerns are shared by many of the members of this committee, and they are shared by the administration, and I think that it is likely that we will see amendments which will ensure that consumers are not gouged by

unregulated monopolies before real competition and proper alternatives are available. I'm also concerned that certain amendments to a fine underlying text may have the practical effect of compelling me or other members to reconsider support of the bill if those amendments are adopted.

These are reservations, but despite them I want to work with my colleagues on both sides of the aisle to develop H.R. 1555 and to see to it that it represents the real concerns of everybody in this room.

I would like to commend again Chairman Bliley and Chairman Fields for the fine manner in which they have conducted the drafting of this legislation. The process has been truly bipartisan, and the legislative text before us reflects the many compromises and changes that were assembled from all sides.

Telecommunications issues have never been partisan, and they have never been ideological, nor should they. The manner in which the majority has treated the minority in this case is exemplary, and it is my hope that it will serve as the model for many legislative initiatives that this committee and other committees will have before us.

I would also like to thank both of these fine legislators, Mr. Fields and Mr. Bliley, and also my friend Mr. Markey, and I look forward to working with them in this bipartisan approach as H.R. 1555 moves through the House.

Thank you, Mr. Chairman.

Mr. FIELDS. I thank the gentleman.

The Chair has circulated its intent to all the members that statements be limited to 3 minutes. Of course, the Chair would appreciate even shorter statements if that is within the realm of possibility.

With that, the Chair would like to recognize the vice chairman of the subcommittee, the gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman. I think I can accommodate you on the time.

Mr. Chairman, as the committee again addresses the issue of rewriting the 1934 Communications Act, we have the benefit of another year's experience and a deeper understanding of the issues before us. As good as last year's bill was—and I want to tip my hat to the former committee chairman and subcommittee chairman, Mr. Dingell and Mr. Markey, for all of their good efforts—I do believe that we can do even better in the 104th Congress.

I would like to thank you, Mr. Chairman, for the crucial guidance and long hours you have devoted to bringing this measure to fruition. I want to commend Chairman Bliley for his comments and his commitments to developing and passing the best possible bill.

The measure we will soon consider will provide the legislative framework for a tremendous surge in the development of this Nation's telecommunications supersystem. As in the past, the watch words will be deregulation, competition, and investment. These are principles, by the way, which I believe should apply to international telecommunications policy as well.

Section 310(b) of the 1934 act limits foreign investment in American telecommunications firms to 25 percent. This World War I era

law is an anachronism outpaced by international cooperation and converging communications technologies.

Mr. Chairman, just a few years ago I introduced a bill along with my good friend from Virginia, Rick Boucher, on the House side with then Senator Gore and Senator Burns on the Senate side that would eliminate the cross-ownership ban and allow free and open competition between telephone companies and cable companies. This is indeed the core of the bill that has been introduced by you as well as other members of the committee along with the chairman of the full committee. Indeed, we hope that the commitment to competition that was shown by then Senator Gore and others will be brought to fruition in this legislation, and I trust that it will.

This bill is indeed procompetitive and pro-consumer, and indeed those two terms are not mutually exclusive. Let us trust the marketplace. Let us understand that free and open competition is the best way to provide the most effective use of the spectrum and to make certain that our consumers, our constituents, have the most available choice in the marketplace at the freest, most available price, and that really, I think, sums up the goals behind this legislation. We are well on our way to bringing that to its final conclusion, and I again thank the Chair and yield back the balance of my time.

Mr. FIELDS. The Chair thanks the gentleman for his statement.

The gentleman from Virginia, Mr. Boucher.

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

At the outset I want to commend you and Chairman Bliley for structuring an excellent draft that is an appropriate starting point for our discussions on telecommunications reform, and I'm pleased to be joining with both Chairmen Bliley and Fields as a coauthor of this measure. The bill appropriately moves the industry toward open and competitive markets with respect to all of the telecommunications sectors.

There are areas, however, where I think some changes in existing provisions and the addition of other provisions would be helpful in achieving the overall goals of the legislation, and I'll take my time this morning to mention the most significant of those.

First of all, the electric utilities that today are subject to the Public Utility Holding Company Act, about 20 percent of the entire electric utility market, should be freed to offer telecommunications services and therefore be placed in parity with the other 80 percent of the electric utility market that is free to offer these services today, and I'll be joining with our colleague, Mr. Gillmor, in offering an amendment that will achieve that result on terms that will add this measure of competition to the telecommunications arena and that also will do so on terms that protect the interests of the consumers of the electricity services.

We should also change our section 310(b) restrictions on foreign ownership of U.S. telecommunications entities and do so on a reciprocal basis. The goal of this, by the way, is to open foreign markets for greater U.S. investments. Many foreign countries today close their telecommunications markets to U.S. firms that would like to invest abroad and cite our own section 310(b) restrictions as jus-

tification for that practice, and I'll be pleased to join with Mr. Oxley in offering an amendment that will achieve that goal.

It is vitally important that we address the set top box issue so as to ensure that information service providers, be they competing networks, be they programmers, be they software vendors, have access to their customers, and, regretfully, that key provision is not a part of the bill. It should be added by amendment.

The bill should be modified to provide that telephone companies are not prohibited from acquiring MMDS or wireless cable services, and the provision of the legislation that contains that prohibition is no doubt an oversight which should be corrected.

There are various issues relating to Bell company offering of interLATA services that should be addressed, four specifically in number.

First of all, out-of-region call origination should be exempted from the interLATA restrictions just as wireless and cable TV should be exempted. There is no potential for bottleneck with regard to out-of-region origination, and those services should be exempted.

We should also maintain parity in dialing to assure that the local, long-distance or the intraLATA long-distance market is not open to other long-distance competition until Bell companies have an opportunity to offer interLATA services. To do otherwise would deprive the Bell companies of revenue which they would not have an opportunity to replace by the entry into other lines of business, with dramatic and adverse consequences for the sustaining of universal service.

The actual competition standard is somewhat troubling and offering numerous opportunities for mischief. Under these provisions, an applicant for interconnection could file with the Bell company for the right to interconnect at the end of the 18-month period, after which the Bell company itself is entitled to file with the FCC for the offering of interLATA services. This could be a company that really has no intention to reach agreement with respect to the terms and conditions of interconnection and could simply drag those negotiations out endlessly, therefore endlessly delaying the opportunity of the Bell company to offer interLATA services, and I would like to call the attention of the members of this subcommittee to that provision and ask that it be addressed.

Mr. Chairman, I could spend an equal amount of time talking about the good aspects of this legislation. Let me simply congratulate both you and Chairman Bliley on the measure and say that I look forward to working with you as we move the legislation forward.

Mr. FIELDS. The Chair thanks the gentleman for his statement.

The Chair now recognizes the gentleman from Colorado, Mr. Schaefer.

Mr. SCHAEFER. Thank you, Mr. Chairman, and I'm going to be as brief as I can on this and certainly want to echo what my other colleagues have said in saying that we probably have here the finest telecommunications bill to see the light of day since we started this process 2 years ago.

Today's panels are going to focus on how we manage this transition to a fully competitive market for the benefit not only of the

American public but for the competition in this highly technical telecommunications industry.

H.R. 1555 sets out what is probably the tightest, most idiot proof model for managing this whole transition. As we will hear today, many think it is less than perfect, and all legislation probably is that has this comprehensive nature, but I'm willing to say that some modified version of this checklist approach will be the model ultimately put to use. It is a model that rightly stresses a need for facilities-based competitors to lead the way in providing a true alternative to today's monopoly in the local exchange service. In fact, it is no exaggeration to say that the entire bill is premised on the existence of robust facilities-based competitors.

Unfortunately, those in the industry best situated to fulfill this role, the cable television operators, are today preoccupied trying to understand the FCC's rules dictating what they can or cannot charge for MTV or the Cartoon Network. Without any sort of regulatory certainty, neither they nor their bankers feel confident enough to invest the billions of dollars it will take to fulfill the role this committee is asking of them and make the local competition promised by this legislation a reality.

I want to thank Chairman Bliley and Chairman Fields for allowing me to participate and write this section of H.R. 1555 that provides the regulatory certainty cable operators need to be full players in tomorrow's full service broad-band world.

And of course cable is not the only potential facilities-based competitor, at least in the long term. Today we will also hear from the registered utility holding companies, some of whom would like to use their fiberoptic networks to provide telecommunications services. To do so, the Public Utility Holding Company Act, under the jurisdiction of the Energy and Power Subcommittee, must be amended, and, as the chairman of that subcommittee, I support the concept of utilities providing telecom services.

Important issues for both power and telecommunications consumers are raised, however, by the notion of some of the Nation's largest monopoly utilities entering a viciously competitive industry like telecommunications. I plan to hold a number of hearings throughout the year to investigate the overall state of competition in the power generation transmission and distribution industry, and, Mr. Chairman, I would yield back my time if I do have any, and I would thank the Chair for allowing me to participate in this very extensive piece of legislation.

Mr. FIELDS. I thank the gentleman for his statement. I also thank the gentleman for his cooperation in this jurisdictional matter.

The Chair would now like to recognize the gentleman from Pennsylvania, Mr. Klink.

Mr. KLINK. I thank you, Mr. Chairman, and I want to commend you for your leadership that you have provided in bringing the telecommunications debate to the point that we are today. You have worked your way through an arduous process to produce a bill. You have crafted this bill in a way that I had always heard this committee worked, through the give and take with the minority in a bipartisan manner. I have to tell you, it is a very refreshing change from the first 100 days of this Congress.

I want to join you, Mr. Chairman, and the ranking member, Mr. Markey, as well as full committee Chairman Bliley, and full committee ranking member, Mr. Dingell, on the subcommittee because, in my 24 years in broadcasting and because of the reputation of this subcommittee and this committee for bipartisan deliberation, I'm hoping that we can continue this tradition as we consider this legislation before us.

I really believe that H.R. 1555 will be probably the most important piece of legislation that this committee considers this Congress. The ramifications of this bill will be far reaching and will be felt by virtually everyone in the country in very tangible ways. There are not many bills that we can say that about, and that is why I think it is important that we get this bill right. That is why we have to achieve the delicate balance between competition and consumer protection so that new services and technologies can make their way to the marketplace.

But we have to avoid the creation of new monopolies. H.R. 1555 takes significant steps towards opening the telecommunications marketplace, and I'm encouraged by those steps, but I have some concerns about the bill and what this will mean for consumers of telecommunications services: The small businessman who relies on his phone for business in his community, the rural widow who needs that cable television service to get good reception to brighten her otherwise lonely day, and the young family that is looking for a break in its long-distance bill. Those are the people that I will be concerned about as we deliberate this legislation. I want to make sure that we don't end up voting to increase cable television rates by mindless deregulation in the name of competition.

The consumers have saved billions of dollars since the Cable Act of 1992. I don't want to see those savings reduced, and I'll tell you, there are a lot of people in the Fourth Congressional District of Pennsylvania that are stamping for their cable rates to go up. I don't want us to make that mistake.

I'm also concerned about the relationship between low-powered television stations and the cable systems. There are now more LPTV stations today than there are full-powered stations, and they provide in many instances some very important programming, and yet the cable systems are reluctant to carry LPTV stations no matter how well received the programming is in the community. The Communications Act today grants "must carry" rights to every full power station but to no LPTV station in the top 160 markets. I think it is a situation that needs to be remedied.

There are many other issues that I think we need to look at, and I hope that we will have the opportunity to do that, and I hope that it will continue in a bipartisan fashion. Again, Mr. Chairman, thank you for letting me take part in this debate.

[The prepared statement of Hon. Ron Klink follows:]

PREPARED STATEMENT OF HON. RON KLINK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

I commend you, Mr. Chairman, for the leadership you have provided in bringing the telecommunications debate to this point: you've worked your way through an arduous process to produce a bill.

You have crafted this bill in the way that I had always heard this committee worked, through give and take with the minority in a bipartisan manner. It is a refreshing change from the first 100 days.

I wanted to join you, Mr. Chairman—and the ranking member, Mr. Markey—on this subcommittee, because of my 24 years of experience in broadcasting, and because of the reputation this subcommittee had for bipartisan deliberation. I am hopeful that we can continue this tradition as we consider the legislation before us.

I believe that H.R. 1555 will be the most important piece of legislation this committee considers this Congress. The ramifications will be far-reaching and felt by virtually everyone in the country in a very tangible way. There are not many bills we can say that about.

That is why it is so very important that we get this bill right.

That is why we must try to achieve the delicate balance between competition and consumer protection, so that new services and technologies can make their way to the marketplace, but we avoid the creation of new monopolies.

H.R. 1555 takes significant steps toward opening up the telecommunications market place, and I am encouraged by that. But I do have some concerns about what this bill will mean for the consumers of telecommunications services, the small businessman who relies on his phone for business in his community, the rural widow who needs cable television service just to get good reception to brighten her otherwise lonely day, and the young family that is looking for a break on its long distance bill.

These are the people that I am concerned about. They are the reason that I look forward to hearing from the administration about what role the Department of Justice should play, if any, in ensuring fair competition and what we should do about cable rate regulation.

I want to make sure that we don't end up voting to increase cable television rates by mindless deregulation in the name of competition. Consumers have saved billions of dollars since the Cable Act of 1992, and I don't want to see that reversed.

My constituents are telling me they want more regulation of the cable TV industry, not less. They want rate reductions, not increases. I want to see competition in telecommunications, but not at the cost of huge cable bill increases.

I am also concerned about the relationship between low power television stations and cable television systems. There are more LPTV stations today than full power stations. These LPTV stations are providing important local programming services for small communities and for small groups in large markets that cannot economically support a full power station.

Cable systems are reluctant to carry LPTV stations, no matter how well received the LPTV programming is in the community. The Communications Act today grants must-carry rights to every full power station but to no LPTV station in the top 160 markets. I think that situation needs a remedy and may offer an amendment to provide one.

Finally, I believe that the information superhighway offers opportunities for both the user and the abuser. I am concerned about the proliferation of child pornography and the increased occurrence of pedophiles using the Internet to prey upon innocent children.

I am encouraged by movement to address this problem in the Senate, but I am convinced that Senator Exon has not found the right formula. Perhaps Senator Leahy's interactive media study bill can provide us the answers we need. I also welcome the input of the Justice Department.

Again Mr. Chairman, I commend you for your work. I am pleased the subcommittee is beginning work on telecommunications and I look forward to this week's testimony and further consideration of H.R. 1555. Thank you.

Mr. FIELDS. The Chair appreciates the gentleman's statement.

The Chair will now recognize the gentleman from Washington State, Mr. White.

Mr. WHITE. Thank you, Mr. Chairman. I appreciate it very much.

I want to add my congratulations to you and Mr. Markey and Chairman Bliley and ranking member Dingell, and also, Mr. Chairman, I would like to thank you for not only including the other side of the aisle in these negotiations but also including humble freshmen such as myself in this process. I think that is even more of a departure from what we normally see around here, and I certainly appreciate it very much.

Mr. Chairman, this is an important day. It is an important day for me, it is an important day for the First District of Washington which I have heard described as ground zero for the telecommunications revolution several times since I've come to this town, and it is an important day for our country because this is the day when we are going to start the process of bringing the genius of the American people fully to bear on the telecommunications industry, and as I sit here today I can't help thinking back to 1989 and the debate we had at that time over high-definition television, and, you know, there were many people at that time who urged us to follow the model of other countries and to have the government set some standards so that the industry could move forward and decide what to do, and if we had followed that advice at that time, Mr. Chairman, we wouldn't be here today because it was the following year that private citizens, unhelped by government, adopted processes or invented processes that allowed the digital revolution to take place which is really leading to the revolution that we have in telecommunications today, and if I had to sum up the effect of this bill and what this bill means to me, it is that we have learned that lesson that we have got to let the American people, private citizens, private industry, make as many of these decisions as possible without the help, however well meaning, of the government.

And as I like to say, particularly pertinent to our district, I don't care how many Rhodes scholars we have in the White House, they are never going to be smart enough to tell Bill Gates to drop out of Harvard and write software, they are never going to be smart enough to tell Steve Jobs to drop out of his university, go to his garage, and build a personal computer. That is the lesson of this legislation, and I'm very, very pleased to be a part of it.

Many people have said this bill is not perfect. I agree with them. But it is a very, very good bill. You are to be congratulated for that. I'm looking forward to hearing these witnesses talk today and see if we can further improve it. But I'm pleased to be here, and I look forward to this bill passing the House.

Thank you, Mr. Chairman.

Mr. FIELDS. I appreciate the gentleman's statement.

The Chair will now recognize the gentleman from Texas, Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman.

I think our ultimate goal in rewriting the Communications Act should be to permit and encourage growth and development of new communications technologies and to further competition among providers of all telecommunications services in order to provide consumers with quality service at affordable rates in the markets for manufacturing, local and long-distance telephone service, and cable television service.

After reviewing the bill that you have introduced, along with Chairman Bliley and Mr. Dingell, there are several concerns that come to mind. First, as written, this bill may allow a Bell operating company to offer long-distance phone service on a statewide basis if no condition has been met other than the existence of a small competitor offering a narrow range of local services in only a limited geographic area—which does not appear to be a system that is likely to encourage competition.

Second, the measure does not guarantee that local services can be resold by potential competitors as at a reasonable cost. I think it is important to remember that the strong competition which exists today in the long-distance market does so to some degree because companies like MCI and Sprint offered long-distance service on a resale basis until they had built their own networks.

I'm also concerned that the bill doesn't include safeguards such as separate subsidiaries and imputed cost requirements that must be in effect after the Bell Operating Companies are allowed to enter the manufacturing business and to offer long-distance services. I think that the Department of Justice and the Federal Communications Commission as well should have roles to play in overseeing the continued divestiture, and the bill ought to guarantee that. The FCC has a public interest responsibility, and the Department of Justice has to make a determination that Bell operating companies' entry into currently prohibited lines of business will not create an anticompetitive environment, and the bill ought to have meaningful language that actually would create that result.

I think the bill ought to, first: remove current legal and regulatory barriers to local competition; second: provide that all requirements for an open local market—interconnection, unbundling, resale, number portability, dialing parity, et cetera—have to be functional, that is to say, real—not simply hypothetical. I don't believe the bill does that yet.

Third: it ought to set up post-entry safeguards like separate subsidiaries, and we ought to add to the bill Department of Justice review so there can be no possibility that a Bell operating company could use its monopoly power to impede competition in the long-distance business. And to those who say that will not happen, I think you ask us to deny not only the actual experience of the last 12 years and the many years prior to that, but common sense in general.

Finally, I am concerned that the cable rate regulations sunset ought to take place when a telephone company is not simply authorized to either build a system or authorized to provide that cable service, but is actually providing the service and building the system.

That is as succinct as I can make it in an attempt to fit in if your wishes, Mr. Chairman. I thank you for letting me make this statement.

Mr. FIELDS. Succinct with a drawl. The Chair appreciates the gentleman's statement.

The gentleman from New York, Mr. Frisa, is recognized for 3 minutes.

Mr. FRISA. Thank you, Mr. Chairman.

I would also like to acknowledge and recognize the hard work and thoughtful consideration that you and the full committee Chairman Bliley have given to this legislation and for the way in which you sought the input of every member on both sides other aisle of this subcommittee in order to get as good a piece of legislation as we have today.

I think it is with the passage of this bill that we will finally be able to take off the straightjacket of 60 years of a stifling bureaucratic quagmire, because it is time to change the stripes of the Fed-

eral Government from those gray bureaucratic stripes to the bold black and white stripes [donning black and white jersey] of a National Hockey League referee because the Federal Government need not and should not interfere with play but should do everything possible to facilitate the game.

I think this legislation reflects our view that competition in telecommunications should be robust and that the game should be fast and high scoring. I think this hearing and subsequent markups will ensure that the rules of the game provide just those opportunities.

So with the passage of H.R. 1555 we can finally signal [blows whistle] "Let the games begin."

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

Mr. FIELDS. Our members are as innovative as the technology we hope to see.

The Chair would now like to recognize the gentleman from Illinois, Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. Chairman, I will be as brief as I possibly can. I will make a short statement in order to allow us to move on to the testimony from the witnesses that we have gathered here today.

I am honored to be here today as we begin a series of hearings that will inform this committee of the concerns the telecommunications industry has with regard to the comprehensive bill that you, the full committee chairman Mr. Bliley, the full committee ranking member Mr. Dingell, and 22 other members have introduced. The Communications Act of 1995 will be the second attempt the House of Representatives has made since I have been a member of this body to pass critical telecommunications reform in order for all consumers to reap the benefits that advanced technology has to offer. As a new member of this committee, I will work tirelessly in the effort which will finally allow us to take the fine ground work our forefathers gave us in the Communications Act of 1934 and provide new paths to usher the industry into the 21st century.

I am filled with the an added sense of responsibility toward this legislation because, while the Chicago area grows and prospers from many of our Nation's most progressive telecommunications companies, I also represent a district that cannot afford to be left behind as we progress into an interactive society. Because of this, I am reserving my support of this bill until I understand the full impact it will have on the telecommunications industry and the industry's ability to operate in a competitive model that can be relied upon to further the goal of advanced universal service and promote average citizen use of new technology. I want to be assured that my constituents and the average working American will not end up as roadkill on the information superhighway.

I thank all the witnesses for being here today and look forward to their testimony, and I yield back the balance of my time, Mr. Chairman.

Mr. FIELDS. The Chair appreciates the gentleman's statement.

The gentleman from California, Mr. Cox.

Mr. COX. Thank you, Mr. Chairman.

I would like to commend you for holding these hearings, for your leadership in holding these hearings, and for bringing before the

committee a forward looking bill to deregulate the telecommunications industry. Your bill marks an important step towards unleashing America's competitive advantage in technology. You have shown exceptional vision and political courage in leading us out of the regulatory thicket that has shackled the industry over the past 60 years.

The telecommunications industry is one of the most important and fastest growing parts of our high-tech future. Telecommunications services add about $180 billion to our GDP annually, telecom equipment another $36 billion a year; cable TV has grown to $29 billion per year in sales. All told, telecommunications now represents about one-seventh of our GDP, the same size as the health care industry.

Two years ago Congress failed in its attempt to put that one-seventh of our economy under sweeping new Federal management and regulations. Today the new Congress is embarking on what virtually everyone predicts will be a successful effort at sweeping deregulation of another one-seventh of our economy.

Just as America has a substantial technological lead in medicine, the U.S. has a substantial technological lead in telecom. This lead is especially evident in the more advanced technologies like wireless communications, personal communications services, broadcast programming, and network software. Exports are growing by 15 percent per year in high end technologies like switches and networking equipment. The U.S. is particularly dominant in wireless communications, and we control 70 percent of the global market in satellite systems. That is the good news.

The bad news is that 60-year-old regulations embedded by a bureaucracy that zealously enforces them are punishing innovators and shackling further advances. Our self-imposed restraints on real competition and innovation are slowing us down just as other nations are catching up fast. The U.K., Hong Kong, Singapore, New Zealand, and Canada are all further along in deregulation than are we. They all have more competition in the local loop. Our Nation is bogged down by ownership restrictions, price controls, and government barriers to new market entrants. Judges and bureaucrats are routinely required to approve everyday business decisions by major parts of the industry.

The greatest danger of falling behind in international competition and providing even more advanced services to American consumers doesn't come from a failure to modernize our technology. The threat to competition and high-tech innovation is posed by antiquated laws. We should be quite clear about what regulations do. Every new reg takes a decision out of the hands of the marketplace and entrusts it to a bureaucrat. What the economy of the 21st century needs more than anything to unleash competition and enhance overall productivity is new grants of rulemaking authority to entrepreneurs.

Mr. Chairman, in the global information-based economy of the 21st century, telecommunications will converge with computers. As this process unfolds, it is imperative that the regulatory apparatus governing the telecom industry look more like that of the computer industry and not the other way around. The surest way to turn Silicon Valley and Orange County back into farmland is to increase

the size and power of the FCC and effectively turn it into the Federal Computer Commission. Hopefully, by the time our efforts at deregulation are complete, we can put the FCC to pasture instead.

Mr. Chairman, I congratulate you for setting out on this course, and I look forward to working with you to report landmark deregulatory legislation from this process.

Mr. FIELDS. The Chair appreciates the gentleman's statement.

The gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman.

We didn't play a lot of hockey growing up in Tennessee, and I can't compete with your jump shot, so I believe my best contribution to this hearing is to do more listening than talking, so let me just make one quick observation, and that is that my objective is for us to soon come to some kind of consensus on a bill that is going to be fair—fair, most importantly, to consumers and certainly fair to all the different industry groups that are involved—and I think too much time, energy, resources, and creativity has been spent fighting each other, and hopefully we can bring some certainty to this and certainty to this process so that these folks and others that are going to be presenting themselves later can put those resources towards becoming more creative, making our country more productive.

There is one small, little amendment that I will be dealing with that I might put you on notice for concerning 800 numbers. Last year I introduced legislation that tried to provide some consumer protection in the 900 industry. As you know, many of the teleporn and other scams had infiltrated 900 numbers. We passed legislation here that provided consumers with full disclosure of what was going on and allowed families and businesses to put blocking on their phones so that children or other minors or other people that were just picking up the phone could not call a 900 number and be billed when the parents didn't know. We were so successful, as a matter of fact, that we ran all those scams over into the 800 numbers, and I will be talking with some of you today about taking some of those same type of consumer protections over to the 800 numbers.

Thank you, Mr. Chairman.

Mr. FIELDS. The Chair appreciates the gentleman's statement.

The gentleman from New York, Mr. Paxon.

Mr. PAXON. Thank you, Mr. Chairman.

First of all, I would like to join with my colleagues in commending you and the Chair of our full committee, Mr. Bliley, for your leadership in moving forward what I believe is historic legislation both in terms of telecommunications and also in terms of this Congress, and I certainly think it is noteworthy that members on both sides of the aisle have joined together in sponsoring this legislation and drafting this important measure. It shows the breadth and depth of support both in this committee and in the country for this legislation.

As members of the subcommittee worked on drafting this legislation, we were of the opinion that competition is better than regulation in areas where regulations are necessary, such as transition rules while opening the local loop regulations, and that the regulations must be fair, reasonable and flexible.

In earlier decades, perhaps it was easier for the Federal Government to establish communications monopolies to serve our Nation. However, we have now reached a stage in the communications industry in which regulation is not only inefficient but is actually a hindrance to vigorous innovation and expansion, certainly crucial elements in this world marketplace.

Flowing from this idea that competition is better than regulation, the subcommittee members worked on this legislation and came to the realization that the marketplace moves much faster than Congress or the FCC can even imagine. Therefore, it should be the role of Congress, as Mr. Frisa has well pointed out, to write the rules and enforce them and not determine who wins or loses the game. In numerous instances Mr. Bliley and Mr. Fields wisely chose not to mandate technical standards or to advantage one technology over the other. When today's technology is obsolete in 6 months, it would be counterproductive for Congress to set standards in statute.

Finally, Mr. Chairman, I recently came across a copy of Time magazine. It is dated November 21, 1983. The cover story was about the breakup of AT&T. Eleven years ago we ventured, as was noted in this story, into uncharted territory by breaking up Ma Bell, and I think we would all agree that the telecommunications industry specifically, then the consumer and Nation generally, have benefited.

As I read through this story, it was interesting because there were prophets of doom then who felt, as many do today, that it is better to maintain the status quo, that neither the industry nor the American people could possibly deal with the kind of revolution that this breakup would cause. Today many of those prophets of doom are saying the same thing. They were wrong then, and they are wrong today. Our watchwords today should be, be bold, be daring, be farsighted, but certainly rely most importantly on the American people to adapt quickly to the changes that are about to take place because it will benefit this entire Nation.

Thank you, Mr. Chairman.

Mr. FIELDS. The Chair appreciates the gentleman's statement.

The Chair now recognizes another gentleman from New York, Mr. Manton.

Mr. MANTON. Thank you, Mr. Chairman.

Mr. Chairman, today we begin a process that I'm hopeful will ultimately result in the passage and enactment of legislation to reform and modernize our Nation's telecommunications laws.

Telecommunications reform is likely to have a greater direct impact on our national economy than any other issue this committee will consider. Domestic telecommunications industries already account for almost one-seventh of the U.S. economy. In order to sustain this fast glowing sector of our economy and to make certain that American consumers reap the benefits of the information age, Congress must act quickly but with all due care to replace burdensome and outdated regulations with fair and free competition.

Chairman Bliley, Chairman Fields, and the ranking member Mr. Dingell, as well as Mr. Markey have developed an excellent framework that sets us on a path towards competition in all telecommunications markets. I want to commend you all for your ex-

cellent work, and I'm proud to be a cosponsor of this landmark legislation.

Having said that, I do have some concerns regarding the provisions of the bill designed to open the local loop, and I believe some changes are needed in order to ensure free and fair competition will exist in all markets.

Under this legislation, a Bell operating company may seek entry into the long-distance market once a State has certified that the BOC has met the so-called competitive checklist and the BOC has entered into an access and interconnection agreement with a facilities-based competitor.

First, while I believe the checklist contains all of the elements necessary to open the local loop, I'm concerned that a Bell operating company might not have to comply with some items on the list if they are not economically reasonable or technically feasible. This is particularly troubling with respect to number portability, the idea that consumers can change local service providers but retain their existing phone number. I'm somewhat skeptical as to whether local competition can actually flourish without a number portability requirement.

Second, the requirement a Bell operating company must have an access and interconnection agreement with a facilities-based competitor before the BOC can enter the long-distance market is a key component of this bill. However, I'm concerned that if this provision is not strengthened a Bell operating company might be allowed into other competitive markets before any actual competition exists in its own market. For example, a Bell operating company agreement with one competitive access provider offering services to a few business customers would meet the local competition test contained in this legislation. I believe we need to look carefully at this critical issue.

Mr. Chairman, I'm confident that we can work together to address these important issues as the process moves forward. Once again, I want to commend you for your leadership and vision on this vitally important issue. I look forward to hearing from today's witnesses, and I yield back the balance of my time.

Mr. FIELDS. The Chair appreciates the gentleman's statement.

The Chair will now recognize the gentleman from Texas, Mr. Barton.

Mr. BARTON. Thank you, Mr. Chairman.

I have a formal statement for the record that I'll submit.

I'm pleased to be a sponsor of the legislation. Mr. Frisa stole my speech, except he substituted hockey for football, so I'm going to have to chastise him for that.

I look forward to working with you and the committee to improve what is an excellent base bill, and I'm proud to welcome Mr. Whitacre whose family is from my home town of Inez, Texas, and look forward to hearing him on the panel.

[The prepared statement of Hon. Joe Barton follows:]

PREPARED STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

First, I want to commend Chairman Jack Fields for all of his time and effort that went into drafting this piece of legislation. This committee is going to pass the largest telecommunications reform bill ever to go through Congress. I am proud to be

an original cosponsor of this historic legislation. "The Communications Act of 1995" will be the biggest job creation bill to pass in the 104th Congress. This legislation moves a number of currently heavily regulated industries into true market competition with each other, thus ensuring consumers real choices as to who to place their local telephone, cable television, and electronic data business with. The bill, when it becomes law, puts the consumer in the driver seat for all of his or her communications needs.

Generally, I feel this is a very effective piece of legislation; however, there are a few points of the bill I would like to address. In 1992, this committee passed out arguably the most regulatory piece of telecommunications legislation in the history of the industry. Frankly, I am disappointed that the 1995 bill does not simply repeal the 1992 Cable Act. The 1992 Cable Act took a giant step backward and decided that the consumer could best be served by massive regulations. I realize the legislation we are now debating eliminates many of these policies, but the bill does stop short of complete repeal.

Another issue I would like to touch on is the cellular industry. The themes of this legislation are deregulation and competition, but unfortunately, these themes do not reach into the cellular industry. The bill excludes wireless services from the competitive provisions including those requiring interconnection, network unbundling, and resale. Because the cellular industry is structured as a duopoly, competition could be brought about by extending these measures.

Overall, I support this deregulatory approach that will promote growth and competition in the telecommunications industry. If we can create a fair marketplace for telecommunication services, the industry, through competition, will create the much touted information superhighway in a less expensive and more efficient fashion.

Mr. FIELDS. The Chair appreciates the gentleman's statement.

The Chair might have understood a football analogy better than the analogy used by Mr. Frisa.

The Chair would now like to recognize the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, and I would like to pay tribute to you and to Chairman Bliley for not only bringing this bill forward and to the rest of my colleagues but also for these all important hearings.

Since I have been busy watching the faces of those that are at the table in front of me and they weren't paying all that much attention to opening statements, I think that I'll just insert my opening statement and listen to them.

Thank you.

[The prepared statement of Hon. Anna G. Eshoo follows:]

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

Thank you, Mr. Chairman. I will keep my opening statement short because there is much work to be done in the next few days, and many of the previous speakers have provided a superb description of the issues we face.

Mr. Chairman, this committee's yeoman work on the telecommunications issue during the last congress has been widely reported. Yet, as a new member of this committee, I am looking forward to hearing the testimony of the individuals appearing before us at these hearings.

Several issues will be discussed over the next few weeks and I'm eager to consider each of the respective viewpoints offered.

In the end, I believe successful telecommunications legislation must pass two critical tests. First, it should establish a framework which encourages competition, and second, it should promote technology innovation and production in a way that makes a difference for all of us rather than profits for some of us.

I'm proud to be an original cosponsor of H.R. 1555, the Communications Act of 1995. It is a bill that will do much to reconcile many of the issues that face our telephone and cable industries.

But as the Representative from Silicon Valley in California, I also know the importance of this bill to computer and software technology. Mr. Chairman, when we presented this bill to the public in last week's press conference there was an old radio and an old telephone on the table to represent our outdated laws.

Well, I have seen what my constituents have developed in Silicon Valley for telecommunications not for the next century—but for the next few years. Mr. Chairman, if we hold a similar press conference in four or five years, we can put today's telephone and today's television next to that old radio and telephone.

Consider, for example, that in 1972 there were only 150,000 computers in the world, yet this year Intel Corporation alone will sell 100 million small microprocessors each surpassing the capabilities of those computers sold in 1972. The reality is that computers are no longer items we buy with disposable income. They are the telecommunications tool of the future.

Unfortunately today's twisted copper wire telephone network is unsuitable for modern computers and software applications which can incorporate voice, video, graphic, and data transmissions and send them simultaneously in real-time exchanges.

There is also the critical issue of interoperability and ensuring that equipment and information can fit together and communicate as networks are expanded and opened to competitors.

Mr. Chairman, while we discuss the future of the local telephone loop and long distance, or interLATA, telephone service, I am glad that we will begin to address the issues that I have mentioned here. For not only are we discussing the next era of telecommunications in these hearings, we are deciding which country will emerge as the economic power of the information age. Thank you.

Mr. FIELDS. The Chair thanks the gentlelady.

The gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman, and out of deference to you and the distinguished panelists, I make my opening statement part of record.

I want to thank obviously you for your leadership on this bill as well as Mr. Bliley and Mr. Markey and Mr. Dingell.

I also want to take a moment, Mr. Chairman, to recognize the staff, what a terrific job they have done, and to compliment them in the public forum here.

This bill, of course, is a starting point, but I think our motto and what we are trying to do is pass a bill to unharness the technology that is capable, as my colleagues have talked about. So we are all mindful this is a starting point, we are all receptive to amendments, but for all of us and the people in this room as well as in the telecommunications subcommittee, we want to pass a bill.

Thank you, Mr. Chairman.

Mr. FIELDS. The Chair appreciates that statement.

The Chair would now like to recognize the vice chairman of the full committee, the gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman, and I want to congratulate you on coming up with an excellent piece of legislation. I also want to congratulate everyone that had a part of it in designing it, including Chairman Bliley.

I believe that this bill creates a structure for the information highway that encourages innovation and creativity, risk taking, and competition, without reckless disregard for the rights of consumers. I think we will create an atmosphere under this legislation that will make it possible to reach the heights in all of the areas dealing with communication, and for that reason I support the legislation, I'm glad to be a cosponsor of it, and I ask that my statement be made a part of the record.

Mr. FIELDS. The Chair appreciates that.

Now the Chair would like to extend a very warm welcome to a new member not only of our subcommittee but also a new member on our side of the aisle, the distinguished gentleman from Georgia, Mr. Deal.

Mr. DEAL. Thank you, Mr. Chairman. It is my pleasure to be with you, and I'm pleased to be on this subcommittee and a part of this committee process.

I realize that we are on this information superhighway, and I'll try very hard to catch up with those of you who are a little bit ahead of me in the process. Thank you for having me.

Mr. FIELDS. Thank you very much.

The Chair appreciates very much the patience of our witnesses, appreciates the fact that many of you changed personal schedules to be with us here today. What I would like to do is introduce all of you at one time and then we will come back to Mr. Allen to begin.

We do have, first of all, Mr. Bob Allen, chairman and CEO of AT&T; Mr. Ed Whitacre, chairman and CEO of Southwestern Bell; Mr. Brian Roberts, president of Comcast Corporation.

And we will say a special congratulation. We understand you are being installed today as chairman of the board of the National Cable Television Association in Dallas.

Mr. Bob Annunziata, chairman and CEO of Teleport Communications; Mr. Brian Thompson, chairman and CEO, LCI International; and Mr. Joe Ford, chairman and CEO of Alltel Corporation.

We welcome all of you, and, Mr. Allen, if you would proceed.

STATEMENTS OF ROBERT E. ALLEN, CHAIRMAN AND CEO, AT&T CORPORATION; EDWARD WHITACRE, CHAIRMAN AND CEO, SBC COMMUNICATIONS, INC.; BRIAN L. ROBERTS, PRESIDENT, COMCAST CORPORATION; ROBERT ANNUNZIATA, CHAIRMAN, PRESIDENT, AND CEO, TELEPORT COMMUNICATIONS GROUP; H. BRIAN THOMPSON, CHAIRMAN AND CEO, LCI INTERNATIONAL, INC.; AND JOSEPH T. FORD, CHAIRMAN, PRESIDENT, AND CEO, ALLTEL CORPORATION

Mr. ALLEN. Thank you, Mr. Chairman.

I'm Bob Allen. I'm chairman and chief executive officer of AT&T. I'm pleased to be here today to discuss house bill 1555, the Communications Act of 1995.

With all due respect to the Congresswoman from California, I didn't miss a word. I listened with more interest to some than others, but I did not miss a word.

By introducing this important legislation, Mr. Chairman, you, Chairman Bliley, Mr. Dingell, and other cosponsors are confronting the most urgent problem in our Nation's telecommunications industry, the rock solid monopoly that local phone companies continue to have on the delivery of local telephone services and local access service.

The entire telecommunications industry and the country's public policy makers I believe have reached a consensus that consumers and businesses alike would benefit from opening the local telephone exchanges to real competition. Our debates revolve around how, when, and under what conditions that should be accomplished. This is why this legislation is so important.

AT&T believes that Congress, as envisioned in this bill, must establish sound national standards for opening the local exchanges. This is a vital issue affecting, as has already been discussed here, one-seventh of the entire U.S. economy. This bill also addressed

whether and under what conditions the Bell companies should be permitted to enter the long-distance and manufacturing markets.

AT&T has often testified, and we continue to believe, that it is essential that the local market must be competitive before the Bell companies enter the long-distance business, and I am heartened that H.R. 1555 does indeed recognize the need to put local competition first.

Competition in long-distance is already fierce. The addition of a few more competitors is not the value of this legislation. The critical task for this subcommittee remains delivering on the promises of local competition, creating a real second competitor for local services and the potential for others. That is what will unleash market forces that have long been absent, stimulating investment in new technologies and assuring a wide array of local service provided at the highest possible quality and the lowest possible cost.

Designing a structure that leads to local competition seems to me to be the clear intent of this legislation, Mr. Chairman. I have read analyses of the bill with great care and interest, and the goal, I have no doubt, is the introduction of local competition in the local phone service markets.

I believe, however, that the actual language of the proposed bill will not deliver on the intent. I find uncertainty, ambiguity, and potential loopholes in some parts of the legislation. In my written testimony I propose some important changes for your consideration.

For example, there is a critical need to clarify the requirement for facilities-based competition prior to long-distance entry. Also, without effective resale local competition cannot begin. So the bill needs to be specific in requiring that local service must be offered for resale on a commercially viable basis. In addition, I propose removing or defining "economic reasonableness," so it cannot be used as an excuse for local carriers refusing to comply with requests for unbundling or interconnections that are technically feasible.

Let me reemphasize that I believe this bill is directionally right. If the bill can get clear and unambiguous standards in place and verify that actual competition really does exist, then it is on the right track, and this can be done, I believe, without any more regulatory bureaucracy overhanging the process. In fact, if the bill meets the goal of more competition, it will reduce regulation, not increase it. Let me say just a few words about that.

I take a back seat to nobody when it comes to wanting to eliminate unnecessary regulation, but if the real objective here is to introduce actual local competitive choices for consumers and businesses, then the conditions for local competition must be crystal clear and an agency like the FCC empowered to carry out those requirements. In my view, there is also a case for a back stop.

Mr. FIELDS. Mr. Allen, if I could ask you to summarize. We are going to give every witness 5 minutes, and at the end of 5 minutes I am going to ask you to summarize if I could.

Mr. ALLEN. Surely, Mr. Chairman. I didn't think I had exceeded my 5 minutes.

Let me just conclude then by saying that some changes in the bill are clearly needed, but you and your subcommittee are on the right track. You are on the way to crafting legislation that will complete the evolution of telecommunications to a full and open

competitive marketplace, and, once achieved, this industry will need no more or less regulation than any other American business, and we stand ready to help you with that.

Thank you, Mr. Chairman.

[The prepared statement of Robert E. Allen follows:]

PREPARED STATEMENT OF ROBERT E. ALLEN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, AT&T CORP.

Mr. Chairman and members of the Subcommittee: my name is Robert E. Allen. I am Chairman and Chief Executive Officer of AT&T Corp. I appreciate the invitation to appear today to discuss H.R. 1555, the "Communications Act of 1995," and in particular the local competition provisions of the bill. By introducing this important legislation, you, Mr. Chairman, Chairman Bliley, Ranking Member Dingell and your other cosponsors have moved to confront the most pressing national problem in the telecommunications industry: the lock that the local phone companies have over the delivery of local telephone service and local access service. Even in the most populous areas of the country, customers do not have an effective choice of local telephone providers, and there is no reasoned basis for thinking they will any time soon—without enlightened Congressional action of the kind that this Committee appears to be pursuing.

This lack of competition in the local exchange is a consequence of decades of federal and state policies that assumed that local service was and would remain a natural monopoly, and that created a regulatory regimen to keep the local monopoly in place. Now, however, advances in technology have allowed state and federal policymakers to begin to question this premise and to examine whether the monopoly local exchanges can be opened to competition. AT&T believes that the role of the Congress in this effort should be, as envisioned in this legislation, to establish sound national standards for opening the local exchanges. This is a vital issue, important to the successful evolution of local, long distance and international services, and affecting, by some estimates, one-seventh of the U.S. economy.

Closely tied to this issue is whether and under what conditions the Bell companies should be permitted to enter long distance and manufacturing markets. AT&T has testified previously before this subcommittee, and continues to hold, that it is essential that the local exchanges become competitive before the Bell companies are permitted to provide long distance service or manufacture telecommunications equipment. Former Judge Robert H. Bork recently explained the risks and incentives this way: *"Permission to enter those markets should be granted... as soon as—and not before—the local exchanges have become competitive. That would protect against anticompetitive conduct of which the Bell companies would otherwise be capable, while providing them with the strongest possible incentive to open up the local exchange."* [1]

H.R. 1555 makes a significant contribution in identifying the needed conditions for local competition and in providing some of the necessary incentives for the development of local competition. These we address below, along with other parts of the bill that we believe should be changed. Even with the best of intentions, however, imperfectly worded requirements could work in the opposite direction: to slow the development of local competition and permit the Bell companies to undermine it altogether, along with the health of the long distance marketplace. In offering these comments, I speak on behalf of AT&T as an established long distance and manufacturing firm but also as a potential new entrant in the local telephone business, provided the changes necessary to open the local exchanges to full and fair competition are put in place.

LOCAL EXCHANGE MARKET

To understand why the details of legislation matter so, it is first important to understand the strength of the local monopoly. When customers anywhere in the United States want to obtain local telephone service dialtone, they have only one option: they must call the local telephone company that serves their area. In Washington D.C., it is Bell Atlantic; in Atlanta, BellSouth; Dallas is served by SBC (formerly Southwestern Bell), and so forth. Through the local telephone network, customers make *all* their local calls ("local service") and, in over 99% of the cases, they are

---

[1] Robert H. Bork, "The Ban on Bell Company Entry into Long-Distance and Manufacturing: Why it Should be Retained Until the Local Exchange Becomes Competitive", February 1995, p.18 ("Bork", prepared at AT&T's request.)

also connected through the same local network to the long distance carrier of their choice ("local access").

This, then, is the local exchange "bottleneck", so-called because long distance carriers have no way around the local exchange networks to reach their customers. AT&T and our long distance competitors know this firsthand, for we are the Bell companies' largest captive customers. For the access we need to our customers, long distance companies pay the Bell companies and other local telephone, monopolies about 40% of our long distance revenues, which in 1993 amounted to about $23 billion in access payments. By contrast, in 1993 less than 1/4th of 1% of AT&T's total access payments went to alternative access providers.

Real local exchange competition, by contrast would mean that a customer could pick up his or her phone, receive dial tone from a local carrier of his or her choice, and make a call to any other local number. Long distance companies could select from among these competing local carriers—or construct—their own access connections to reach their customers. And real competition would unleash market forces that have been absent from the local market, stimulating investment in new technologies and assuring that a wide array of local services are provided at the highest possible quality and at the lowest possible price. The challenge and opportunity before the Congress is how to deliver on these promises.

The difference between a structure that leads to local competition and one that does not will have a profound impact on the nation. As it is, nearly 73% of all telecommunications services revenues go to the incumbent local telephone companies for local service and local access. The local companies face virtually no competition for these revenues, which amounted to $94 billion in 1993 (compared to a mere $350 million for the alternative local service providers). The fact that nearly three-fourths of the nation's telecommunications services are not disciplined by a competitive marketplace simply highlights how important H.R. 1555 is at this stage in the evolution of the nation's communications infrastructure.

THE BILL'S CHECKLIST

The bill itself provides a litany of many of the regulatory obstacles that exist and must be changed, before local competition can be given a chance. It preempts the states from imposing franchise restrictions that confer a government grant of monopoly power. It recognizes that competition cannot develop as long as the Bell companies control the nation's phone numbering system and as long as customers would have to change their telephone numbers or dial extra codes to place a call, when using the services of a competing local exchange carrier. (The definition of number portability should, however, explicitly state that it includes the ability to change phone numbers without impairment in "features or functions.") In other respects it recognizes the need for the incumbent carriers to take affirmative steps, including unbundling their networks and providing interconnection and resale, to allow new entrants the opportunity to offer a competing service.

However, the bill then undercuts the potential of the legislation to revolutionize telecommunications, by including two provisions that would give the Bell operating companies an easy mechanism to refuse or delay key aspects of local service or to overprice it and ultimately to enter the long distance market with their monopolies intact. First, the Bell companies need not provide number portability, unbundling or interconnection to the extent they can successfully argue that it would not be "economically reasonable." Sec. 242(a)(2) and (4) and Sec. 242(b)(1). Second, there is no requirement that resale of local services must be priced so that resale is commercially viable. Sec. 242(a)(3).

"Economic Reasonableness" must be deleted. The economic reasonableness provisions are a hungry wolf in sheep's clothing. They are almost certain to be used by the Bell companies and other local exchange carriers as an excuse to refuse to comply with requests for sufficient unbundling or interconnection that are otherwise technically feasible. They surely will have the effect as well of delaying for a significant time the introduction of number portability, without which competition cannot realistically be expected to develop, as the parties debate what is or is not "economically reasonable." AT&T is particularly familiar with the power this provision would give the Bell companies to prolong their monopolies, for it was a rationale that the Bell System commonly used in refusing to cooperate with potential competitors. If policymakers are serious about establishing local competition and about sending the right signals to the marketplace, then it must not give the local monopolies such an easy way out.

Alternatively (or in addition), the Bell companies and other local carriers are likely to argue that the limitation of "economic reasonableness" gives them authority to charge rates for number portability and unbundled elements that well exceed

what would be required to recover their costs. This tactic would effectively preclude any would-be local service competitor from succeeding in the marketplace. The concern arises because the cost-based provisions that apply to reciprocal interconnection (Sec. 242(b)(2)) do not apply to unbundled elements, number portability or resale. Furthermore, the bill could be construed to permit a Bell company to apply to enter long distance and manufacturing, based on mere compliance with an FCC schedule for implementing these critical elements, at a time when the Bell company monopoly is certain to be intact.

Resale must be "commercially viable." Just as occurred with the long distance market, it is likely that most new entrants in local markets will begin as resellers, and some will build out their networks over time if the marketplace warrants and permits. Indeed, unrestricted resale opportunities are the key to jump-starting competition in local markets. However, the resale market will not develop, and local competition will be thwarted, unless the incumbent monopoly carriers are required to offer wholesale rates that give the new entrant a reasonable opportunity to recover all its costs of providing local service to both residential and business customers, plus a return on its investment. This principle is recognized in long distance markets, where since 1976 the FCC has required unrestricted resale of long distance services, and the discounts available to resellers can run as high as 50% off the long distance carriers' basic service rates. In addition, the concept of commercial feasibility is incorporated in the recent accord among Ameritech, AT&T and the Justice Department for a local competition trial that may lead to a trial of long distance service.[2]

If a requirement that resale be "commercially viable" is not included, the nation can expect local exchange carriers throughout the country to follow the lead of Rochester Telephone, which "opened" its local exchange under a plan negotiated with the New York PUC, but then priced its unbundled elements *above* its retail cost (eliminating that as a route for new entry), and offered new entrant resellers only a 97 cent discount off its $19.41 average residential customer prices—a mere 5% reduction, even though its own avoidable costs were significantly greater than 5%. It is obvious that no one could make money having to cover its marketing and sales, billing and uncollectables, and customer service expenses out of this 5% discount. As it turned out, AT&T was the only carrier that opted to try to enter the residential local market under these constraints, and AT&T predictably found that it was losing money on every call it carried. Over several months, AT&T was able to attract only 2% of the Rochester residential local service market, and we have now suspended active marketing of our local offering. The attached chart illustrates the predicament any would-be entrant would face and dramatizes how without a requirement of commercial ability, the incumbent local exchange carrier would have substantial room to manipulate its resale price to keep the new entrant from being able to offer residential and business customers a viable service in competition with the incumbent.

In addition to the pricing problems, Rochester did not make its automated support systems available to us. Without those, our customers suffered a significant degradation in the kind of customer service we could offer relative to Rochester's service, affecting not only service orders, but also repair as well as number assignment. For instance, their customers' automated orders were processed immediately; our customers, manual orders took several days. For resale to be commercially viable, the local exchange carriers need to provide new entrants with equal access to these customer support systems. Under the best of circumstances, it would be very difficult for any new entrant, including AT&T, to compete successfully with the incumbent local carriers, but the Rochester experience underscores how important the local competition conditions become as the country tries to move in this new direction.

ACTUAL COMPETITION FIRST

These improvements to H.R. 1555 would help ensure that as the Bell companies apply for entry into long distance and manufacturing under Sec. 245, they cannot effectively evade the certification requirements of Sec. 245(a) and (b) by submitting a plan that while technically in line with the requirements, nevertheless is foreordained to fail in bringing about local competition. Further changes will be re-

---

[2] U.S. v. Western Electric, CA 82-0192, Preliminary Memorandum of the United States dated April 3, 1995: *"[T]he Department would require not simply that the tariffs theoretically permitted resale of particular local services, but also that, as a matter of economic reality, there were meaningful opportunities for commercially feasible non-facilities based competition in business and residential service."* (at p. 6).

quired, however, to ensure that customers throughput the local market actually have a choice of competing, facilities-based providers for their local dialtone before the Bell companies are permitted entry into long distance and manufacturing.

The bill recognizes the importance of a facilities-based competitor in Sec. 245(a)(2), but the language of that section could be interpreted to require only limited local service in a limited geographic area. There are two particular problems: first, because the language refers to access and interconnection "to the network of a competing provider of telephone exchange service" (which is further defined in Sec. 501(a)(1)), it does not clearly require that the facilities-based carrier have more than a very limited network, that the carrier serve any residential customers, or that the carrier's reach extend throughout the geographic area for which the Bell company is seeking long distance entry. This must be remedied.

In addition, the exception in Sec. 245(a)(2)(B) for areas where no provider has requested access is too broad, and its provisions would be effective too soon. By definition, the Bell companies' monopolies would still be fully intact in those areas. The provision would permit the Bell companies to enter the long distance market as early as 18 months after enactment in any area for which the Bell company did not receive an interconnection request in the first 15 months. As a practical matter, both periods—the 18 months and the 15 months—are woefully short. The FCC will not even have issued its access and interconnection regulations until the end of 15 months. In addition, it will take far longer than 15 months for new local entrants, even if they have access to the necessary capital, to construct their networks so that they are up, running, and ready for interconnection. This would of course include installing the necessary switching, transmission and trunking and loop equipment for local service. As it is, the Bell companies own well over 10,000 switches over which they provide local service in their regions. By contrast, long distance carriers own only 480 switches nationwide. To expect this gap to narrow in the first 15 months after the bill's passage is simply unreasonable.

Given the fact that the Bell companies would be able to enter the long distance market almost immediately over their own facilities and through resale, and the serious risk of anticompetitive conduct if they were to enter the long distance market before their local markets were competitive, Sec. 245(a)(2)(B) should not survive as written. We believe a reasonable accommodation can be reached that balances the risk of harm against the concern that some areas will not attract new entrants, by providing for a narrow exception in those cases where most of the residential and business customers in a state are served by an alternative facilities-based provider, but there are islands where no new entrant has requested access and interconnection.

In all cases, the Bell companies should have to satisfy a long distance entry test that evaluates the risk that they can use their monopoly power to suppress competition in the long distance market. For those states where pockets of monopoly power may remain, the responsible agency would evaluate their application in light of the competition that has developed in the rest of the state and the Bell companies' readiness and willingness to provide interconnection under the checklist requirements. If the decision is permit entry, the Bell company should also have to comply with conditions—similar to those contained in the recent agreement between Ameritech and the Justice Department—that it provide long distance service over leased facilities, through a separate subsidiary and subject to unbundling and other safeguards. These would help minimize, though not eliminate, the potential for cross-subsidies and discrimination against competing long distance carriers.

We are heartened that the sponsors of H.R. 1555 recognize the need to put local competition first. If legislation were instead to permit long distance entry before there is actual facilities-based local competition, it would set the goal of local competition well back as well as risk the future of competition in the long distance industry. The Bell companies would have every incentive to keep their local exchanges closed, so that they could leverage them to disadvantage their long distance competitors. Consumers would end up paying far more for local service than they should, because (1) the Bell companies would have no competitors to force their prices towards the most efficient cost of service, and (2) the Bell companies could overcharge their local services and local access customers (who cannot go elsewhere) and use those overcharges to subsidize their long distance service. In other words, they would be using their long distance access customers (i.e., the long distance carriers) as a source of leverage to disadvantage those very long distance firms.

Contrary to Bell assertions, this problem is not eliminated to the extent the Bells are subject to price cap regulation. As Judge Bork explained recently: *"This contention is unpersuasive because it overlooks the obtrusive fact that the price caps will*

have to be related to costs."[3] Nor is the problem of access cross-subsidies solved if the Bell companies are required to impute or pay the same high access prices for its own long distance operation, because their payments would be transparent "transfers" within the same Bell company, permitting price squeezes to occur almost as readily as if imputation were not provided. Indeed, the problem would be exacerbated under H.R. 1555 because it does not require the Bell companies to provide long distance service through a separate subsidiary.

In addition to the cross-subsidies, a Bell company could discriminate in provisioning and maintaining the access to the local exchange that every long distance carrier needs—denying access, delaying access or providing inferior access. A Bell company would be strongly tempted to take the proprietary technical and marketing information that its long distance competitors must give it when they request access for new services, and turn around and use that information as marketing intelligence in the Bell companies' long distance operations. Without separate subsidiary requirements, this temptation would in fact be overwhelming if the Bell companies were to enter long distance markets before they faced effective competition in their local markets.

At the outset of this Congress, you, Mr. Chairman, and others asked the industry to try to work out a consensus in an effort to find a creative and responsible approach to looking beyond the MFJ to the next century. While there is no single resolution of this issue, there is a clear and important convergence of views from members of the Bell community, long distance carriers, and consumer groups that any entry standard must include a finding that there is actual, facilities-based competition.

The Ameritech accord, stipulated to by Ameritech, AT&T and the Department of Justice, is a limited trial that will test whether local competition can develop under the market-opening terms set out in the agreement together with the local competition conditions recently adopted by the Illinois Commission. Most importantly, Ameritech has agreed that it may not enter the long distance market in the trial area until *"actual competition (including facilities-based competition) in local exchange telecommunications exists"* in the territory, and regulatory developments and market conditions offer *"substantial opportunities for additional local exchange competition."* Ameritech further agreed that it will have to meet the VIII(C) test found in the Modification of Final Judgment (MFJ) and prove to the Justice Department that there is no substantial possibility that it could use its monopoly power to impede competition in the long distance market. While I am aware that this accord provoked some objections from other Bell companies, the fact is that Ameritech has praised the agreement and believes that it will succeed under its terms.

Not to be overlooked as well is Bell Atlantic's pleased reaction to the MFJ court's recent opinion granting the Bell companies' request to provide interLATA cellular and other wireless services, subject to certain conditions intended to protect against anticompetitive conduct. Key among these conditions was that there must be actual competition in the provision of facilities-based landline access to the wireless switching office (MTSO)—the part of the Bell company network that is a bottleneck for wireless services along with equal access and separate subsidiary requirements and unbundling safeguards. *"This is a splendid victory... This is the beginning of the end of the Decree."* was the Bell Atlantic quote in the press. (*Wall Street Journal*, May 1, 1994 at B4).

A requirement that both residential and business customers have a choice of facilities-based carriers is crucial to the development of sustainable local competition. If a Bell company's only competitors are resellers who by definition must rely totally on the Bell's services—then the Bell company will still effectively control the local market. Nowhere would this be more evident than in the Bell company's ability to discourage competition by manipulating and controlling the price of resale. As the Rochester experience teaches, this could take many forms: e.g., a price squeeze between the new entrants underlying costs and the Bell's own retail rates; refusals to offer cost-based and economically appropriate prices; pricing arrangements designed to favor the Bell's network services. In addition, the Bell company would continue to control all interconnection to its facilities, a critical factor for any reseller gradually attempting to finance and build its own network (assuming that regulatory conditions and customer demand permit). With no other facilities-based carrier to turn to, the reseller would be vulnerable to the Bell company's ability to take information about its own facilities or information the Bell company has about the reseller's customers and their use of the network, and use it to disadvantage the reseller.

---

[3] Bork, p. 17.

A fully competitive local market by contrast would be like the long distance market: several carriers, including the Bell companies, would own some or all of their own facilities while others would compete by reselling those carriers' services. In this case, the resellers would not be entirely dependent on the Bell companies, and resale would enhance the level of genuine competition and customer choice.

Despite their control of local markets, the Bell companies have nevertheless argued that they already face vigorous competition. This is largely a tactic to gain early entry into the long distance business. The market is not competitive. Nevertheless, they claim that alternative local service providers, cable networks and wireless services, either alone or in combination, are or will soon be effective alternatives to the local exchanges. We do not believe these claims can be supported; certainly the numbers, including the Bell companies' 99% market share, do not bear them out. However, these debates have become largely moot because once actual competition is the accepted standard, then the sooner the Bell companies can demonstrate to the appropriate federal agency that they actually do face real competition, the sooner they will achieve their goal of entry into long distance and manufacturing markets.

The nation's experience with competition in the long distance industry is predictive of the kinds of benefits consumers can expect with some patience. The FCC began the series of rulings by which MCI ultimately became a full-fledged long distance carrier as early as 1969. But it was not until the government found the right industry structure 15 years later—in the form of the MFJ—that competition in long distance took off (and MCI's revenues soared from $205 million in 1980 to over $13 billion in 1994). The critical break-through was the MFJ's long distance restriction. This gave the long distance industry the confidence that while any other firm in the country could enter the market (and railroad companies and natural gas companies did), they would be protected from direct competition with the one firm which has the ability and incentive to harm the market: the Bell company for the area. The MFJ could not, and did not try to, solve the underlying problem, which was that the Bell companies own the essential facilities that the long distance carriers must use to reach their customers. That, of course, is the subject of your legislation. What the MFJ said to long distance carriers was, in effect: you and your investors can count on your being subject to competition from all sides, except from the companies that control 40% of your costs, where you have no genuine alternative to using their services.

In the eleven years since the MFJ was effective (including the MFJ's requirement of equal access for long distance carriers), competition has yielded consumer benefits that could scarcely be more dramatic. There are today some 458 carriers offering long distance service, as compared with 210 at the end of 1986. Every subscriber in the United States has a choice of at least 3 long distance carriers; 45 states (including the District of Columbia) are served by at least 9 long distance carriers (and most of them are served by many more—up to 134 carriers serving Texas); 4 states are served by at least 126 carriers.

The sheer number of long distance carriers has created genuine choice for consumers, and they have exercised it in search of lower prices and better services. Industry estimates suggest that in 1994 alone, residential customers switches long distance carriers 27 million times (an average of 74,000 a day). Overall, the price paid by consumers for long distance services has declined approximately 60% since divestiture.

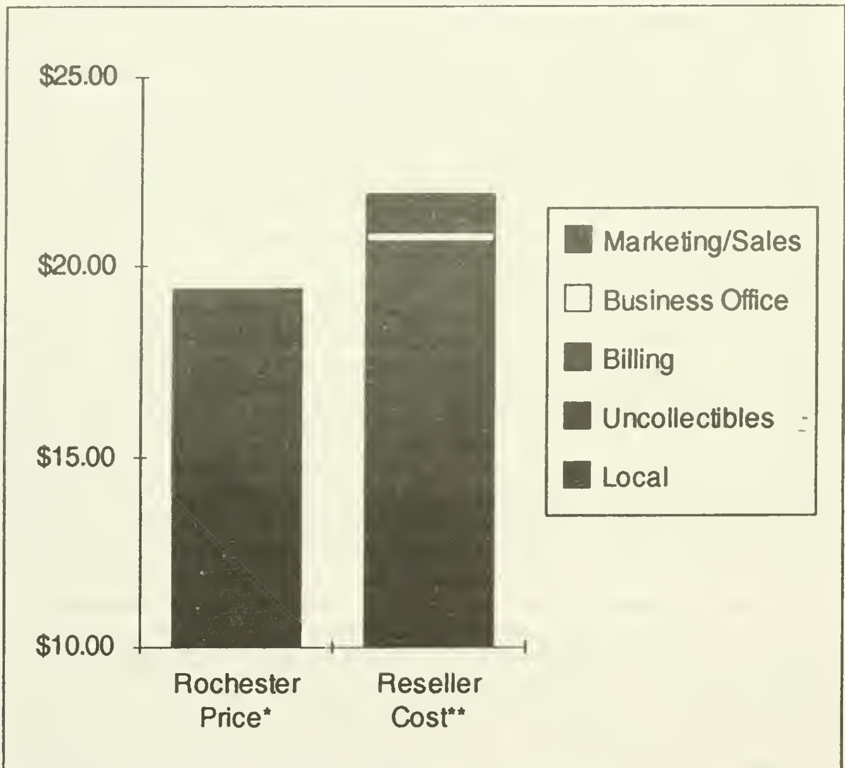
If residential and business customers could have a choice of local dialtone providers and long distance carriers could have a choice of access providers, there would be no possibility that the Bell companies could impede competition. The Bell companies would be unable to discriminate in provisioning and maintenance of access because long distance carriers would have elsewhere to go. Bell companies could not manipulate prices because they would be determined and disciplined by the market, not the Bell companies. And Bell companies could not cross-subsidize because any improper shift in cost could not be recovered—because their other services also would be competitive and therefore priced by the market. For these reasons alone, it is the simplest and best policy to create local exchange competition first, and then to allow Bell company provision of long distance services.

In this regard, it is essential that before the Bell companies can enter these competitive businesses there is a determination by a responsible federal agency experienced in promoting competition (which the Justice Department certainly is) that there is sustainable and real competition from a facilities based provider. The Bell companies should not object if such an impartial body were to adjudicate this market-entry test. After all, the Bell companies claim that local competition is here already—or just around the corner.

Even as the bill appears to move toward open markets, we are troubled by provisions that would support less competition in cellular long distance markets. Sec. 107(a) provides that cellular carriers must provide access to toll carriers of the subscriber's choice, but then defines access to exclude equal access. This provision would appear to prejudge a pending FCC proceeding on this matter. Moreover, customers themselves would be required to dial access codes to reach any long distance carrier other than that provided by the cellular company, greatly limiting their choice.

You, Mr. Chairman, and your Subcommittee, are on your way to crafting legislation that could transform the landscape of telecommunications and complete the evolution of telecommunications to a full and open competitive marketplace that, once achieved, will need no more or less regulation that any other business does. We at AT&T are ready to help in any way we can, working with you to establish the rules that will guide the telecommunications industry—and the nation—to a more competitive, more productive, and more prosperous 21st century. Thank you for inviting us to testify. I would be pleased to answer any questions now or for the record.

ROCHESTER PRICE V. RESELLER COSTS



* Rochester also retains $3.50 SLC and toll access revenues from reseller accounts.
** Estimated average costs for illustrative purposes only.

92-967 O - 95 - 2

Mr. FIELDS. Thank you very much.
The Chair will recognize Mr. Whitacre for 5 minutes.

STATEMENT OF EDWARD WHITACRE

Mr. WHITACRE. Thank you, Mr. Chairman.

I want to again express my appreciation for the opportunity to be here with you today to discuss this important telecommunications legislation. I am here today on behalf of my company and the other regional Bell operating companies who form the Alliance for Competitive Communications. The Alliance supports four principles which we believe should serve as the cornerstones for good telecommunications reform legislation:

The legislation must preserve universal services, permit all providers to compete in all markets, it must open all markets to all participants at the same time, and it must ensure that whatever regulation is retained is necessary and competitively neutral.

In my written statement I emphasized that consumers want real competition in which all telecommunications providers have the opportunity to offer all services at the same time. Our customers and your constituents want to be able to select the best service at the best price in the most convenient way, and they want to do it from competing suppliers. It is time to sweep aside the legislative, regulatory, and judicial barriers which prevent consumers from having that choice. It is time to set aside arguments suggesting that you should pass legislation which gives a preference to one provider or class of providers over others.

Some groups are saying that you should tie our hands in the long-distance arena until there is pervasive competition in the local exchange market. Of course doing so would give those companies an unfair advantage by allowing them to offer customer services in our markets before we could compete in their markets. That would give our competitors the distinct advantage of being able to offer one-stop shopping for all telecommunications services, something everyone in this industry is well aware that consumers want very much. Opening some markets before others would be destructive to our ability to serve customers. For the Congress to enact that approach would be wrong, anticompetitive, counterproductive, and anti-consumer. The right course is free, fair, and open competition that gives all providers an equal opportunity to serve customers.

In my written statement I support the idea of lifting regulatory, legislative, and judicial barriers which make it difficult for others to compete for the local exchange business. I believe that is the right approach but only if the legal barriers that prevent our company from competing in the long-distance marketplace providing full service, mobile and video services, and engaging in manufacturing are lifted at the same time the local exchange market is opened.

I also believe that telecommunications reform legislation must treat all providers fairly in order to achieve maximum consumer benefit. To accomplish that, this bill needs to clearly state that all regulatory, legislative, and judicial barriers to entry into all markets are being lifted at the same time.

We are eager to work with you to ensure that all barriers are eliminated at the same time. That is the only way to guarantee

that the consuming public can have the benefit of multiple providers offering multiple services in a truly competitive way. And let me stress that consumers should not be denied the benefits of competition by some artificially set time line such as an 18-month delay. Competition should begin in all markets at the earliest possible date.

SBC Communications and the other Alliance members consistently have said that we support legislation which is truly competitive and eliminates unnecessary regulation. We are willing to open the loop, we want to be helpful, we will be helpful, we want to facilitate an agreement. H.R. 1555 is an excellent start toward that goal.

Mr. Chairman, I appreciate the hard work this committee has already invested. We look forward to working with you to enact real reform in telecommunications in 1995.

Thank you.

[The prepared statement of Edward Whitacre follows:]

PREPARED STATEMENT OF EDWARD E. WHITACRE, JR., CHAIRMAN & CHIEF EXECUTIVE OFFICER, SBC COMMUNICATIONS, INC.

Mr. Chairman and members of the committee: My name is Edward E. Whitacre, Jr. I am the Chairman and Chief Executive Officer of SBC Communications Inc. I want to thank you for this opportunity to address the Subcommittee. Today I am here on behalf of my company and the other Regional Bell Operating Companies who form the Alliance for Competitive Communications, of which two of my fellow witnesses represent member companies.

It would be easy to come here today and tell you that SBC and the other Alliance companies need telecommunications reform, but this Committee has made it clear that this year the Congress is going to enact real communications reform. H.R. 1555 is to be a launching pad. I hope to meet that spirit of reform by focusing on what consumers expect of us. Let's focus not on what we say the public should want, but on what consumers say for themselves. If we have learned anything at all in the years of debating these issues, it is this: If we allow ourselves to fall into an industry-centered technical quagmire, nothing will be accomplished. We must instead center on what should be the real focus of this legislation: our customers and your constituents.

With that in mind, I'd like to share with the Committee some survey results which shine the spotlight where it belongs, on what consumers say they want. Next, I'll highlight the principles our Alliance believes should drive reform and thereby meet those consumer expectations. Finally, I'll discuss where we see H.R. 1555 as meeting those expectations today and where it can be changed to better match the public interests.

I. The Public Wants Change

In March, my company conducted a poll to determine consumers' views on competition in communications and how industry change should unfold. In a nutshell, we found that customers want local exchange, long distance and video competition, and they want it to be fair. They say real competition will be better than what we now have. Finally, consumers favor less government regulation of the industry and reject government management of competition.

What made the greatest impact on us was the intensity of consumers' feelings in this area. Here's a sample of the results:

—85% of the respondents said that other companies should be allowed to offer local telephone services in competition with Southwestern Bell.

—By even larger percentages, consumer believe that Southwestern Bell should be able to compete in the interLATA long distance and cable television markets.

—When we asked if people favored more or less government regulation in the telecommunications industry. The result: 79% preferred less regulation.

A recent nationwide survey commissioned by the Alliance and conducted by The Mellman Group and Public Opinion Strategies netted similar results. Seventy-five percent of those surveyed said there should be open competition in all markets. Approximately three-quarters said that local and long distance companies should be

allowed to compete with each other at the same time, rather than phasing-in the change.

In addition, 78% of the respondents said that consumers should be able to choose the communications company with whom they do business. Finally, more than two-thirds of rural residents believe that more competition will lower their telephone and cable TV rates and that giving them a choice of providers will bring technology advances.

If we listen to consumers, the key issue of this debate must be how soon customers will have more choice, innovative services, and the potential for lower prices. That's what consumers are saying they want. We in the Alliance believe that serving customers is the best way for the employees and owners of individual companies, the industry at large and the U.S. economy to thrive.

II. Create Legislation That Serves the Public

With that consumer focus of the debate in mind, I'd like to introduce four principles that Alliance members believe should serve as the cornerstones for good telecommunications reform legislation. They are principles supported by consumers, which will lead us to legislation that serves all customers. The legislation must:

1. Preserve Universal Service.
2. Permit all providers to compete in all markets.
3. Open all markets to all participants at the same time.
4. Ensure whatever regulation that is retained is necessary and competitively neutral.

The members of the Alliance are committed to these principles. We recognize that it won't be easy to achieve them, and that we'll have to work to remove some hurdles along the way. For example, the "carrot and stick" approach that some groups bring to the discussion should be discarded. Permitting RBOC's to provide interLATA service only after there is evidence of "actual and demonstrable" competition in the local exchange is market allocation and governmental handicapping.

Second, entry into all markets by all providers should be made *possible.* Plus—and this is critical—such opportunities must be simultaneous. Notice I used the word "possible." That means the legal and regulatory conditions should be created that permit companies to enter the local exchange telephone market and the interLATA long distance market, to have intraLATA dialing parity, to provide cable television service, to manufacture and to interconnect networks.

We at the ACC and the nearly 80% of the public respondents, don't believe that government regulation or legislation itself can manage this industry's transition to genuine competition. After the legal conditions outlined have been met, turn the competitors loose, at the same time, and let competition and the marketplace dictate the winners and losers, as opposed to expecting government agencies to micro-manage a competitive industry environment.

Finally, the regulatory and legal burdens imposed on this industry must be reduced significantly. I can think of few other industries so pervasively regulated at so many levels of government. If we are to meet customer expectations, hard triggers, such as those contained in the checklist in this bill must be the rule. The checklist should determine compliance with serving the public interest, rather than abstract and time-consuming, constantly evolving tests being proposed to you by so many institutions who are parties to this debate.

III. Promote Competition

While H.R. 1555 is a very significant step in the right direction, it can be improved in order to achieve the fully competitive, customer-oriented telecommunications marketplace it seeks to create. We support the bill overall, and we are anxious to work with this Committee to obtain quick approval. The following elements of H.R. 1555 are responsive to customers and promote competition. We congratulate Chairman Fields and all the Members of the Subcommittee on the positive direction set by these provisions:

(1) The ability of parties to negotiate network interconnection is conducive to companies operating in a less regulated environment. It will drive solutions closer to the consumer and help assure that customers come first.

(2) The definitive checklist clears the way for competitors to provide local exchange service and gives concrete direction to the industry. It avoids the "one size fits all" approach that can come from government-imposed regulation and allows for market entry to be tailored to local consumers. Finally it sets specific performance conditions for facilitating competition.

(3) It removes outdated and unnecessary regulatory burdens with its elimination of rate-of-return regulation and its ultimate elimination of price regulation. This approach assures maximum benefit to consumers.

(4) The provisions dealing with RBOC entry into cable television services recognize that telephone companies and cable operators are natural competitors.

(5) The bill provides the incentive for the RBOC's to capitalize on our extensive network knowledge to bring new services to consumers through the immediate ability to collaborate with manufacturers on telecommunications research, design and development.

IV. Allow Simultaneous Entry

However, we believe the following parts of the bill conflict with the strong, clear messages consumers are sending and the objectives set by H.R. 1555:

(1) As currently drafted, the bill seems to not provide for simultaneous market entry. It appears that the competitors of local exchange companies get a government-managed head start. The bill lets competitors provide local exchange service and may force us to provide local long distance dialing parity before we can offer consumers competing alternative packages of services. That situation is not the kind of fair competition that benefits consumers and is contrary to what consumers themselves say they want to see in telecommunications reform.

(2) The section of the bill dealing with RBOC provision of video services creates a new layer of regulation. It does not allow a Bell company to provide video services under conditions that are comparable to cable companies. In fact, this would not create the competition envisioned by this bill, and it does not give customers access to the choices that otherwise could be available to them. H.R. 1555 limits the options available to companies who want to provide video services. Most importantly, it imposes unnecessary common carrier regulation of integrated telephony/video networks, substituting regulation for competitive market forces.

(3) There is no provision in H.R. 1555 today that provides RBOC's out-of-region, interLATA relief. There is no sustainable argument that MFJ restrictions should apply where we don't provide local exchange service. That fact should be clearly recognized in this legislation and services consumers purchase should not be burdened further by retaining unnecessary and pointless restraints.

(4) There are ambiguities and uncertainties in the bill's construction. We want to work cooperatively with the committee to avoid unintended outcomes and wasteful litigation.

Mr. Chairman, members of the Subcommittee, in closing, we at the Alliance want to thank you for your efforts on this bill. We know you, your staff and many others have worked long hours to produce it.

For many years, we have been before Congress asking for the statutory relief we need to fully serve our customers and which will allow this industry to expand and make greater contributions to this country. The members of the Alliance believe that it is time to let full, fair and open competition flourish. We know the consuming public is impatient for these changes. Let us finally move out of the hearing rooms, the court room, and into the competitive marketplace.

The companies in the industry are ready to serve customers. More important, consumers are asking for change. American consumers want competition in all communications markets. They want to choose who provides their communications. They want competition to determine prices and to provide incentives for creating innovative, personally useful services.

H.R. 1555 can allow us to step up to the challenge consumers have placed before us. We appreciate all that has been done, and we look forward to assisting you in making this bill the consumer-oriented legislation we all want it to be.

Mr. FIELDS. Thank you, Mr. Whitacre.

Mr. Roberts, president of Comcast Corporation and the soon to be chairman of NCTA.

STATEMENT OF BRIAN L. ROBERTS

Mr. ROBERTS. Thank you, Mr. Chairman.

H.R. 1555 is the legal framework that will bring full competition to the last telecommunications monopoly, the local telephone exchange. On behalf of America's cable television industry, I congratulate the authors on making an excellent start, and we wholeheartedly support swift passage of your bill.

Last evening I flew in from Dallas where the biggest cable industry convention in history is under way, and the theme of that show is, "The future is on cable." One had to come away from that con-

vention with a clear message: The cable industry is close in every way to being able to deliver competitive telecommunications to American homes and businesses. The technology is there, consumer demand is there, our desire is there, and only two things are missing. First, our industry is constrained in its ability to compete for capital dollars to invest in this exciting future; and, second, we lack a stable, procompetitive legal and regulatory environment that would permit us to move forward. Those two things are inextricably linked.

The investment community is waiting for a clear signal from this Congress that you have embraced a competitive telecommunications future, and the longer that that signal is delayed the longer that billions and billions of investment dollars remain bottled up, hundreds of thousands of jobs, and unprecedented choices for consumers, and America's global leadership in telecommunications are all held hostage.

Comcast has recently joined forces with Sprint and two other cable companies, TCI and Cox Cable, to create a national local telephone company, and we want to knit together America's cable systems, speed up the installation of fiberoptics in our networks, and combine wireless and wire line technologies in a bold new way to give American consumers unprecedented choice, convenience, and competitive prices.

We and our partners will initially invest over $4.5 billion in the next 3 to 4 years to carry out our dreams to create this national local phone company, and when we are done America will be the first Nation on earth to have full-fledged, facilities-based telephone competition everywhere. We will have achieved the vision of a two-wired world, and there is only one barrier to this future that we cannot overcome without government's help, and that is the barrier that government has itself created.

Today in more than 30 States we are barred by law from providing competitive local telephone service. In many other States where the statutory bar has been eliminated, State public utility commissions still need to adopt rules to let new competitors in, and these States need to set the terms under which our networks interconnect, and, as you might expect, the incumbent telephone companies are resisting these changes, trying to overwhelm the State commissions with lawyers and lobbyists and economists and everybody else to slow it down, and even to the extent that we succeed with State legislators, we will then find ourselves confronted with a patchwork of regulation and real stumbling blocks to a national local phone company.

Mr. Chairman, this is no way to build a national information infrastructure. We need action now on the Bliley-Dingell-Fields bill. We need your unambiguous command to the FCC and the States to clear the way for competition without delay. We need the kinds of incentives your bill provides to get the Bell companies to do what they need to do to open up local markets, and we need reduced regulation of the way the cable companies price and market our video services, as your legislation provides.

Reduced regulation of cable prices is essential to the balance you have struck in your bill. The bill gives telephone companies complete freedom to compete with us in the video business. It also

gives phone companies even more deregulation of their rates than the FCC and the States have already given them. Moreover, your bill would let broadcasters use their spectrum to provide multichannel video and other digital communications services.

Therefore, as you stimulate more competition to our cable business and impose less regulation on our competitors, it is only fair that you also ease regulation of how cable prices and markets its video services to give us more flexibility to respond to this competition. We sat by last year at the end as the bill died, and we hope that this year the leadership on both parties will find a way to make it into law.

Thank you for having us.

[The prepared statement of Brian Roberts follows:]

PREPARED STATEMENT OF BRIAN L. ROBERTS, PRESIDENT, COMCAST CORPORATION

Mr. Chairman: The Bliley/Dingell/Fields bill, H.R. 1555, is the legal framework that will bring full competition to the last telecommunications monopoly—the local telephone exchange.

On behalf of America's cable television industry, I congratulate the authors on making an excellent start... and I wholeheartedly support swift passage of your bill.

Late last evening, I flew in from Dallas, where the biggest cable industry convention in history is underway. The theme of that show is "The Future Is on Cable."

One had to come away from that convention with a clear message: the cable industry is *close in every way* to being able to deliver competitive telecommunications to American homes and businesses.

The technology is there. Consumer demand is there. Our desire is there.

Only two things are missing: First, our industry is constrained in its ability to compete for capital to invest in this exciting future... and second, *we lack a stable, pro-competitive legal and regulatory environment* that would permit us to move forward.

Those two things are inextricably linked. The investment community is waiting for a clear signal from this Congress that you have embraced a competitive telecommunications future.

The longer that signal is delayed, the longer these billions and billions of investment dollars will remain bottled up... hundreds of thousands of jobs, unprecedented choices for consumers, and America's global leadership in telecommunications are all held hostage.

When I appeared before this Subcommittee last year, I told you of Comcast's total commitment to compete in the local exchange telephone marketplace.

Since that time, Comcast has joined forces with Sprint, and with two leading cable companies, Tele-Communications, Inc. and Cox Communications, to create a "national local telephone company."

We will knit together Americas cable television systems, speed up the installation of fiber optics in our networks, and combine wireless and wireline technologies in a bold new way... to give American consumers unprecedented choice, convenience, and competitive prices.

We and our partners will invest over 4.5 billion dollars in the next three to four years to carry out our plans to create a "national local telephone company." Before we have fully deployed our service, that number will multiply several times over.

And when we are done, America will be the *first nation on earth* to have full-fledged, *facilities-based* telephone competition everywhere... we will have achieved the vision of a "two-wire world."

There is only one barrier to this future that we cannot overcome without government's help—and that is *the barrier that government itself has created.*

Today, in more than 30 states, we are barred by law from providing competitive local telephone service.

In many other states where the statutory bar has been eliminated, state public utility commissions still need to adopt rules to let new competitors in. The states need to set the terms under which our networks interconnect with the incumbent phone companies. They need to deal with technical issues such as dialing parity and number portability—issues which are essential to our ability to compete.

And, as you might expect, the incumbent telephone companies are resisting these changes, trying to overwhelm the state commissions with lawyers and lobbyists and economists-for-hire.

Even to the extent that we succeed with state legislatures and regulators . . . we find ourselves confronted with a patchwork of regulation—a real stumbling block as we try to roll out local service on a national basis.

Mr. Chairman, this is no way to build a national information infrastructure.

We need action now on the Bliley/Dingell/Fields bill. We need your unambiguous command to the FCC and the states to clear the way for competition without delay.

We need the kind of incentives your bill provides to get the Bell companies to do what they need to do to open up local markets.

And we need reduced regulation of the way that cable companies price and market our video services, as your legislation provides.

Reduced regulation of cable prices is essential to the balance you have struck in your bill. The bill gives *telephone companies* complete freedom to compete with us in the video business. It also gives phone companies *even more* deregulation of their rates than the FCC and the states have already given them. Moreover, your bill would let *broadcasters* use their spectrum to provide multichannel video and other digital communications services.

Therefore, as you stimulate more competition to our cable business and impose less regulation on our competitors, it is only fair that you also ease regulation of how *cable* prices and markets its video services . . . to give us more flexibility to respond to all of this competition.

We sat by frustrated when, at the end of the last Congress, market-opening legislation died, despite overwhelming bipartisan support. There is no mistake about who held the knife that killed that bill—it was those who claim to embrace competition, but who panic when competition gets too real.

I hope that the leadership of both parties will have the fortitude to overcome all the obstacles that the opponents of competition will place in your path.

I ask you for the chance to compete in the marketplace, instead of the legislature . . . because that's where the American people, not the special interests, will win.

Thank you.

Mr. FIELDS. The Chair appreciates the testimony.

The Chair will now entertain testimony from Bob Annunziata, chairman and CEO of Teleport Communications.

STATEMENT OF ROBERT ANNUNZIATA

Mr. ANNUNZIATA. Chairman Fields and distinguished members of the subcommittee, I'm pleased to be here today to share my views on competition in the local telecommunications marketplace. As chairman and CEO of Teleport Communications, we now operate in over 200 communities and 37 major markets in 19 States.

I founded TCG 11 years ago, and for a decade I have been fighting before State regulatory commissions to get authorization to compete with incumbent monopolies. After 10 years of this struggle, only six States have at least one local exchange competitor in operation. I am pleased that the regulators in 12 States are working to open up the local marketplace and State legislation enabling competition has passed both Houses in several States in the first months of 1995. Yet the fact remains, there is no real substantial local exchange competition anywhere in the country today. Over 99 percent of all calls must be terminated through the existing local exchange monopoly. We must resell their lines to complete those calls.

But given some important technical developments and the proper legal and regulatory environment, we believe that local exchange competition can exist but will take some time. Federal legislation that declares competition to be in the national interest and preempts State and local barriers to entry in the local exchange marketplace is a critical element of that proper legal, regulatory environment. Your bill is timely and desirable, but the legislation that is finally passed must be the right legislation.

The single most important right element of H.R. 1555 is the requirement for reciprocal compensation, for the mutual exchange of local traffic. From my perspective of a facilities-based local exchange provider, the whole duty to interconnect comes down to section 242(b)(2), reciprocal composition for the mutual exchange of local traffic, the most fundamental, most significant aspect of the marketplace.

The bill requires what I have called rate certain for reciprocal composition. Furthermore, it explicitly allows for mutual compensation arrangements that mirror a fully competitive marketplace where traffic would be exchanged on a bill and keep basis, just as it is now by commercial service providers on the Internet. I applaud this section of the bill.

The bill also requires unbundling, which TCG has always advocated. The necessary unbundling, I believe, is of the loop between the ends users premise and the point of switching closest to the end user. TCG has shown in more than one State that loop unbundling is technically and economically reasonable. No further physical unbundling of interconnection networks is really necessary.

The bill also imposes a duty on carriers to provide for number portability. This is also critical since, without true number portability, local exchange traffic can never be even roughly balanced between inbound and outbound calls. Until database number portability exists, new entrants will be seriously handicapped as to how they can maximize efficiency on their networks.

Notwithstanding these excellent features of the discussion draft which reflect a sophisticated understanding of how this business really works, there are a few areas where some modifications are necessary to make competition serve the public interest. A process that does not call for an evaluation of market conditions before freeing incumbent monopolies from existing line of business restraints is seriously flawed.

Much as I would like to believe that the interconnection arrangements called for by legislation will promptly lead to competitive opportunities, my experience tells me this is not likely. Numerous costly though often petty anticompetitive actions by incumbents will surely arise. Indeed, they have arisen in recent years, and as competition becomes more likely they will accelerate opportunities on the checklist.

Let me summarize. In summary, there is no competition in the local exchange now. To encourage real facilities-based durable competition, the bill recognizes economic, reciprocal compensation for the exchange of local traffic is essential.

Thank you very much for this opportunity.

[The prepared statement of Robert Annunziata follows:]

PREPARED STATEMENT OF ROBERT ANNUNZIATA, PRESIDENT, CHAIRMAN AND CEO, TELEPORT COMMUNICATIONS GROUP

Chairman Fields and distinguished members of the subcommittee, I am pleased to be here today to share my views on competition in the local telecommunications marketplace. I am Chairman, President and CEO, Teleport Communications Group, "The other local phone company." TCG now operates in over 200 communities in 37 major markets in 19 States.

I founded TCG eleven years ago. For a decade, then, I have been fighting before state regulatory commissions to get authorization to compete with incumbent mo-

nopolies. After ten years of this struggle, only six States have at least one local exchange competitor in operation. I am pleased that regulators in 12 States are working on opening up the local marketplace, and state legislation enabling competition has passed both houses in several States in the first months of 1995. Yet the fact remains: there is no real sustainable local exchange competition *anywhere* in this country today. Over 99% of all calls must be terminated through the existing local exchange monopoly.

But, given some important technical developments, and the proper legal/regulatory environment, substantial local exchange competition will exist in a pretty short time—say, two years.

Federal legislation that declares competition to be in the national interest, and preempts state and local barriers to entry in the local exchange marketplace is a critical element of that proper legal/regulatory environment. Your bill is timely and desirable. But the legislation that is finally passed must be the *right* legislation.

The single most important "right" element of H.R. 1555 is the requirement for reciprocal compensation for the mutual exchange of local traffic. From my perspective of a facilities-based local exchange provider, the whole duty to interconnect comes down to section 242 (b)(2). Reciprocal compensation for the mutual exchange of local traffic is the most fundamental, most significant aspect of the marketplace. The bill requires what I have called "rate certain" for reciprocal compensation. Even more important, it says that the mutual and reciprocal recovery of costs associated with call termination must be "on the basis of reasonable approximation of the additional costs of terminating such calls." It says that such costs must be "reasonable in relation to the prices for termination that would prevail in a competitive market." Furthermore, it explicitly allows for mutual compensation arrangements that mirror a fully competitive marketplace where traffic would be exchanged on a "bill and keep" basis—just as it is now by commercial service providers on the Internet. I applaud this section of the bill.

Other aspects of the bill, of course, are also very pro-competition. It recognizes that if local exchange competition is to work, technically integrated operations must be achieved in the most cost-effective way by each interconnected network, and requires common carriers to provide access to data bases and signalling systems.

The bill requires unbundling, which TCG has always advocated. The necessary unbundling, I believe, is of the "loop" between the end user's premises and the point of switching closest to the end user. TCG has shown in more than one State that loop unbundling is "technically and economically reasonable." No further physical unbundling of interconnecting networks is really necessary.

The bill imposes a duty on carriers to provide for number portability. This is also critical, since without true number portability, local exchange traffic can never be even roughly balanced between inbound and outbound calls. Until database number portability exists, new entrants will be seriously handicapped as to how they can maximize efficiency on their networks.

Notwithstanding these excellent features of the discussion draft, which reflect a sophisticated understanding of how this business really works, there are a few areas where some modifications are necessary to make competition serve the public interest.

First, it is not equitable to require new entrants to bear the entire cost of unbundling. This reflects a misunderstanding of where the actual benefits of unbundling fall. Reasonable unbundling to the "link" and "port" level helps the *incumbent,* because it minimizes bypass. So the incumbent realizes benefits, not costs. The result of local exchange competition will be that customers of all carriers, including incumbents, will enjoy better service and lower prices. Therefore, I urge that the legislation either specify that all net costs be shared fairly, or allow state regulators to establish a mechanism for cost recovery of the reasonable, net incremental costs of unbundling.

Second, a process that does not call for an evaluation of market conditions before freeing incumbent monopolies from existing line of business restraints is seriously flawed. Much as I would like to believe that the interconnection arrangements called for by the legislation will promptly lead to competitive opportunities, my experience tells me this is not likely. Numerous, costly—though often petty—anticompetitive actions by incumbents will surely arise. Indeed they have arisen in recent years, and as competition becomes more likely they will accelerate. During a transition from monopoly to competitive opportunities, is it really enough to treat the competitive "checklist" as if it were a simple tariff filing, as this bill appears to do?

No. As in any other formerly monopolized market undergoing restructuring, an affirmative judgment that a market has been restructured, or is substantially likely to be, must be required before an incumbent monopoly RBOC is granted the oppor-

tunity to enter the interexchange market. Restrictions can be prudently removed when the conditions which gave rise to them no longer exist, that is, when the companies subject to them no longer have the capacity to exploit the local exchange "bottleneck." Simply put, the only way to be sure that there has been a fundamental change in the bottleneck is to observe that competitive local exchange carriers are offering *facilities-based* services over a substantial territory to a substantial number of customers.

The role of judging the structure of competitive and non-competitive market conditions belongs properly to the Department of Justice. The Department of Justice and Ameritech have agreed on the parameters of such an evaluation, in their motion for a trial waiver in Chicago and Grand Rapids. I strongly support this "give to get" approach: Ameritech "gives" the opportunity for substantial change in the bottleneck, and when the change occurs, Ameritech "gets" MFJ relief. It's simple. It is absolutely "deregulatory." Since Ameritech has already agreed to such a role for DOJ, The Congress should do so as well.

Now, for a final, very practical concern. The bill directs the FCC to require actual collocation except where the local exchange carrier demonstrates that it is not practical. I strongly support giving the FCC explicit authority to require physical collocation. However, I recommend that the interconnecting carrier be given the choice of physical or virtual collocation. Otherwise, incumbents will have a strong incentive to continue "gaming" collocation by pulling out virtual collocations which have already been made, thereby imposing extra costs on collocating carriers.

In summary: there is no competition in the local exchange now. To encourage real, facilities-based, durable competition, the bill recognizes, economic reciprocal compensation for the exchange of local traffic is essential. With such compensation arrangements in place, competition will develop quickly, and the need for continuing the MFJ restriction on interexchange service will disappear, along with the need for costly and intrusive regulatory oversight. TCG is greatly encouraged by the bill, and is ready to work with you as you finalize it.

Mr. FIELDS. Thank you very much, and your statement in its entirety along, with every other witness's, will be placed in the record.

Now, the Chair recognizes Mr. Brian Thompson, chairman and CEO of LCI International.

STATEMENT OF H. BRIAN THOMPSON

Mr. THOMPSON. Thank you, Mr. Chairman and members of the subcommittee.

My name is H. Brian Thompson. I'm chairman and chief executive officer of LCI International. It is a facilities-based long-distance carrier that provides service throughout the United States and worldwide. LCI's 1994 revenues of over $450 million make it the sixth largest long-distance company. I am also vice chairman of the Competitive Telecommunications Association, the national industry association of over 150 small and medium-size long-distance companies and their suppliers. In that capacity, I speak on behalf of the many smaller long-distance companies which now comprise about 13 percent of the market and provide strong competition for the larger companies for the benefit of consumers. These companies are the tough-minded, the fleet-footed entrepreneurs who are not afraid to enter the market that was dominated by AT&T when the rules were set earlier. They are the ones that are creating thousands of new jobs in the economy, they are the engine of competition, and, quite frankly, they are hardly fearful of more competition from the Bell companies if the rules are correct.

I appreciate this opportunity to testify on H.R. 1555 because Comtel and LCI support your interest in promoting the advancement of competition across all telecommunications markets. We

welcome competition by the Bells so long as I and my long-distance competitors are allowed to compete in their business on a reasonably comparable basis. If that happens, if we are all allowed to provide integrated local long-distance service on an equal footing, then every consumer in this country will be better off and America will benefit as the world leader in telecommunications.

But it is critically important that the public good of competition across the board is not subordinated to the private goal of allowing seven gigantic monopoly companies into an already very competitive market. Unless this is done very carefully, you run the grave risk of wrecking a very competitive long-distance marketplace, which it has taken a decade to become so, while failing to bring significant competition in the local market.

I can tell you that long-distance is competitive because LCI is proof of it. We are the fastest growing long-distance company in America, and our growth is coming from within. We serve both residential customers and businesses throughout the Nation and over 230 countries, and we have tripled our revenues and doubled our employees in the last 3 years. We offer company customers flat rates by time of day, and we charge in 6-second increments instead of rounding to the next minute.

This is not a commercial for LCI. Dozens of other long-distance companies could recite equally impressive innovations and pricing plans. Today there are over 500 long-distance carriers operating in the United States; 46 are served by at least 15 carriers, and 92 carriers serve four or more States. Last year 27 million residential customers switched their long-distance carrier, an average rate of 74,000 a day. Most important, the rates consumers pay for long-distance have dropped dramatically by nearly two-thirds in the last decade.

On the core issue of Bell entry into the long-distance business, we in the long-distance business say fine, welcome, and may the best competitor win. The only question remains, and the one that absolutely demands this legislation gets it right, is, will LCI or LDDS or MCI or U.S. Long Distance have a fair opportunity to provide the same end-to-end service that a Bell and local and long-distance company would? The answer is, not on your life, unless legislation gets it right, because as things stand today each RBOC has a local monopoly. To make matters worse, every long-distance company has to go to that Bell monopoly to originate or terminate its calls, and you have heard enough about that in this hearing this morning.

As Assistant Attorney General Bingaman said in the Senate testimony last week, the goal is that every company will be permitted to compete in every market for every customer on a fair basis. It is very easy for Congress to let the Bells compete in the long-distance business because it just takes a stroke of the pen, but it will require great care for Congress to permit LCI and my long-distance brethren to compete in every market for every customer because right now the regional Bell companies own the dial tone and so truly own the customer.

Let me hone in quickly on four issues.

Mr. FIELDS. Mr. Thompson, if we could ask you to summarize please.

Mr. THOMPSON. First, it is essential that in the near term we have resale across the board because local exchange resale is synonymous with competition. Second, it is critically important that we have separate subsidiary requirements in the bill. They are not there now, and we think that is critical. Third, the bill does create a loophole by imposing openness obligations on the Bell company. We think you have got to guarantee competition. And, finally, Mr. Chairman, though it may not be popular, we believe there is critically a role for the Department of Justice in this bill.

With that, I end my remarks.

[The prepared statement of H. Brian Thompson follows:]

PREPARED STATEMENT H. BRIAN THOMPSON, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, LCI INTERNATIONAL, INC., AND VICE CHAIRMAN, COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Thank you, Mr. Chairman and Members of the Subcommittee. My name is H. Brian Thompson. I am Chairman and Chief Executive Officer of LCI International, Inc. ("LCI"), based in McLean, Virginia. LCI is a facilities based long distance carrier providing service throughout the United States and worldwide, to commercial and residential customers. LCI's 1994 revenues of over $450 million make it the sixth largest publicly held U. S. long distance company. I am also Vice Chairman of the Competitive Telecommunications Association (CompTel), the national industry association of over 150 small and medium-sized long distance telecommunications companies and their suppliers. In that capacity, I speak on behalf of the many smaller long distance companies which now comprise approximately 13% of the market for long distance service and provide such strong and vital competition to the larger long distance companies and, most importantly, for the benefit of consumers. These companies are the tough-minded and fleet-footed entrepreneurs who were not afraid to enter a market dominated by AT&T. They are the ones creating scores of thousands of new jobs for the economy. They are the engines of competition. They are hardly fearful of competition from the Bell companies.

I would like to thank you for this opportunity to testify before you today on the issue of telecommunications policy reform and particularly H.R. 1555. CompTel and LCI support your interest in promoting the advancement of competition into the local telephone exchange and across all telecommunications markets. I believe that telecommunications reform is one of the most important consumer issues to be addressed by the 104th Congress. On the surface, many of the issues surrounding the telecommunications legislation appear simple; however, in reality, they are complex and require very careful consideration, lest the American public be harmed by a decrease in competition rather than benefited by increased competition in heretofore monopoly markets. Simply put, the key issue for consideration this morning is how Congress can move to permit the Bell Companies to enter the long distance market *without* harming the existing robust competition in the long distance marketplace, and at the same time introduce—I would say compel—real competition in the local exchange telephone business as well. Because let me be clear: I *welcome* competition by the Bells in the long distance business, *as long as I and my long distance competitors are allowed to compete in their business on a reasonably comparable basis. If that happens—if we are all allowed to provide integrated local and long distance on an equal footing—every consumer in this country will be better off, and America will benefit as the world leader in competitive telecommunications and information.*

But it is *critically* important that the public good of greater competition across the board is not subordinated to the private goal of allowing seven gigantic monopoly companies into an already competitive market. Unless this is done very carefully, you run the grave risk of virtually wrecking a very competitive long distance marketplace which has taken a decade to become so, while failing to bring significant competition to the local market.

I can tell you that the long distance marketplace is competitive, because LCI is proof of it. We are the fastest-growing long distance company in America, and our growth is from within. We serve both residential customers and businesses throughout the nation and over 230 countries, and we have tripled our revenues and doubled our employees in the last three years. We advertise nationally, both in print media and on television, and we do something different than most of the others: we offer customers flat rates by time of day, and we charge in six-second increments instead of rounding to the next full minute. This is *not* a commercial for my com-

pany. Dozens of CEOs of other smaller, post-divestiture long distance companies could say the same types of things—and talk about other, equally impressive innovations and pricing plans. And let me tell you how that has happened.

In 1982, the U.S. Government and AT&T entered into the Modification of Final Judgment ("MFJ") which separated the competitive and monopoly elements of the Bell System. As a result of divestiture, the makeup of America's telecommunications markets has changed dramatically. Unlike the local calling market which remains a monopoly, the long distance market was opened up to competition. At the time of divestiture, as you all will remember, there were many that feared the impact of such action upon America's telecommunications infrastructure. However, nothing could have been further from the truth. In fact, it was divestiture and the infusion of competition that has brought consumers the vast array of telecommunications benefits that we enjoy today.

Today there are over 500 long distance carriers operating in the United States. Forty-six states are served by at least 15 carriers and 92 carriers serve 4 or more states. These figures would mean little if consumers did not exercise their right to choose among the various long distance companies. However, Americans have elected to exercise their right to choose. In 1994, an estimated 27 million residential customers switched long distance carriers, at an average rate of 74,000 per day—a clear indication that consumers have the ability to move freely among long distance carriers.

As one would anticipate in a competitive market, the rates consumers pay for long distance service have dropped dramatically, by nearly two-thirds in the last decade. Competition has not only resulted in lower rates; it has stimulated the use of telecommunications services as well as the deployment of fiber optic technology. In 1984, long distance carriers sent approximately 37.5 billion access minutes across the local exchange networks. By the third quarter of 1994 this number had grown to over 100 billion minutes.

Along with this growth in minutes of use has come a growth in the deployment of fiber optic networks. Since divestiture, four long distance carriers have built nationwide digital fiber networks. Eight others, including LCI, have built regional fiber optic networks adding some 5,700 fiber optic miles to the long distance infrastructure. Collectively the long distance fiber networks span over 100,000 route miles. It is clear that competition in the long distance market has brought consumers these benefits.

On the core issue of Bell Company entry into the long distance business, we in the long-distance business say: *Fine. Welcome, and may the best competitor win.* If you think about it, that's what we've always said, and I've been saying it to the likes of AT&T for years. The *only* question that remains—and the one that absolutely *demands* that this legislation gets it right—is: Will LCI, or LDDS, or MCI, or U. S. Long Distance have a fair opportunity to provide the same end-to-end service that a Bell local-and-long-distance company would? The answer is: Not on your life, *unless* legislation gets it right. Because as things stand today, each RBOC has a local monopoly; no long distance company does. To make matters worse, every long distance company has to go to the Bell monopoly to originate and terminate every one of its calls. And to make matters worse *still*, every long distance company has to pay that Bell monopoly about 50 cents out of every revenue dollar for that access to its customers.

So the reality is that the Bells are in long distance: they handle the beginning and end of virtually every call. But the harsher reality is that nobody can get into *their* business. And *that* is the reality that Congress has to address if there is to be real, across-the-board competition in this industry.

And, to be candid, that is the biggest problem with the legislative proposals that have surfaced to date in this Congress—including, with all due respect, H.R. 1555 as introduced last week.

As Assistant Attorney General Bingaman put it in Senate testimony last week, the result that we all seek is that *every* company will be permitted to compete in *every* market for *every* customer on a fair basis. It is very easy for Congress to let the Bell Companies compete in every market for every customer. You can do that with the stroke of a pen. But it will be very hard, and will require great care, for Congress to permit LCI and my long-distance brethren to compete in every market for every customer, because right now the regional Bell Company owns the dial tone and so, truly, owns the customer.

Let me hone in on just four areas that are critical to H.R. 1555 and to its success in achieving the goal of full competition across all markets:

First. It is utterly essential to recognize that, at least in the near term, local competition and local exchange *resale* are virtually synonymous. By that I mean that while facilities-based, dial-tone competition may be feasible in midtown Manhattan

or downtown Houston, it most assuredly will *not* be feasible anytime soon in Ithaca or Corning or Port Arthur or Conroe. Instead, the only way that LCI, or even AT&T, can possibly provide integrated local and long distance service on a broad scale anytime soon will be to resell local exchange capacity from the RBOC.

In this regard, H.R. 1555 as introduced suffers from two serious, but easily fixable, flaws: its "actual" competition test relies far too heavily on *one* competitor in *one* location in a state negotiating a *facilities* interconnection agreement with the RBOC. It does not require the offering of a *non*-facilities based service offering that I could subscribe to in order to provide local service competition. Teleport's, or Cablevision's, ability to provide service to Citicorp in midtown, or even to a few brownstones sandwiched between Rockefeller Center and the Russian Tea Room, has nothing whatsoever to do with whether LCI can compete with NYNEX upstate. If what you are seeking is broad-based local competition rather that minuscule pockets of competition, then reliance on one or even a handful of facilities interconnection agreements is badly misplaced.

Instead, Congress has to mandate that the RBOCs offer *resale* of local exchange service to competitors that will be priced on a *wholesale* basis—backing out the RBOC's avoided costs like billing, customer service, marketing, and allocated overhead. But the bill as introduced merely states without elaboration that an RBOC can't prohibit or impose unreasonable conditions on resale. That wording evidently would allow the RBOC to price a resale product at or barely below its rates for retail customers. To give a real world example, Rochester Tel now offers a local exchange resale product, but one that is priced at 95% of retail. This is *not* a wholesale price, and there is no way that I could resell at such a price without losing my shirt.

I would offer two suggested changes to the bill in this regard: First, explicitly require that the RBOC's local exchange resale offering must be at a wholesale price that is *commercially feasible* for potential competitors for business and residential services. The recently announced joint proposal by Ameritech and the Department of Justice for interLATA service trials in Illinois and Michigan contains that requirement, and I submit that Ameritech's assent is proof positive that such a provision is reasonable to the monopoly carrier and the would-be competitor alike. And second, provide for *actual* resale as well as facilities-based competition, by establishing the precondition that several companies—I would suggest at least four—have actually subscribed to resell the RBOC's services at negotiated wholesale rates that are made publicly available. Simply stated, the best proof that a local resale product is real and commercially viable is that companies actually buy it and take their chances with it in the marketplace. I guarantee you that my company would be among those willing to enter such an arrangement, as would many of the entrepreneurial smaller companies that have gambled successfully in bringing competition to long distance services.

Second, I am extremely disheartened that there is no separate subsidiary requirement in the bill as introduced. To put it bluntly: After the bill's preconditions have been met and the Bell Company turns up its integrated local exchange and long distance service—what happens then? How can you possibly have any assurance on a *continuing* basis that the Bell Company will not cross-subsidize or discriminate against competitors? No one can seriously argue that it won't have the ability to do so in Year 2 or Year 3. There *must* be a structural separation of the RBOC's monopoly and competitive activities, at least in the near term. The Senate bill would require a separation between its local exchange and interLATA services. Far more effective and efficient would be a structural separation between its *wholesale* and *retail* activities: that is, between the still-monopoly wholesale network provider and a newly-created separate subsidiary providing all retail services, both local and long distance.

Make no mistake: I am no great believer in separate subsidiaries. They are not by themselves *sufficient* to prevent discrimination and cross-subsidy, but they are *necessary* to even begin to address those concerns. Separate books, officers and personnel, operations and reporting are absolutely necessary to monitor compliance with and detect violations of the bill's other provisions. I do not contend that such a separation must persist forever. Just as the bill provides that other safeguards may be dispensed with upon an FCC finding of full and effective competition, so too could a structural separation requirement. Frankly, until that time—which without question will be at least five years—there is no possible justification for requiring a separate subsidiary for electronic publishing but not for long distance.

Third, the bill creates gaping loopholes by imposing basic "openness" obligations on a Bell Company, only to provide that several of them (including network unbundling and number portability) are only obligatory to the extent they are "technically feasible and economically reasonable." Having been at MCI before the Bell System divestiture, I can *guarantee* you that the Bells *will* take advantage of these

enormous loopholes to delay as long as possible the onset of viable competition. The Ameritech-DOJ settlement provides no such excuse to the Bell Company. Neither should H.R. 1555.

And *finally.* This may not be a popular statement, but I must say I was deeply dismayed to read that there is "no place at the table" for the Department of Justice in this bill. Why not? The Antitrust Division is the expert agency on competition, which is what H.R. 1555 is all about; the FCC, as a regulatory agency, simply is not. It is well to recall that the Department initiated the Bell System breakup in the Nixon and Ford Administrations, produced the MFJ in the Reagan Administration, and has administered it through two Republican administrations as well as through the halfway point of a Democratic one. The Antitrust Division is composed of competition professionals, not partisans. Moreover, the current Department has expertly forged an agreement that it, a Bell Company, the long distance industry, the Illinois Commerce Commission and consumer and user groups have all endorsed. I share your justifiable concerns over bureaucracy and administrative delay and judicial intrusion, but it should be easy enough to impose a time limit on Department review of Bell applications. It is very unfortunate, but obvious, that the check-off of a checklist cannot provide assurance of fair competition. But a requirement that the nation's historical and expert guarantor of competition makes an expedited finding as to whether the substantial possibility of monopoly abuse has abated would do so. The Department of Justice should have a place at this table.

Mr. Chairman, in an op-ed in this Sunday's *Washington Times*, former Republican Whip Vin Weber stated—undoubtedly referring to the other chamber—that "some political leaders have grasped for the superficial fix in saying that deregulation of this industry is an end in itself. That's knee jerk wrong. True conservatives seek real competition and open markets."

Vin Weber is right. I am for deregulation to *drive* competition, not to diminish it. I congratulate you and Chairman Bliley on your pro-competitive efforts, and I am confident that, with needed changes, this bill can accomplish that conservative yet lofty goal.

Mr. FIELDS. The Chair now recognizes Mr. Joe Ford, chairman, president, and CEO of ALLTEL Corporation.

STATEMENT OF JOSEPH T. FORD

Mr. FORD. Thank you, Mr. Chairman, Mr. Markey, members of the subcommittee.

Alltel phone companies serve approximately 1.6 million access lines in mostly rural communities in 22 States, and that may sound like a big company to some of you, but in fact we are less than one-tenth the size of Bell South. We have barely 1 percent of the Nation's telephone customers, and yet we operate nationwide inside each of the seven Bell operating company regions in towns such as Grandview, Texas, and Stilwell, Oklahoma. Our operating territories range from less than 400 access lines in Utah to about 400,000 access lines scattered throughout Georgia. We are a member of the Independent Telephone and Telecommunications Alliance, a coalition of independent telephone companies serving areas such as Lufkin, Texas; Rochester, New York; Gig Harbor, Washington; Verona, Wisconsin. These companies provide local telephone service and other telecommunications services in almost every State in the Union.

We appreciate the opportunity to speak with you today about the unique and important role of independent telephone companies in today's telecommunications business and to work with you and to assist the subcommittee to pass legislation that will ensure a truly competitive marketplace for telephone and other telecommunications services.

Perhaps the most important message that I can leave with you today is that competition for local telephone service is not always about giant incumbents easily able to beat back competition from

small entrepreneurial start-ups. In fact, from where we sit, it looks like just the opposite.

This legislation does a good job at eliminating barriers to entry. My company, however, has the opposite problem. We have a barrier to exit. What is happening to ALLTEL in Ohio today is a good example. We serve approximately 275,000 access lines in Ohio in small communities such as Paulding and Kenton. Time Warner recently applied for authority to provide competing telephone service in those parts of our Ohio service territory served by Time Warner Cable. Time Warner Cable serves over 700,000 customers in Ohio. Its cable system there passes 1.1 million homes. If Time Warner succeeds in providing telephone services only to those customers served by its existing infrastructure, it will be the second largest local telephone company in Ohio. Time Warner is clearly a company with the resources to compete directly with ALLTEL for customers without benefit of a head start or special protection.

H.R. 1555, however, would require ALLTEL to operate under more restrictive regulatory requirements than Time Warner, provide space in our central offices to Time Warner without the reciprocal benefit of physical access to their facilities, and spend far more on overhead than Time Warner to meet the universal service and quality requirements demanded by our customers and our regulators. In order to ensure a truly competitive marketplace, a balance of responsibility and opportunity is essential. One company cannot be saddled with all the responsibility while another is granted boundless opportunity.

In effect, H.R. 1555 would force ALLTEL and other telephone companies to continue to provide universal service, service to anyone at any time, anywhere within our service territories regardless of whether it makes sound business sense to do so. We do not oppose the imposition of this requirement. On the contrary, our commitment to the provision of universal service for our customers is unwaivering. At the same time, however, this legislation would require us to run our business shackled by artificial price controls and compete with companies 5, 10, 20 times our size who have the advantage of a friendlier set of regulatory rules than ours. No business can or should be required to operate under such conditions. These conditions would allow Time Warner to freely price telephone or cable service below cost or even give it away while we have absolutely no way to respond. AT&T and other long-distance companies would have similar opportunities to give away or price local service below cost as a method of attracting new long-distance business. For open and strong competition to develop, fair regulation is a necessity.

Mr. Chairman, we are prepared to compete. In fact, ALLTEL and the other independent telephone companies have for years provided long-distance manufacturing and information services, and we have been aggressive competitors in those fields. We look forward to competing, to be creative, to respond to our customers, to provide profitable services to our new and our old customers. We fully expect that our competitors will include household names such as AT&T, Time Warner, Consolidated Edison, Washington Post, Motorola, regional Bell companies, and others. We will compete, but

we think that we should have parity in regulation and give us the opportunity to compete fairly.

[The prepared statement of Joseph T. Ford follows:]

PREPARED STATEMENT OF JOE T. FORD, CHAIRMAN AND CEO, ALLTEL CORPORATION

Mr. Chairman, members of the Subcommittee, I am Joe Ford, Chairman, President, and CEO of ALLTEL Corporation, headquartered in Little Rock, Arkansas. ALLTEL subsidiaries provide both local telephone and cellular services and, as a result, we will be directly affected by the legislation being considered by this Subcommittee.

Introduction

ALLTEL wireline telephone subsidiaries serve approximately 1.6 million access lines in mostly rural communities dispersed in 22 states. That may sound like a big company to some of you, but in fact, we are less than one-tenth the size of BellSouth, Bell Atlantic, Ameritech, GTE, or NYNEX. We have barely one percent of the nation's telephone subscribers, yet we operate in each of the seven Bell Company regions. Our telephone operating territories range from less than 400 access lines in Utah to approximately 400,000 access lines scattered throughout Georgia.

ALLTEL is also a member of the Independent Telephone and Telecommunications Alliance, a coalition of independent telephone companies that provide local telephone and other telecommunications services in almost every state in the nation.

Some ITTA members serve metropolitan areas, the largest of which is Cincinnati, Ohio, the 45th largest city in the United States. But the real story of ITTA's members can be found in the hundreds of small towns and rural communities that we serve such as Lufkin, Texas; Gig Harbor, Washington; Grandview, Texas; and, Stilwell, Oklahoma. These communities have telephone service today because ITTA members such as ALLTEL in Arkansas, Lufkin-Conroe in Texas, and Century Telephone in Louisiana were willing, decades ago, to fill in gaps left unserved by the Bell System.

I appreciate the opportunity to speak to you today about the unique and important role of independent telephone companies in today's telecommunications business and to assist you and the Subcommittee in passing legislation that will ensure a truly competitive marketplace for telephone and other telecommunications services.

Independent Telephone Companies Share Unique Characteristics

Independent telephone companies were born in areas unserved by the Bell System and, as a result, share certain unique characteristics: (1) we lack the market dominance and economies of scale of our Regional Bell counterparts; (2) we share a history of localism and commitment to public service; and (3) we are dedicated to growing our businesses and creating new jobs. Our companies are not now and never were restricted by the MFJ and its business prohibitions. Many independent telephone companies provide long distance, manufacturing, and information services today. We have been permitted to do so, unlike the Bell Companies, because we were viewed as unable to interfere with the development of competition in those markets.

And that is perhaps the most important message that I can leave with you today—that competition for local telephone services is not always about giant incumbents easily able to beat back competition from small, entrepreneurial start-ups. In fact, from where we sit, it looks just the opposite.

ALLTEL's Experience in Ohio

What is happening to ALLTEL in Ohio today is a good example. Ohio is our second largest telephone service state. We serve approximately 275,000 access lines there in communities such as Paulding and Kenton (populations 2,600 and 8,300). Time Warner recently applied for authority to provide competing service in those parts of our Ohio service territory served by Time Warner Cable. Time Warner Cable serves over 700,000 subscribers in Ohio; their cable system there passes 1.1 million homes. If Time Warner succeeds in providing competitive telephone services only to those customers served by its existing infrastructure, it will be the second largest local telephone company in Ohio. Time Warner is clearly a company with the resources to compete directly with ALLTEL for customers without benefit of a head start or special protection.

Effect of H.R. 1555 on ALLTEL's Ability to Compete in Ohio

H.R. 1555 would, nevertheless, require ALLTEL to operate in Ohio under more restrictive regulatory requirements than Time Warner. Indeed, in addition to the

new interconnection, number portability, unbundling, and dialing parity requirements imposed by H.R. 1555, incumbent telephone companies such as mine would also be forced to assign personnel to spend time and money preparing cost allocation manuals, writing and defending tariffs, and filing ARMIS reports. All the while, Time Warner and other competitors much larger than ALLTEL can devote equivalent resources to creating new product offerings and selling to our customers.

H.R. 1555 would also require ALLTEL to provide space in our central offices to Time Warner without the reciprocal benefit of physical access to their facilities, and to spend vastly more on overhead than Time Warner to meet the universal service and quality requirements demanded by you, our customers, and our regulators.

Recommended Modifications to H.R. 1555

In order to ensure a truly competitive marketplace, a balance of responsibility and opportunity is essential. One company cannot be saddled with all the responsibility while another is granted boundless opportunity. For that reason, we strongly urge the Subcommittee to modify H.R. 1555 in three critical areas.

First, legislation should avoid "one-size-fits-all" solutions. It is not 1984 anymore. When the Bell System was divested in 1984, AT&T had 100% of the long distance marketplace and MCI and Sprint were truly start-ups that could probably have been erased from the long distance business by AT&T's size and resources. Today, approximately 1,000 telephone companies split the 12% of the local telephone market not served by an RBOC or GTE. Needless to say, none of these companies can erase an AT&T, a Time Warner, or the RBOC next door. As a result, certain regulations designed to foster competition among huge competitors simply deny companies like mine a fair opportunity to compete.

H.R. 1555 would impose upon small and medium-sized telephone companies with more than 500,000 access lines nationwide the same interconnection, unbundling, number portability, dialing parity, and CPNI obligations designed for much larger companies, without any opportunity for waiver or modification of those requirements. This would arbitrarily subject companies like mine, whose access lines are scattered in small towns throughout America, to huge new regulatory burdens and deny us the flexibility to deviate from these requirements regardless of whether such impositions resulted in adverse competitive conditions or otherwise harmed consumers.

Let me be very clear about one thing—we are not looking to avoid competition or interconnection requirements. We provide interconnection today to long distance carriers, cellular operators, each other, and the Bell Companies. With or without this legislation, we will continue to meet this obligation. We are, however, concerned about the regulatory rigmarole that simple interconnection seems to generate. Unbundling is a good example. Unbundling in theory makes perfect sense, buyers buy only what they need and each element of their purchase is broken down and priced accordingly. Taken to extremes, however, unbundling becomes the equivalent of forcing restaurants across America to charge diners separately for use of a fork, a plate, the salt, pepper, and each individual item on the plate. Such unbundling would require that each diner's bill reflect whether he didn't use a fork, brought his own plate, and consumed only part of his meal. If Congress required this at restaurants across the country, there would be a crying demand for waiters with Ph.D.'s and the overall quality of restaurants, particularly smaller restaurants, would decline precipitously.

Second, this legislation does a good job at eliminating barriers to entry. My company, however, has the opposite problem—we have a barrier to exit. Our commitment to universal service requires that ALLTEL stand ready to provide continuously advancing services to anyone who requests it at reasonable rates and to continue to provide such service to our existing customers, regardless of whether it makes sound business sense to do so. Please don't get me wrong, I am not advocating that you eliminate mine or any company's universal service requirement. On the contrary, our commitment to the provision of universal service for our customers is unwavering. But, as a result, legislation must ensure that carriers like ours, obliged to protect and advance universal service, must be provided a rational method for meeting these commitments.

In this regard, a national universal service fund, available only to universal service carriers, must be established. This will ensure that customers located in areas that are the costliest to serve continue to receive a level and quality of service comparable to that of their lower cost neighbors.

Lastly, in order to ensure fair and open competition, mid-size telephone companies like mine, that have minuscule resources compared to the RBOC's and Time Warner, must be relieved of any but the most imperative regulatory requirements, and ensured regulatory parity with our competitors. Over the past few years, the FCC

and the states have imposed an explosive number of regulatory requirements on mid-size telephone companies. Any of these regulations that are not absolutely necessary to protect the public and that do not have a demonstrable cost benefit must be eliminated and the states and the FCC must be directed to ensure that those of us who are providing competing services receive equal regulatory treatment.

As discussed earlier, many competitors for local telephone service already have competitive advantages such as huge infrastructures, few or no regulatory restrictions, and the freedom to exclude less desirable areas or customers. In order to avoid further competitive inequities that could permanently damage the emergence of competition for local telephone services, independent telephone companies must be relieved of state and federal regulatory, tax, accounting, and other requirements not also imposed on their competitors.

Unfortunately, in addition to the numerous regulations relating to interconnection, unbundling, dialing parity, and number portability, H.R. 1555 would also impose price controls on all telephone companies. This is absolutely inconsistent with the development of competition and will unnecessarily restrict the competitive responses available to us in the emerging marketplace.

In effect, H.R. 1555 would force ALLTEL and other telephone companies to continue to provide universal service—service to anyone, anytime, anywhere within our service territories. At the same time, however, this legislation would require us to run our business shackled by artificial price controls, while competing with companies 5, 10, 20 times our size who have the advantage of a friendlier set of regulatory rules than ours. No business can, or should be required to, operate under such conditions.

Conclusion

Mr. Chairman, we are prepared to compete. In fact, ALLTEL and the other independent telephone companies have, for years, been aggressive competitors in long distance, information services, cellular and other telecommunications businesses. We look forward to rolling up our sleeves and providing creative, responsive, and, yes, profitable services to both new and old customers. We fully expect that our competitors will include such household names as AT&T, Time Warner, Consolidated Edison, The Washington Post, Motorola, and of course, each of the seven Regional Bell Companies. Any one of these companies has name recognition, economies of scale, and personnel and financial resources that tower over small and mid-size telephone companies and have the option of selecting the most advantageous fields of play. Still, we say "bring them on." But bring them on fairly, under rules sufficiently flexible and equitable that smaller companies can truly compete and challenge these large companies in the new telecommunications arena.

We support the Subcommittee's goals of competition and deregulation. These are commendable objectives and we look forward to working with the Subcommittee to ensure the development of the vigorously competitive communications marketplace you seek to establish.

Thank you.

Mr. FIELDS. Thank you, Mr. Ford.

The Chair will now move to questions and would inform the membership that the Chair will recognize members for 5 minutes. The Chair will diligently, but fairly, try to enforce that 5-minute limit, and, with that, the Chair recognizes himself for 5 minutes.

The first question is to you, Mr. Roberts.

One of the primary objectives in this legislation is for the loop to be open, and as all of the witnesses can imagine, that was a very difficult section to write. As we really got into the draftsmanship it became obvious to us that if the loop is truly open, then as a natural result there should be a facilities-based competitor. I have to say that there is healthy skepticism among some of the witnesses appearing before us today as to whether a facilities-based competitor will show up, date of enactment or shortly thereafter. We did make this a requirement as a condition for FCC verification in determining that the loop is actually open.

What I would ask you today, Mr. Roberts, is, could you please gauge the interest of the companies that you represent as the incoming chairman of NCTA in offering local exchange service?

Mr. ROBERTS. I think the interest is very high. It appears to be a terrific market. Look at how long-distance was robust since that Time magazine cover story when AT&T was broken up. But there is a healthy skepticism on Wall Street, and larger than healthy, as to whether this is affordable and financeable for today's cable industry, and that is the schizophrenia about this current situation.

I think that the investors, bond holders, banks, equity investors that will be financing this need to know that there is going to be a stable platform of rules, that the cable industry is likely to be able to be one of the facilities-based competitors. But there is no lack of interest, and, given the opportunity, we will make this the number one business opportunity facing our company.

At the convention that I just came from, there were 25 different hardware manufacturers ready to gear up their manufacturing facilities in the next 2 years to make this a reality. The technology works, but without that then spending won't get made.

Mr. FIELDS. I want to probe a little bit deeper, because in your testimony just a moment ago you said that you envisioned facilities-based competition, and if I remember the word you used, you said "everywhere." Now, are you anticipating facilities-based competition in the business and the residential market, or one or the other?

Mr. ROBERTS. Both. I think that our vision starts by looking at all the uses that telephone customers have—mobile, office, cordless, residential fax, data—and each of our offerings we hope will be somewhat technologically superior or economically more attractive to consumers.

This is a business product that was also at the show; that is, a high-speed modem that goes 200 times faster than your phone line—terrific thing for consumers. Wireless facilities also are an important part of this, and I know you have some wireless panelists today, but it is the mix. The consumer doesn't care how they get it, they just want functions, and that is why the facilities should be everywhere.

Mr. FIELDS. Again, probing a little bit deeper because, again, this I think is central to much of this debate, upon date of enactment, assuming the legislation stays basically as written, you have the opportunity to engage in a good faith negotiation with State PUC's in a supervisory role. Do you foresee that type of engagement would occur quickly after date of enactment?

Mr. ROBERTS. I think what was critical in your bill that you successfully did is to require a facilities-based competitor. I think what the Bell companies want and the local providers, in addition to getting into video day one, is to get into long-distance, and we do believe that we will be successful in having negotiation with them, but with the outline you have made and some oversight process that is Federal, not State by State.

Mr. FIELDS. The Chair's time has expired. The Chair will recognize the gentleman from Massachusetts, Mr. Markey.

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

Mr. Roberts, do you anticipate that the cable industry, which you represent—the cable industry's entry into local telephone service will result in lower rates for our consumers at the local level?

Mr. ROBERTS. I would hope so, but if not, depending on the services that are being offered, I would think better services at competitive prices. Whether that is just a price discount or enhanced features is—you know, let the marketplace decide that.

Mr. MARKEY. And you are also going to be partnering with Sprint in providing long-distance service as well. Do you anticipate that that kind of new competitive mode combined with allowing the regional telephone companies to get into the long-distance market will result in yet lower long-distance rates?

Mr. ROBERTS. I don't know the answer about long-distance rates. I do know that our vision is to be able to come to a consumer, as the phone companies will be able to do under this legislation, with a full array of products.

Mr. MARKEY. I appreciate that, but how will the ratepayer be benefited? Will they see lower rates?

Mr. ROBERTS. I would think that in the packaging and marketing it is conceivable that the features will be enhanced. Also competition——

Mr. MARKEY. No, no. I'm asking about rates. Will they see lower rates?

Mr. ROBERTS. We are going to have to see what the marketplace has. I'm not Sprint. I can't speak for Sprint on their long-distance rates.

Mr. MARKEY. Okay, so you are not predicting lower local rates then and you are not predicting lower long-distance rates.

Mr. ROBERTS. I think it is possible.

Mr. MARKEY. It is possible.

Now do you believe that direct broadcast satellite, the 18-inch dish satellite industry, provides effective competition to the cable industry?

Mr. ROBERTS. I think it is a competitor.

Mr. MARKEY. Is it effective competition for your industry today?

Mr. ROBERTS. What specifically do you mean by—the fact is, every consumer in America who—it is a competitor, a viable competitor. They said they are getting—60 percent of their customers are coming from existing cable subscribers. I don't know if that is true.

Mr. MARKEY. Does it act as an effective competitor for the purposes of constraining price increases by the cable industry?

Mr. ROBERTS. I think it is the beginning.

Mr. MARKEY. Does it today provide effective competition for the cable industry in ensuring that there is a constraint on your industry raising rates for consumers?

Mr. ROBERTS. I think in some cases it has modified behavior, but we are regulated today, so no. The answer is no, because we are under regulation.

Mr. MARKEY. You are not constrained today at all from lowering prices. I want to dispel—I would like to dispel the cable industry of any misconception they have, that they may have, that there is any legislation that has ever been passed that will prohibit you from lowering rates in the face of competition.

Is there any cable company in the United States that has lowered cable rates since the introduction of DBS?

Mr. ROBERTS. Not to my knowledge.

Mr. MARKEY. Thank you.

Now if that is the case, what should the test be under our legislation if there is going to, in fact, be a complete deregulation, for all intents and purposes, of the upper tier for smaller cable systems across the country immediately upon the President attaching his signature to the bill? Will there be effective competition to protect all of the rural cable consumers in America if DBS thus far has been unable to constrain and in fact produce lower rates for consumers in America?

Mr. ROBERTS. I know this is a very important question, and I appreciate the opportunity to address it.

First of all, the marketplace is changing very rapidly. DBS is one of the hottest products today. Sony announced that they are now getting into the business——

Mr. MARKEY. I appreciate that. I'm looking for evidence of that dramatic change in terms of consumer benefits. Do you have any evidence of that for the committee, that the consumers are seeing lower prices from the cable industry as a result of the competition?

Mr. ROBERTS. We just had to lower our prices 17 percent from the Federal rollbacks.

Mr. MARKEY. No, I'm not talking about Federal rollbacks, I'm talking about as a result of competition.

You are protesting the rollbacks, I'm talk—I'm not talking about protesting giving consumers lower prices, I'm talking about you giving consumers lower prices because there is competition in especially the smaller systems. You are basically telling us that 25 percent of all the systems affecting the smaller communities of this country represented by the people on this panel should get immediate deregulation——

Mr. ROBERTS. It is 18 months—as I understand the legislation, it is 18 months from date of enactment.

Mr. MARKEY. No, it is not 18 months from enactment, it is immediately for the small systems of America upon the signature of the President being attached to the legislation.

Mr. ROBERTS. I think the goal is local competition——

Mr. MARKEY. I know what the goal is, but the consumers should not be tipped upside-down waiting for——

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

The Chair will recognize the Chairman of the full committee, the gentleman from Virginia, Mr. Bliley.

Mr. BLILEY. Thank you, Mr. Chairman.

Mr. Allen, you expressed concern about the economic reasonableness provisions included in the checklist items relating to interconnection, unbundling, and number portability. Checklist requirements do not on their face allow a Bell company to avoid complying with any of these requirements and still claim to satisfy the checklist. Could you provide for the committee how your concern could be resolved?

Mr. ALLEN. Let me just explain my position. I think that while the term is innocent enough, it is a time-tested—the history has demonstrated, a time-tested excuse for pricing anticompetitively and for denying service. It is, in effect, I think, a wolf in sheep's clothing. It makes sense on the surface, but who is to determine economic reasonableness, and this particular test applies to three

essential conditions, as I understand the legislation: The local competition, number portability, unbundling, and interconnection; and all I know is that in the 1970's when some of my competitors, who are represented in this room today, were trying to enter the long-distance business, it was the Bell system who used the same terminology, economic reasonableness, to deny them access and equal interconnection and to delay long-distance competition. It is a term that is loaded with potential mischief.

Mr. BLILEY. Well, I hope that some of your folks can give us some guidance before we go to markup as to how we achieve your ends for our consideration.

Mr. ALLEN. We will be glad to do that.

Mr. BLILEY. The second question I have is, you expressed concern that resale—and I have heard this from others—must be commercially viable. In part it appears possibly because of your experience in Rochester.

As you know, writing statutory language that sets how and what wholesale rates are to be offered is difficult at best. We would also like to have your suggestions as to draft language to assure that there is a legitimate opportunity to offer resale, not that the switch is there, but it is no good if the switch is there but the price is so high that you can't afford to compete, and we want to avoid that too.

Mr. ALLEN. We will be glad to assist you on that.

Mr. BLILEY. Finally, I would like to—if I can find my note here—my intention for the language in this bill to be—that there will be actual competition in the residential market for local service before there is entry into other lines of business—that is my understanding of what the language does. If it turns out not to be the case, I assure you, this member will make every effort to get it right.

I am sure that my friend, the gentleman from Texas—if I might have his attention—agrees with me. Isn't that right? Would you like me to repeat it, Mr. Chairman?

Mr. FIELDS. I agree with anything the chairman says, within reason.

Mr. BLILEY. What it was is basically this, Mr. Chairman. I understand the language to mean that there has to be actual competition in residential local service before entry into other lines of business. If this turns out not to be true, then I assure you I'm going to make every effort to get it right.

Mr. FIELDS. If the gentleman would yield.

Mr. BLILEY. Yes.

Mr. FIELDS. There is a question about how clear that language is, but there is no question that the intent of the drafting process was for the loop to be open both in the residential and in the business markets, which envisions competition in both markets if you segment it that way.

Mr. BLILEY. Thank you very much, Mr. Chairman, and I will yield back the balance of my time in the interest of time.

Mr. FIELDS. Thank you, Mr. Chairman.

Mr. ALLEN. Mr. Chairman, may I comment on the subject, the last subject?

Mr. FIELDS. Yes, if you could be brief.

Mr. ALLEN. Very briefly, the press release issued by the committee used the terminology "the existence of actual competition," but in our reading of the bill it may not require local dial tone competition. It is possible, as we read it, for a Bell company to meet the test by providing interconnection and access to a single competitor who intends to provide a single service to a narrow class of customers in a limited geographic area, and therefore we believe that, given the words that are now there supplying that test, that someone, for example, like MFS could meet that test in New York City and therefore open the local exchange to access to the long-distance market.

Thank you.

Mr. FIELDS. Thank you, Mr. Allen.

The Chair would now recognize the distinguished ranking minority member of the full committee, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, I thank you for this recognition, and it is with some regret that I embark upon the course upon which I am about to embark.

First, I have a parliamentary inquiry. What is the membership of this subcommittee and of this committee? Has there been any change in it? I note on the letterhead we have the membership, and I'm inquiring of the Chair, have there been any changes either in the membership of this subcommittee or in the membership of the full committee?

Mr. BLILEY. Would the chairman of the subcommittee yield to the chairman of the full committee?

Mr. FIELDS. I would be glad to yield.

Mr. BLILEY. I will assure the gentleman from Michigan that there has been no addition to this committee or to this subcommittee as of this moment. The House has to vote, and the House has not voted on the membership to the committee.

The gentleman was here today because this is just a hearing, and under the rules as I interpret them, the chairman of the subcommittee has the right to invite any Member of the House to sit in on a hearing.

But I assure the gentleman, before this committee or subcommittee is expanded, that the House will have to act to assign a member, and then there will be a meeting of this subcommittee, and the full committee, to determine where the gentleman shall sit or not sit.

Mr. DINGELL. I have this curiosity. As I note, the customs and the traditions and the practices of the House require consultation between the majority and the minority before members are assigned to the committee or before there are changes in the membership of committees. Is that correct?

Mr. BLILEY. That has been my understanding.

Mr. DINGELL. I'm curious, is that practice to obtain with regard to any changes of this committee which might impend?

Mr. BLILEY. I would hope that it would be.

Mr. DINGELL. And I join my dear friend from Virginia in that expectation, and as we proceed with our discussion I want to express both great respect and affection for the gentleman from Virginia and also for the gentleman from Texas who are fine members and who happen to be also very dear friends of mine.

I am advised that the rules of this committee require that there be consultation between the majority and the minority before changes occur in the membership of the subcommittee. Is that correct?

Mr. BLILEY. That is correct.

Mr. DINGELL. Am I to assume that that practice will obtain in connection with any changes which impend with regard to the structure of the subcommittees and the membership thereof?

Mr. BLILEY. Yes.

Mr. DINGELL. I was informed, and am somewhat curious about the information I received, that one of our colleagues who I gather is not a member of this committee was introduced as a member of this committee and as a member of this subcommittee. Am I correct in that?

Mr. FIELDS. You are correct. The Chair made a mistake.

Mr. DINGELL. I beg pardon?

Mr. FIELDS. The Chair made a mistake.

Mr. DINGELL. I'm comforted to hear that.

Mr. FIELDS. The Chair is also honest.

Mr. DINGELL. I don't want to embarrass my good friend from Texas.

Mr. FIELDS. I'm not embarrassed. I think it is very instructive for our panel. They get to see how Congress really works. This is more public than it normally is, but you can also see it is filled with good spirit.

Mr. DINGELL. Unfortunately, when there is lack of consultation these kinds of things become more public than perhaps we might like.

Mr. FIELDS. I will say, the Chair was also surprised to see the gentleman show up.

Mr. DINGELL. I also, however, would observe that it is possible that the chairman of the subcommittee and perhaps the chairman of the full committee have been misinformed by the leadership. Is that correct?

Mr. BLILEY. I don't think so.

Mr. FIELDS. I don't say we were misinformed by the leadership. I think that we are now in a procedural process, and if I understand the assurances from Chairman Bliley, the distinguished minority member will be informed when decisions are made with due process.

Mr. DINGELL. I'm pleased to hear that I will be informed, but I'm sure I will have many sources of information. I do observe that the rules require that I be consulted. Is the Chair either of the subcommittee or the full committee indicating to me that perhaps I might be informed and not consulted?

Mr. BLILEY. Oh, you will be consulted, no question about it.

Mr. DINGELL. Again, I reiterate how comforted I am on this matter.

Now I would just observe that I'm told that there has been no consultation with the leadership on this side of the aisle. Could either the chairman of the full committee or the chairman of the subcommittee inform me whether the leadership on the part of the Republican Party intends to consult with Mr. Gephardt?

Mr. BLILEY. The last time I spoke with the Speaker on this subject was last week, and he told me that he intended to do just that, and so I have had no communication to the contrary since, so I assume that he is, but I cannot give you more than that.

Mr. DINGELL. Now we have had rather wide ranging discussion. What is "just that" to which my esteemed friend from Virginia has referred? To consult—for Mr. Gingrich to consult with Mr. Gephardt or to take some other action? I'm not quite sure what the words, "just that," mean.

Mr. BLILEY. I assumed by his statement to me that he meant that he intended to pursue with your leadership. Beyond that, I cannot tell the gentleman.

Mr. DINGELL. I'm told that Mr. Gephardt has been seeking to communicate with Mr. Gingrich and has not had his calls returned.

Mr. BLILEY. Well, I don't know anything about that.

Mr. DINGELL. Can the gentleman from Virginia explain that fact to me?

Mr. BLILEY. I don't know anything about it, whether that is fact or fiction. I can't comment on it because I don't know anything about it.

Mr. FIELDS. Will the gentleman yield to the Chair?

Mr. DINGELL. Yes, of course.

Mr. FIELDS. I would just like to assure the gentleman that we will honor all due process, and as part of the beginning of consultation let me just ask, does the gentleman seek 5 minutes to ask questions of the witnesses?

Mr. DINGELL. I would like to defer my questions for a bit, but I do want to thank the chairman of the subcommittee for his courtesy to me and also my dear friend, the chairman of the full committee, and I look forward to continuing to work with them on these difficult problems of administering the committee, and I thank them both.

Mr. FIELDS. Well, we look forward to the consultation process, and, with that, I would like to recognize my good friend, the vice chairman of the subcommittee, Mr. Oxley of Ohio.

Mr. OXLEY. Thank you, Mr. Chairman.

Let me follow up with Mr. Roberts.

Could you help the committee with giving us some kind of a logical time line as to the ability of the cable systems to participate in telephony, and what specifically are your goals and perhaps some of the goals of the other member companies of NCTA?

Mr. ROBERTS. I want to be very clear that it is absolutely the intent and desire of the cable industry to build telephone facilities given the opportunity under the law and given an economic model that we feel it will justify itself.

That said, there are really two parts of telephony—three parts of telephony—wireless, wired residential, and wired business—and we are pursuing all vigorously.

Wireless—we were the largest winner in the PCS auction, so we are getting started immediately on that, but you need interconnection agreements, and it is going to take some time to build the wired facilities, so I do think you are talking several years, but we will have trials in place by the end of this year.

Mr. OXLEY. I'm sure you are aware of the Time Warner efforts to serve Columbus and Cincinnati. Maybe it would be more appropriate to talk to somebody from Time Warner, but since you are going to be the new chairman.

Mr. ROBERTS. I believe Mr. Levin is on the next panel.

Mr. OXLEY. Okay. I'll wait for Mr. Levin then.

Mr. Ford. You testified to the problem of a "one size fits all" solution to regulation, and you take issue in particular with the 500,000 access line cutoff for the FCC to allow modifications or waivers from regulation. Do you have a specific proposal of where the lines should be drawn?

Mr. FORD. I think some other proposed legislation was put into it, in the range of 2 percent of the access lines in the country. That is an arbitrary figure, but I think that is realistic.

Mr. OXLEY. And would you believe that the other folks in your business would think that would be a reasonable number?

Mr. FORD. I would think so.

Mr. OXLEY. So your proposal would be more on a percentage basis as opposed to just a hard number?

Mr. FORD. Correct.

Mr. OXLEY. Thank you.

I wanted to ask Mr. Whitacre, you had expressed some concern that the bill does not allow telephone companies to offer cable services on comparable terms and conditions as the cable company. In fact, the bill allows a telephone company to overbuild or buy out cable systems and be regulated as a cable company. Further, the bill allows a telco to build a video platform that is regulated under Title VI; that is, as a cable company. What is the concern then as you indicated in your initial remarks?

Mr. WHITACRE. Thank you, Mr. Oxley.

You are correct, as I understand we are allowed to be a video dial tone provider; not a viable option, has not worked. It is pretty obvious to me it is not going to work, or that concept is.

The other alternative for us is a complete overbuild, which means building another system, not being able to utilize any of the existing network. Whereby the cable companies can use the network they already have in place to go into the telephone business, the telephone companies are forced to build a total new network to go in the cable television business. That is a real concern.

Mr. OXLEY. Because of the amount of capital that would have to be——

Mr. WHITACRE. Sure. It would be very expensive, it would be very long term. A complete overbuild is a very large economic undertaking.

Mr. OXLEY. Without assuring that competition can be provided in the local loop by the presence of a competitor prior to allowing Bell companies to offer long-distance, how can we take the gaming out of this process? The mere presence of an agreement doesn't assure that there is competition, does it, and how do we best get to a competitive mode?

Mr. WHITACRE. If I may just take a second to tell you what I believe to be the case, I believe we are talking a game here of, lest the providers want to provide all services to the customers—one-stop shopping, if you would—and I don't think we need to make

any mistake about it, that is what it is about, and the company or provider that is able to offer all those services at the go down or at the beginning is clearly at an advantage to the other companies. One-stop shopping is the key. The way to do this is go simultaneous with all people providing everything. You take the gaming out of it.

Mr. OXLEY. Thank you.

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

The gentleman from Virginia, Mr. Boucher.

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

And, Mr. Whitacre, let me pick up with you on that very point about the value of a one-stop shopping opportunity and ask you about the joint marketing provisions that are contained in the bill.

As I read the legislation, a long-distance carrier that is an incumbent today that acquires a local exchange business could jointly market that local exchange and long-distance service and do so before the Bell operating company obtains the right to offer interLATA services, and so effectively the long-distance carrier could be jointly marketing that one-stop shop before the Bell operating company has the opportunity to do that. Are you troubled by that provision, and do you have any comments about it?

Mr. WHITACRE. Well, I'm troubled a great deal by that provision. He who gets there first—he or she who gets there first with the opportunity to market all has a huge advantage. That certainly troubles me a great deal. We have to work to get that corrected.

Mr. BOUCHER. Mr. Allen, let me ask you to comment on the same subject, if you would. Would the long-distance industry object to a provision in the legislation that would delay the ability of the long-distance industry to jointly market both long-distance and local exchange services until such time as the Bell companies have an opportunity to offer interLATA as such?

Mr. ALLEN. I'm not sure I understand the question, but your earlier question to Mr. Whitacre, I think you suggested could—if a long-distance company acquired a local company—was that the preface to your question?

Mr. BOUCHER. Well, the problem is this, Mr. Allen. According to the way the legislation reads today, the incumbent long-distance industry that also has a local exchange component can jointly market those two services and, in effect, create a one-stop shop, which could prove to be very attractive to a large number of subscribers of the Bell operating company at the present time, and conduct that joint marketing activity in advance of the opportunity of the Bell company to do the same thing, because the Bell company would not be able to offer the same combination of services until it gets interLATA freedom, and so the question precisely is this: Would you object to a provision in the bill that would create parity in that joint marketing opportunity allowing the long-distance industry as it exists today to jointly market at such time as the Bell companies get the right to do the same thing?

Mr. ALLEN. First of all, AT&T doesn't have the opportunity that you described because we can't acquire a local exchange facility and therefore can't jointly market, and the answer to your question is no, I wouldn't object if we could be assured that competition, actual competition, exists and if AT&T, if we chose to be in that business

and provide those bundled end-to-end services, truly had the opportunity to sell those services on a combined basis. That condition does not apply. That means that the local monopoly bottleneck must be broken before that condition could even occur, let alone simultaneously with the joint marketing the other way.

Mr. BOUCHER. Realizing that the incumbent long-distance industry is likely to obtain some local exchange capabilities through a resale of local exchange services and that that could be done in the relatively near term upon passage of the bill, would you object to a delay in the joint marketing ability of the incumbent long-distance industry until the Bell companies get the same right?

Mr. ALLEN. Well, if you will excuse my reference, I don't think it is a pertinent question because the real question here is breaking the local monopoly bottleneck and being sure that we have actual competition in the local exchange before anybody does anything. That is the key issue here.

Mr. BOUCHER. Well, I'll simply take that as a nonanswer to the question.

Mr. Thompson, you are also in the long-distance business. Would you like to comment?

Mr. THOMPSON. Yes, I would agree with what Mr. Allen said. I think there is no option that I can see of acquiring local exchange facilities even for us to have any impact on the local market. So I would agree with him in that regard. I think it is a hypothetical that really doesn't exist. It is more important that we do have competition in the local exchange.

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

The gentleman from Colorado, Mr. Schaefer.

Mr. SCHAEFER. I thank the Chair, and I'm pleased up to this point to see that so much attention has been focused on a few short pages of this bill, of a 135-page bill that deals with cable legislation, and I want to take a couple of seconds and try and clarify and put in perspective exactly what we are talking about here.

I think the bottom line is, are we going to say to the FCC that we want you to determine whether the Comedy Channel or QTV or whatever is 20 cents or 25 cents, and I'm not sure that this is the place in which we should do that—I'm quite sure it is not—and that the open competition market should be the one that is really setting the stage for this, and I would like to ask Mr. Roberts, if I might, and the question came down on the DBS and whether or not this was really competition and whether or not this was causing cable to lower its rates, and, not only that, if the gentleman could, what does DBS charge for a similar service that is provided by cable?

Mr. ROBERTS. Well, if I might start just by saying that you can go to any Radio Shack in America today—circumstances have changed radically, and it is moving at breakneck speed—go to any Radio Shack, Sears, and many other stores, and get a dish. So anybody in America who wants competition to cable, that is now available. The price of it is a one time $699, I believe, and then a monthly——

Mr. SCHAEFER. And coming down.

Mr. ROBERTS. And coming down, and more manufacturers getting into the business like Sony, and, as I believe it is, the competi-

tion will get greater. They have tremendous projections they are making.

Second, every single phone company has won a court case allowing them into video, and the presence in our community that they are coming is a significant restraint on your behavior. This industry is working to improve all the time customer service. The way we package our products—and we want to move forward here in time, not backward, and the way to move forward is to, as this bill does, recognize that the goal is to create competition in local telephone, and I think the cable industry is ready to step up to the plate to be that competitor but not go with it with our arms tied behind our back.

Mr. SCHAEFER. Yes, and I think one of the major concerns of some members of this committee is on the rates to be charged by the consumers, and as far as this member of the committee goes, it seems to me that the more there is full and open competition out there, the less charge it is going to be as long as there is a choice to be made.

Mr. ROBERTS. Absolutely right.

Mr. SCHAEFER. Now when we start talking about DBS prices, in other words, what that consumer has to look at is whether they are paying for cable now and whether they want to buy the dish and go on DBS, and so, therefore, you cannot say that even there is competition that is driving cable prices down because, as far as I understand it, this is a choice of the consumer themselves.

Mr. ROBERTS. That is correct, and also wireless cable is coming very rapidly, and two major Bell companies have purchased where they say it will cover 90 percent of their markets by next year. So the technology is racing forward. That will be an all-digital service just like digital direct satellite is.

Mr. SCHAEFER. It is completely different than it was in 1992.

Mr. ROBERTS. No question about it.

Mr. SCHAEFER. I would just like to ask my other members of the panel, what, from your perspective, in the future is it that you would be getting into the cable industry? And anyone can answer this who should so desire.

Mr. WHITACRE. Are you asking, are we going to be getting into cable?

Mr. SCHAEFER. Yes, is this something that you, if this bill goes through, that you are certainly going to be looking at to get into?

Mr. WHITACRE. We are interested in looking at video certainly and interested in getting into the business. That is a simple answer, I think, to your question.

Mr. SCHAEFER. No. This is the important thing, to know that every other person that is on this panel is looking to get into everybody else's business, and that is what the purpose of this particular piece of legislation is.

I thank the Chair.

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

The gentleman from Pennsylvania, Mr. Klink.

Mr. KLINK. Yes. I hadn't intended to, but I would like to follow up on Mr. Schaefer's question down the line. I want to talk to Mr. Thompson, Mr. Ford, and some of the others. We already know—Mr. Roberts has been very forthright—the fact that they want to

get into the telephone industry. Do all of you have the same interest in getting into the cable?

And also, Mr. Thompson, let me start with you. You are in the long-distance business now. Do you want to provide local phone service as well?

Mr. THOMPSON. There are two things I think realism tells me that I would be unwise to do. One is to try to build a cable television company in competition with a cable system that was already in place; and, second, it would be unwise of me to try to build a local telephone company to compete on a facilities basis with one of the Bell companies. I think those would both be folly.

No, our interest is, to the extent that a local telephone company is allowed to resell long-distance service and take advantage of the wholesale price that exists, that because of competition out there and bundle local services, that we be allowed to do the reciprocal, which is to be able to acquire local services on a wholesale basis, that is economically attractive, that would allow us to compete against that Bell company's offer of a long-distance package. I think that is a reasonable thing to ask, and it should be a part of this legislation. I think it is natural, however, that there will be alliances of companies like ours with cable television companies as well as others.

Mr. KLINK. Mr. Ford.

Mr. FORD. I can certainly understand cable companies want wanting to get into the television business when DBS is giving them competition, because they have got investment they have got to use for something else or lose that business. I also understand the problem of cable packaging.

Mr. KLINK. Mr. Ford, the question is, does ALLTEL want to get into other businesses like cable TV?

Mr. FORD. I'm getting to that, sir.

Mr. KLINK. I only have 5 minutes.

Mr. FORD. I'll take 30 seconds.

Mr. KLINK. Thank you.

Mr. FORD. I can understand packaging of business with cable and long-distance and telephone, and if we have to unbundle our services and let competitors have that and package those services, we are at a competitive disadvantage.

My response is to that, that we have to look at all alternatives and explore that in order to keep our business the way we think it should be, so we will have to look at all that. We don't have a definitive answer to that yet.

Mr. KLINK. You have touched on a very interesting point. I noticed that Mr. Annunziata—did I pronounce your name correctly? I hope I did, and if I didn't I apologize—you are on the opposite end of the unbundling issue, and let me give you a little equal time here. Take 30 seconds, if you would, to talk about why you think that is so important.

Mr. ANNUNZIATA. Well, I would like to respond to the question. Our company is not looking to get into the cable television business, but our company is looking to continue to build to provide the alternative for the long-distance companies to terminate their traffic, so we are building the company that will provide the choice lo-

cally, not just to resell the incumbent local monopoly but to offer the long-distance companies a choice.

So we are really interested in the proper interconnection rates and the incentives that will be there to have a facilities-based local competitor. So our major clients are the interexchange carriers, or the long-distance companies, and without that infrastructure they do not have a choice.

Mr. KLINK. Can I understand this so we can complete the hockey team here for Mr. Frisa. Mr. Thompson, you are probably in agreement; Mr. Roberts you are probably in agreements with the——

Mr. ROBERTS. Yes, I think the courts are letting all the phone companies—the courts are setting the policy, so absolutely.

Mr. KLINK. You probably found the one area that Mr. Whitacre, Mr. Allen, and Mr. Ford are in agreement against you on, I would suppose. You would be opposed, I would think.

Let me just ask, while we are speaking, Mr. Roberts, when you are talking about the need for deregulation to raise capital to compete with the Bells, I hope that you are talking about requiring people to invest in the cable systems and you are not talking about raising the rates.

Mr. ROBERTS. I think what—yes, I think what we are saying is that when you get to a competitive marketplace you want to package and price your products to what the marketplace then demands. So it may not be rate increases; I can't predict. For instance, DBS offering many more pay services and pay TV channels than a traditional cable service and pay per view channels, they are not regulated in any way, and the Bells are not regulated in video in any way.

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

The gentleman from Illinois, Mr. Hastert.

Mr. HASTERT. I thank the chairman and certainly appreciate the great work that he and others have done on this bill.

Mr. Allen, I want to ask you a couple of questions. You have to understand, I probably talk a little slower. I'm not a lawyer like a lot of these guys, but I still only have 5 minutes, so I will try to be as concise as possible.

You made an interesting statement. You said back in the 1970's when the Bell system was facing this—actually, AT&T was part of that Bell system, isn't that right? So you are very familiar.

Mr. ALLEN. They were one and the same, sir.

Mr. HASTERT. And what happened then? If I remember—I had a little bit of involvement in the eighties in trying to pass a bill in Illinois—what happened when the OCC's or the Sprints and the MCI's came in? They were the competition at that time. What kind of business did they pick off?

Mr. ALLEN. Well, they traditionally went for the heavy routes, large volume traffic and business customers generally.

Mr. HASTERT. So they really wanted the business customers, didn't they, because that was probably 80 percent?

Mr. ALLEN. The biggest leverage.

Mr. HASTERT. Eighty percent of your revenue.

Mr. ALLEN. Well, not that much, but it was a large segment.

Mr. HASTERT. Very large.

92-967 O - 95 - 3

Mr. ALLEN. The important point to them was, they could get a lot of traffic from a few customers and facilities.

Mr. HASTERT. Sure, I understand that, and they could bypass then too, couldn't they? That was a term that somebody told me one time.

Mr. ALLEN. It was a terrible term in those days, right.

Mr. HASTERT. But you understand that.

Actually your business, your operation is the largest company in the world, or something like that, and you have the opportunity to combine with other types of businesses, cable businesses, for instance, when this bill passes, right? I mean, you will be able to buy or enter into partnership agreements with other companies.

Mr. ALLEN. We have that opportunity now.

Mr. HASTERT. Yes, and those businesses also can offer telephony if this bill passes, right? So you could be in the local loop real quick.

Mr. ALLEN. We can't be in the local loop real quick; neither can the cable companies be in the local loop real quick. I think Mr. Roberts has even demonstrated in his testimony that it would take at least a couple of years.

Mr. HASTERT. Well, let me rephrase that. Potential to be in the local loop.

Mr. ALLEN. Oh, potential, absolutely, and we could be today without the legislation.

Mr. HASTERT. Without this legislation, you couldn't be, right?

Mr. ALLEN. No. We could be today, but not through ownership of local exchange companies. That is precluded by the consent decree.

Mr. HASTERT. And when you talked about other companies, maybe Bell companies, for instance——

Mr. ALLEN. Can I just amend that? There are 30 or 40 States that deny us that opportunity, but technically we could be.

Mr. HASTERT. I think Illinois allows you to get in. That was an act that was written in 1984 or something like that. But anyway, what happens when you deny the Bell companies—after they open their loop and certify the checkoff by complying with the things in the bill? You would still deny them entry into long-distance if they haven't got residential competition. That was what you are asking for, right?

Mr. ALLEN. We want demonstrable, actual competition to be existent for residents and/or business customers, not for everybody.

Mr. HASTERT. How about business and/or residences?

Mr. ALLEN. Business and/or residence, not business or. We think it should be available to both types of services, business and residence.

Mr. HASTERT. Well, that is the best world, but if roughly 80 percent of the business is—revenue from business customers, and they open——

Mr. ALLEN. No, 80 percent is not, sir. I don't know what the——

Mr. HASTERT. All right. You give me a number.

Mr. ALLEN. Probably about 50/50.

Mr. HASTERT. Maybe. That is not the information I have. But let's say when this lucrative business is opened up, the commercial side of it—I think that is what most of those competitors will go

for, don't you? Because that is compact business, you don't have to run lines out 70 miles out in the country.

Mr. ALLEN. Well, if the conditions are provided in the local exchange companies to allow competition on a broad scale basis—and that is really what we are seeking—then we are not going to limit ourselves to a few customers or to the highest user customers. Obviously those are the customers most competitors will be interested in first. But we have a relationship with 60 million customers today, many of whom are very small and residential customers, and we want to maintain that relationship.

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

Mr. HASTERT. I'll reserve my real point for later.

Mr. FIELDS. I thank the gentleman.

The gentleman from Texas, Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman, and I guess my question would be to almost any long-distance witness. Maybe Mr. Whitacre. As a cosponsor of the bill, I'm pleased to see that you are aboard, that you are basically supportive but just not tickled to death with the bill, right?

Mr. WHITACRE. Right.

Mr. HALL. Because, as I read your statement, you set out the things that the legislation ought to do that you do not think it is doing, like opening all markets to participants at the same time, and you referred to competition and the local exchanges, market allocation, and government handicapping, and all the way through here there are indications that you have real problems with the bill, giving to someone else, other companies, a government-managed head start, no provision for RBOC's out of region, and interLATA relief. You are going to take a transition from a position that a lot of people say is a monopoly to a position of being competitive, and you are willing to do that.

Mr. WHITACRE. Mr. Hall, we are willing to open the loop. If the rules are fair, let's go after it.

Mr. HALL. How would you make the rules fair, and do you not think that you need an arm's length dealing between the monopoly local network and a competitive long-distance operation? That needs to be fair and competitive, right?

Mr. WHITACRE. Well, it needs to be fair and competitive, but it is not a monopoly now. That is a term that is thrown around, but even if it is and if people are willing to say that, I'm saying we are willing to open the network. I'm saying you can't give anybody else a head start though because this is all about one-stop shopping, so if we open it, and that means any of these people can get in our business on a resale basis or whatever on day one——

Mr. HALL. Say there is not a monopoly but you have been successful in getting all the business?

Mr. WHITACRE. I wish that were the case.

Mr. HALL. I mean that, Mr. Chairman, as a compliment and as a fact.

Do you—in your efforts to offer long-distance, have you considered doing it through a subsidiary, doing it through something that might be easily measured and have more definitive checks and balances as you go through whatever the period is? Is it 21 months or something like that, that they are talking about?

Mr. WHITACRE. Well, I think we have considered everything. You are asking, have we looked at it sincerely for long-distance? Sure, let's make these other people put local in a different subsidiary, and let's make it fair, and whatever makes it fair, then we will go for.

Mr. HALL. So that would be consistent to apply that safeguard to long-distance as we do in H.R. 1555 for electronic publishing and the video operations of the Bell companies? That would be a consistent approach, would it not?

Mr. WHITACRE. I didn't catch all of yours, but the two things associated with electronic publishing really are carryovers from previous, and they are acceptable to us, to do it in a separate subsidiary.

Mr. HALL. And there has been some Texas legislation that affects this either directly or indirectly, and will we not have a problem of putting both that legislation that I understand has already passed and this legislation that we are about to pass into the computer to see how we can come out with something that equals the competitive marketplace that we are all looking for?

Mr. WHITACRE. No, they are not related. That legislation has not passed. That was a result of a sunset provision in the local law in which the commission's authority expires and has to be renewed.

Mr. HALL. But the effect is similar.

Mr. WHITACRE. No the effects are not similar. The effects are, it addresses some State problems which are related to State matters which are treated in this bill also. They aren't in conflict, as I see it, at all.

Mr. HALL. Well, I'm glad to see that because I have some problems overriding State decisions. I think decisions made closer to the people are the best decisions. I'll go into that with you at a later time.

Mr. WHITACRE. Well, I agree with that, incidentally. I think there is a place for this.

Mr. HALL. Thank you.

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

The gentleman from New York, Mr. Frisa.

Mr. FRISA. Thank you, Mr. Chairman.

Mr. Whitacre, thank you for joining us with your panel mates.

On page 9 of the testimony you submitted you made reference to ambiguities and uncertainties in the bill's construction. Do you think you could just elaborate on that and give us a few specifics?

Mr. WHITACRE. I'll be happy to. One of the ambiguities, as I remember, is on page 17 where we go through a checklist of resale, dialing parity, et cetera, et cetera, and then there is an ambiguity of, what does it mean on page 17, for example, a facility-based carrier? What is the definition of that? We go through this checklist, which is a series of criteria that must be met, and then we have another criteria to be met on top of that, and so that is an ambiguity. I don't know what it means. What does it mean?

Mr. FRISA. Particularly the definition of a facilities-based competitor?

Mr. WHITACRE. Yes, that needs to be cleared up, certainly. Some other ambiguities relate to, as we talked, the cable television. Where we have to overbuild completely, the cable industry, for ex-

ample, can use the network that is in place. There are a couple related to mobile.

Those are some examples which I would be happy to go into if you want me to, but that is what I'm talking about.

Mr. FRISA. Thank you.

Mr. Allen, good morning. Perhaps if you could give us your interpretation of the provisions that Mr. Whitacre just related in terms of a long-distance carrier.

Mr. ALLEN. I'm not sure I understood what the answer was. If I understood Mr. Whitacre, he thought there was ambiguity between the conditions that would apply to his company and then the addition of a facilities-based competitor. I find nothing ambiguous about that. We understand the conditions.

As I have already suggested, I think some of the conditions need to be tightened up and the language clarified, but a facilities-based carrier must be in place before real competition will be actual, before competition will be actualized in the local exchange. We can proceed in that direction with resale, but we must have a facilities-based carrier alternative eventually for there to be real competition.

Mr. FRISA. Thank you.

I think it would be extremely helpful to those of us on the subcommittee if each of you and your colleagues in your industries could provide backup and detailed information with regard to those points. I think that would be very helpful as we go forward to try and fine-tune it. I don't think we are ever going to be make both of you happy, but we want to try our very best in that regard. So thank you both.

Mr. ALLEN. I'm sure I speak for Mr. Whitacre when I say we will be delighted.

Mr. WHITACRE. Thank you.

Mr. FRISA. Thank you.

Thank you, Mr. Chairman.

Mr. FIELDS. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Texas, Mr. Bryant.

Mr. BRYANT. Thank you, Mr. Chairman.

Mr. Whitacre, I'm, as you know, concerned that we not stamp out competition in long-distance and other areas by virtue of letting the Bell Operating Companies into these areas and have pretty much been consistent about that over the years. What I don't understand is how you can at one time say that you are supportive of competition in the local loop, but at the same time say that you are opposed to allowing resale, which obviously would be the beginning of competition in the local loop.

You testified earlier in this hearing that requiring you or your company to build over the cable system would be an extremely large economic burden, and of course it would be exactly the same for long-distance companies to have to build a local system over your local system. In view of that, inasmuch as you have more or less acknowledged the burden there, is it not plain that there is not going to be any local competition if that is the only way they can get into it?

Mr. WHITACRE. I think you are incorrect, Mr. Bryant, and totally misinterpret anything. If we want to let the long-distance compa-

nies in on a resale basis, that is okay. If they want to build, that's okay. I'm not saying one way or another. No, I'm not inconsistent at all, I'm very consistent. I don't oppose a facility-based carrier as long as the conditions are fair and there is simultaneous entry. I don't oppose that at all.

Mr. BRYANT. Now you and I both live in Texas, and I have access to the Texas newspapers and to a few reports about what is going on in the legislature. Your company has steadfastly opposed any entry for the four long-distance companies into the local loop unless they build a whole system.

Mr. WHITACRE. No, that is not true, and I know you don't believe everything you read in the papers, Mr. Bryant, but that is not true.

Mr. BRYANT. Well, what is your position on that? If that is not true, I'm glad to hear it. What is your position?

Mr. WHITACRE. On letting people into the local business?

Mr. BRYANT. And on resale.

Mr. WHITACRE. The resale is fine with us. If we want to let the long-distance companies into the local business on a resale basis, that is fine with us as long as we get in the long-distance business at the same time, as long as there is simultaneous entry. But to let them offer local and long-distance while we can only offer local gives them a huge advantage of one-stop shopping and we are going to be economically severely disadvantaged. So let them in resale, let them in facility-based, make it simultaneous entry, and let's go.

Mr. BRYANT. Well, I'm pleased to hear that. That sounds great.

The second question I have is about the separate subsidiary, and I think you might have answered that when Mr. Hall a minute ago asked about it. You don't oppose requiring the Bell Operating Companies to have a separate subsidiary to get into these other lines of activity?

Mr. WHITACRE. There is a separate subsidiary required for electronic publishing. The other escapes me right now, but the separate subsidiary business, again, it is a fairness issue. We would prefer not to do that through a separate subsidiary and would argue against that, but if it is required then the competition ought to be forced to do to same thing.

Mr. BRYANT. Let me ask Mr. Allen about the competition being forced to do the same thing. Is anything wrong with that?

Mr. ALLEN. The reason for the separate subsidiary, the desirability of a separate subsidiary, is to preclude the opportunity for a monopoly to cross subsidize or to otherwise discourage competition in the competitive market place. There is no reason for a separate subsidiary for any company, AT&T included, who is in a pervasively competitive marketplace, and so there is no—the discipline of the marketplace is enough to prevent those anticompetitive activities.

Mr. BRYANT. Mr. Whitacre, do you want to respond to that?

Mr. WHITACRE. Well, Mr. Allen's point is a point, but it is not a valid one. There are many ways to keep that separate. We have used it for years. There are audits. There are many ways to audit to look at those sorts of things, and anticompetitive behavior is really not a possibility. After all, we are just not going to do that, any of us.

Mr. BRYANT. Okay, but he made the point that there wasn't really any need for a separate subsidiary for him. That is what I was asking you to respond to. It sounded like a good point to me.

Mr. WHITACRE. I think if we have to have one he should. If not, we shouldn't.

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

The gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

Let me just ask sort of a question that we have all been dancing around, but I just want to get it on the record.

Mr. Allen, what is wrong with the idea of simultaneous entry into local and long-distance markets? And I'm sure you have been asked that many times, but just for the record I would appreciate your answer.

Mr. ALLEN. Well, it has been demonstrated that, first of all, the key factor here is the monopoly that exists in the local exchange. No matter what Mr. Whitacre or anybody else says about it, it is a monopoly. It is clear, it is demonstrated, it is proven.

Mr. STEARNS. This is your graph you handed out?

Mr. ALLEN. I'm sorry?

Mr. STEARNS. Is this a graph that you handed out?

[The graph follows:]

LECs Face No Competition in Local Service

(Total Revenues amounted to $94 Billion in 1993)

Local Exchange Carriers
99.63%
$93.7 Billion

Alternative Local
Service Providers
0.37%
$350 Million

$93.7 Billion vs. $350 Million?
Hardly a Competitive Market!

05/09/95\darby\charts\rhocs93

Mr. ALLEN. I can't see it. I didn't personally hand it out. Perhaps I ought to see it before I comment about it.

This is the graph. Total amount, really no competition, local service, total revenues $94 billion, alternative—yes.

Over 99 percent of the marketplace belongs to the local exchange companies. It is a monopoly, and therefore they have the opportunity without competition in their market to leverage their monopoly into a competitive business if we have simultaneous entry. It has been testified to by several people inside and outside this room that it would take perhaps years, 2 or 3 years, to have any kind of effective alternate facilities built out into the local exchange.

Resale would be a major factor to get there, as I have already suggested, and therefore if the—the simultaneous entry without those circumstances would provide an opportunity to monopolize the competitive marketplace.

Mr. STEARNS. Mr. Whitacre, in all fairness, I think the same question I would pose to you. What is wrong with the idea of simultaneous entry into the local and long-distance markets?

Mr. WHITACRE. There is nothing wrong with it. That is what we should do. Mr. Allen acts as though if we had simultaneous entry we could immediately go into the long-distance business. We have facilities to build too, using his argument.

He made the point, and I agree, resale plays a very valid place. We are willing to resell local service, we are willing to open the local loop. I don't know if he is willing to sell long-distance and open his network or not.

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

Mr. WHITACRE. But the opportunities are both there.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. ALLEN. We sell our services today. Our loop is open. I don't understand, and several of his colleagues have said we can be in the long-distance business next week.

Mr. STEARNS. Mr. Chairman, I think we should allow them——

Mr. WHITACRE. And he could be in the local business tomorrow because.

Mr. ALLEN. How?

Mr. WHITACRE. Because I'm going to resell it to you.

Mr. FIELDS. The gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Well, I'm glad we got that clarified.

Mr. Allen, as I had mentioned earlier, over the past years I have had complaints from parents and from businesses in my district and in the State of Tennessee where a juvenile within the family or next-door neighbor or someone just dropping into a business would use a phone, call a 1-900 oftentimes scam or teleporn number, run up big bills, and the parent or the business would get stuck with it. Congress recognized that and last Congress passed some legislation that did a couple of things. One, it required those 900 numbers to say what you were going to get and what it was going to cost; and the other thing, it allowed for parents and businesses to put a block on their phones so that you couldn't call 900 numbers—you can't watch the phone 24 hours a day; and so one thing you could do was put a block so juveniles or other folks that aren't authorized couldn't call a 900 number out of there.

Since then, what we are finding now is that the scammers have moved over to the 1-800 numbers, and they will use the 1-800 numbers to get around the blocking, and once they get around the blocking, then they will flip that either into some kind of an expensive international call where the information provider would get a rebate or just into a 900 number.

Now the international calls are going to have to be dealt with by the FCC, and we are dealing with them on that. The 800 numbers can be dealt with here openly in a similar way with disclosure, and also with requiring that there be either a preexisting contract with those folks or that you have to use a credit card or some other kind of identification pin device so that we know that you do have an adult doing this or whose phone is the correct phone.

Do you have a brief feeling as to whether the 1-900 legislation has been successful and whether something similar to this would be beneficial to bring credibility back to the 800 numbers?

Mr. ALLEN. I would just comment briefly. The 900 issue was a problem. It has, so far as I know, reasonably been solved. We appreciate the leadership and guidance that you have given on this particular issue, and we look forward to working with you on what is a problem that you described that I'm not fully familiar with in terms of the details.

We cannot treat—based on my limited knowledge, we can't treat 800 quite the same way we treated 900, and I think you are aware of that, but we will be glad to work with you and others to try and solve this problem.

Mr. GORDON. Thank you, sir.

Also in your testimony you talked about the commercial viability of reselling local services.

Mr. ALLEN. Yes, sir.

Mr. GORDON. I know you have recently entered into an agreement in Rochester to try to do this. Do you consider this as a model for that commercial viability in the future with resale, and is this bill going to allow that to move forward?

Mr. ALLEN. Under the current terminology, as I think I mentioned earlier—and I won't go into that now—I think resale in this legislation, the words need to be strengthened. "Commercially viable" is a very important term commonly used in the resale area. In Rochester it is not a model. If you can imagine, we obtained in our trial there—the offer was a 5 percent discount from retail rates in the local exchange, and we are supposed to cover all of our marketing and administrative and delivery and distribution costs with a 5 percent margin below the price charged by Rochester, so it is not viable. I might say that it is traditional in our——

Mr. GORDON. What would need to be done to make it viable? I'm not trying to cut you off.

Mr. ALLEN. Just let me very quickly say that in our business it is not uncommon for us to provide 50 percent discounts from retail for resellers in our business. In fact, the FCC mandated that some years ago. So you need that kind of a margin to make resale economically viable. There are other people here at the table who have had experience with that.

Mr. GORDON. What would be a vehicle to get that? How are you going to determine between those two? Is it a willing buyer/willing seller, or how do you determine that?

Mr. ALLEN. How do you determine the discount?

Mr. GORDON. Yes, sir, or what do you think is a reasonable discount.

Mr. ALLEN. I think a reasonable discount must be in the range of 40 or 50 percent or we are not talking about opportunity for real competition.

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

The Chair would like to point out to the gentlemen that the majority would like to work with him in crafting the amendment.

The Chair now recognizes the gentleman from New York, Mr. Manton.

Mr. MANTON. I thank the chairman.

My first question is for Mr. Annunziata.

In your testimony on page 3, you indicate that the competitive checklist should be strengthened. As a competitor to the local telephone market, what changes do you think we need to make to ensure actual competition in the local exchange?

Mr. ANNUNZIATA. Thank you.

The issue that we need to strengthen is the supervision to ensure that while the telephone company will claim that they want competition in the local marketplace, that actually the points that happen is that we go through a gaming that will look like competition but when you actually go to implement there are technical problems, there are pricing problems, and we seem to have experienced throughout our years and years of delays at the State level of going back and forth to the commissions and trying to get them to intercede. So we need to strengthen that there is an oversight that someone says yes, this is in place; yes, that the competition is there; and then freedom should be allowed.

Mr. MANTON. Thank you.

Mr. Thompson, could you speak to the importance of number portability and unbundling, and do you believe that local competition can flourish before these checklist items are fully implemented?

Mr. THOMPSON. Let me take the last part of that first. I think local competition from the standpoint of creating more ubiquitous real competition cannot come with a facilities-based carrier, and clearly even with Mr. Annunziata, having teleport in downtown Manhattan, he can provide service to Citicorp but not necessarily broadly based to the rest of the State, and I think the issue here is one where there are huge requirements to create facilities-based competition, and it has taken us over a decade to get competition into 40 percent of only 48 billion phone calls that are made in the long-distance business. It will take us decades to get facilities-based competition into the over 500 billion local telephone calls that get made. So I think we have got to understand those numbers.

So that the only reality in competition is going to have to come through a resale mechanism, and you have got to establish an economically viable price, and that can be done through arm's length negotiation, I think, with several companies that are willing to do

that if they can or through a prescription that somehow relates to the competitive discount that Mr. Allen was talking about.

On the other hand, when you get into—I'm sorry, the first question was—was number portability, yes. It is clear, in having been with MCI for about 9 years before I got into this business, the fact that we had to carry around a card with all the numbers that had to be called made it a very great disadvantage. The same disadvantage exists in a lot of other countries today as they are trying to create competition. The reality is that you must have not just perceived but real number portability. You can't ask somebody to change their telephone number and then expect that not to be a barrier to competition.

Mr. MANTON. Thank you.

Finally, Mr. Roberts, the bill is designed to promote competition in the local telephone market. Your industry, with co-ax and fiber passing more than 95 percent of American households, offers one of the best chances for competition in local telephone service. This bill would lift the burden of unnecessary regulations from other industries to allow them to compete fully in all markets. If we fail to lift onerous and unnecessary regulations on your industry, what impact will that have on your ability to become a competitive provider of local telephone service that will benefit consumers in the near term?

Mr. ROBERTS. I think Wall Street, the investors that want to finance the things that we are trying to do, are looking to the Congress to set the tone that you are looking for a truly competitive marketplace. I think that it will very much hamper our investment. This year alone our company is spending $100 million more than we are taking in buy—in buying this PCS auction, for instance, to plan for the future. —You can't mortgage your future on an unlimited amount of time until you know that there is an opportunity to compete.

You know, it is very frustrating. These are very legitimate issues, but listening to Ma Bell quibble with their Baby Bells year after year, all it is doing is leaving the status quo in place, and the time is now to open it up, and then I think you will see consumers with tremendous benefits.

Mr. MANTON. Thank you. My time has expired.

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

The Chair now recognizes the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, and thank you to each one of the panelists for both your opening statements and for all the questions that you have answered. I have learned from each part of it.

My question is to Mr. Allen.

Given AT&T's recent announcement, Mr. Allen, to team up with Intel to offer high-speed modem access for information technology, has AT&T considered the issue of interoperability and what goals the Congress should consider to ensure that computer and software technologies will be able to connect and communicate with public networks? I think if there is a portion or a component of this bill that is really going to shape essentially the next century, it centers in and around this. As much as I appreciate so many of the other

things that have been talked about this morning, I would like to hear you views on this, please.

Mr. ALLEN. Well, there are various bodies existing in this country who are working on issues of interoperability, and I can't possibly cite them all. I happen to be associated with one which is really related to the computer industry and deals with interoperability in the communications environment. It is an important issue but not one that is affected by this legislation, in my judgment, nor is it one that will be solved by legislation, it is a marketplace issue, and I fully support and believe in the marketplace resolving issues of that kind.

We are very concerned about interoperability, particularly between our network and other networks, and have long been an advocate of interoperability so that we can bring the information superhighway to virtually everyone.

Ms. ESHOO. Thank you.

Would any other of the panelists want to comment on the issue? No.

Thank you.

Thank you, Mr. Chairman.

Mr. FIELDS. The Chair thanks the gentlelady, and the Chair would like to thank our panel for their patience, their fortitude, their expert testimony. Let the Chair assure each witness that your statement will be included in its entirety.

The Chair is informed that a vote is imminent on the Floor. The subcommittee will stand in recess until 1:30.

[Brief recess.]

Mr. FIELDS. The subcommittee would like to welcome our second panel and again tell them how much we appreciate their indulgence. We have Mr. Gerald Levin, chairman and CEO of Time Warner; Jim Cullen, vice chairman, Bell Atlantic Corporation; Richard Devlin, executive vice president/general counsel, the Sprint Corporation; Royce Holland, president and chief operating officer of MFS Communications; Tom Shockley, executive vice president, Central and South West Corporation; and John Anderson, executive director, the Electricity Consumers Resource Council.

Mr. Levin, we would like to begin with you—again, Mr. Gerald Levin, chairman and CEO, Time Warner.

Before you begin, Mr. Levin, if I could request that our witnesses keep their opening statements to 5 minutes. At 5 minutes I'll ask you to summarize. We will place your testimony in the record in its entirety.

Thank you.

Mr. Levin.

STATEMENTS OF GERALD LEVIN, CHAIRMAN AND CEO, TIME WARNER, INC.; JAMES CULLEN, VICE CHAIRMAN, BELL ATLANTIC CORPORATION; RICHARD DEVLIN, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SPRINT CORPORATION; ROYCE J. HOLLAND, PRESIDENT AND CHIEF OPERATING OFFICER, MFS COMMUNICATIONS CO., INC.; THOMAS V. SHOCKLEY, III, EXECUTIVE VICE PRESIDENT, CENTRAL AND SOUTH WEST CORPORATION; AND JOHN ANDERSON, EXECUTIVE DIRECTOR, THE ELECTRICITY CONSUMER'S RESOURCE COUNCIL

Mr. LEVIN. Thank you, Mr. Chairman. I'm pleased to testify before you today in my capacity as chairman and CEO of Time Warner.

As the world's leading producer and distributor of information and entertainment and as a pioneer in the development and the deployment of digital interactivity, we at Time Warner applaud your bipartisan efforts to produce the first major overhaul of the Nation's fundamental telecommunications law in over 60 years. It is particularly encouraging to us that this landmark legislation has already been cosponsored by a majority of the members of the full House Commerce Committee from both sides of the aisle, and your efforts could not be more timely. The comprehensive procompetitive reform of telecommunications law is essential if the U.S. is to maintain its position as a leader in telecommunications as well as the creator of content so greatly demanded by an ever expanding world audience.

Earlier this year I had the pleasure of accompanying the Vice President to the G-7 ministerial meeting in Brussels to focus on the public/private partnership that is needed to realize the global potential in information development and distribution. Your legislation is part of that grand mission. At present, favorable regulatory conditions in other countries are drawing U.S. investors to foreign opportunities. This legislation will help correct that situation. It will create jobs and encourage the investment of capital to revolutionize the national telecommunications infrastructure.

More important, this legislation will benefit consumers by unlocking the century-old local telephone monopoly. Competition in the local loop will inevitably lead to lower prices for consumers and a wealth of new services and choices. The introduction of competition into the local exchange telephone market is and rightfully should be a priority of every member of this subcommittee. Cable operators with broad-band plant passing over 95 percent of American homes with strategically clustered facilities provide by far the best and perhaps the only hope of competing head to head with the entrenched local telephone companies.

My company has already initiated that competition in Rochester, New York, and we have applications pending in several States to offer telephone services. We are serious about all aspects of this business, and in fact, thanks to the use of dedicated fiber within our cable systems, we have been in the alternative long-distance access competition since 1993.

As Congressman Oxley said in response to our application before the Ohio PUC, there was a time when having a monopoly in local telephone made sense, but that time has passed. Competition em-

powers the consumer more than government regulation ever will, and I think this legislation correctly recognizes that while telephone companies will be immediately unleashed to compete with cable, the regulatory barriers blocking competition in the local loop must be dismantled with equal dispatch.

Indeed, in light of the dramatic changes in competitive competition since 1992, if the goal of local telephone competition is to be realized, outmoded cable rate regulation must be relaxed. Without the very modest rate regulation reform, cable companies will be unable to attract the capital for the infrastructure upgrades they need, and I know that terms like "electronic superhighway" and "national information infrastructure" have been so overused that they have been largely drained of meaning.

One fact remains. A new world of digital interactivity has already come into existence. There are today 25 million people on the Internet. Today every major communications company in the world is actively developing plans to employ the immense potential of interactivity, and today our company is running the world's first full service network in Orlando, Florida.

Our concern for this legislation, while it reflects in part our own self-interest, we clearly recognize that what is at stake goes far beyond our own company and really reaches to the interests of the American people and our country's future. By reducing the burden of regulation, you will encourage new investment in broad-band multimedia. Our Nation has the lead today in the creation of these networks. We must make sure we keep it, and by spurring American ingenuity and investment we will ensure the rapid spread of advanced investment.

Mr. FIELDS. Mr. Levin, could I ask you to summarize, please.

Mr. LEVIN. Yes.

There are four points, Mr. Chairman, that we enthusiastically endorse: One, the elimination of historic State and local barriers to telecommunications competition; two, the creation of a well developed set of requirements for interconnection, access, and unbundling; three, the prevention of interference by local authority in the growth of competing services; and, four, the recognition that to enhance telephone competition, debilitating cable rate regulation must be reformed.

Thank you, Mr. Chairman.

[The prepared statement of Gerald Levin follows:]

PREPARED STATEMENT OF GERALD M. LEVIN, CHAIRMAN AND CEO, TIME WARNER INCORPORATED

Mr. Chairman, members of the Subcommittee, my name is Gerald M. Levin and I am pleased to testify before you today in my capacity as Chairman and CEO of Time Warner Inc. As you may know, Time Warner, through its major operating divisions, Time Inc., Warner Bros. Studios, Warner Music Group, HBO and Time Warner Cable, is the number one global owner, creator and distributor of intellectual property or copyright. As such, Time Warner applauds your bipartisan efforts to produce the first major overhaul of the nation's fundamental telecommunications law in over sixty years. It is particularly encouraging that this landmark legislation already has been cosponsored by a majority of the members of the full House Commerce Committee, from both sides of the aisle.

Your efforts could not be more timely. Comprehensive telecommunications law reform is essential if the United States is to maintain its position as a leader in the telecommunications distribution technology field as well as the creator of content so greatly demanded by an ever-expanding world-wide audience. This legislation will

create jobs and will encourage the investment of capital to vastly improve the nation's telecommunications infrastructure, recognizing that more favorable regulatory conditions in other countries have attracted U.S. dollars to foreign investments. More importantly, this legislation will benefit consumers by unlocking the century-old local telephone monopoly. Competition in the local loop will inevitably lead to lower prices for consumers and a wealth of new products, services and choices not yet fully appreciable.

The introduction of competition into the local exchange telephone market is, and rightfully should be, a priority of every member of this Subcommittee. Cable television operators, with broadband plant passing over 95 percent of American homes, with strategically clustered facilities, provide by far the best hope—and perhaps the only hope—of competing head-to-head with the entrenched local telephone companies. This legislation correctly recognizes that while telephone companies will be immediately unleashed to compete with cable operators in the delivery video programming, the regulatory barriers blocking competition in the local loop must be dismantled with equal dispatch. Moreover, if the goal of local telephone competition is to be realized, outmoded cable rate regulation must be relaxed in light of the dramatic changes in competitive conditions since 1992. Without modest rate-regulation reform, cable companies will be unable to attract the massive capital infusions that will be required for the infrastructure upgrades necessary to do battle with the much larger local phone companies.

I will leave for others to expound on the virtues of this legislation for the national economy generally and in unleashing the magic of competition to enhance consumer choice. My purpose today is to address the specific impact of this legislation on Time Warner.

I. TIME WARNER'S VISION FOR THE FUTURE OF TELECOMMUNICATIONS

Terms such as the "Electronic Superhighway" or the "National Information Infrastructure" have been so overused and clouded by false expectations and hype that they have been largely drained of meaning for most people. One's notion of these concepts seems in some measure to hinge on which school of media gurus you choose to talk to.

Some believe that except for its commercial and scientific applications, the information superhighway will be a dead end, a technology that will confuse viewers with a bewildering array of choices which they neither want nor need.

Others see it as an all-powerful communications system whose "killer app"—the autonomy and control it gives each viewer over what entertainment and information they wish to choose at a particular moment—will lead to the diminishment of every other medium, perhaps even to the extinction of a few.

Time Warner does not subscribe to either of these extreme views. We have developed a sharply focused vision of a broadband, multimedia, interactive, switched digital network that will ultimately reach into every American neighborhood, home and business. This advanced architecture is capable of providing a broad range of information, entertainment and transactional services to homes, businesses and schools.

Make no mistake, Time Warner did not take on the challenge of being the first to build and operate these advanced broadband networks because of an abstract interest in technology or a blind commitment to innovation for innovation's sake.

We have done it out of a clearly defined self interest. The essential reason can be found in the simple, uncomplicated mission statement that has guided our company since its inception: Time Warner is home to the world's premier journalists and creative artists. Through innovative technologies, we bring the product of their minds and imaginations to the broadest possible audience across the globe.

This advanced, interactive technology fits precisely our mission to take our core journalistic and creative businesses—Time Inc., the Warner Music Group, Home Box Office and Warner Bros. Studios—and see to it that their existing competitive leadership is ensured far into the next century. As we at Time Warner see it, digital interactivity is the most powerful instrument ever devised for giving consumers direct, immediate, on-demand access to Time Warner's vast libraries of print, film, programming and music.

For Time Warner, a major step in the evolution of its existing cable television infrastructure occurred in 1992, with the launch of its Quantum cable television service to several thousand customers in Queens, New York. There, Time Warner implemented a dramatically different cable architecture by installing fiber trunks to small neighborhoods of a few hundred homes. This fiber-rich "star" architecture has enabled Quantum to deliver 150 analog television channels to its customers, including a broad array of cable networks and per-channel services, as well the convenience

of ordering current movies or special events, instantly delivered to the home with the touch of a button.

Time Warner's plans envision much more than just an advanced cable television service, however. On December 14, 1994, Time Warner turned on its Full Service Network in Orlando, Florida, allowing consumers to experience first-hand the world's first broadband digital interactive network. The Full Service Network is technically capable of offering an open-ended selection of services, including interactive educational instruction, games, and shopping; alternative access to long distance telephone service; high speed data transfer between local area networks; personal communications service; video on demand; and video conferencing.

The Full Service Network has also been designed to be fully compatible with future wireless communications services, so that users of the network will not be confined to their homes or offices. Accordingly, Time Warner plans that broadband PCS and similar advanced mobile technologies can be seamlessly integrated into the Full Service Network. Such integration will allow customers to custom-tailor a diverse selection of network services to meet their particular communications needs.

One must not overlook the impact on the quality of life to be achieved through linking educational and medical institutions to a network with the capabilities of Time Warner's advanced broadband network. The connection of schools to such a network will promote distance learning so scarce teaching resources can be efficiently deployed. Rural hospitals can be linked to urban teaching hospitals so that expert consultations can be done via video conference and medical test data instantly shared. Telephone companies have created slick ad campaigns touting their lofty intentions to do all these things eventually. But only Time Warner stands in a position to have the network in place to actually provide these services in the foreseeable future.

Last, but not least, the advanced cable system technology being deployed by Time Warner provides the platform to offer to consumers, for the first time in a hundred years, a real choice in providers of local telephone service. Indeed, the cable television industry constitutes the only real hope of introducing sustainable competition to the local telephone companies. This legislation recognizes the narrow window of opportunity for such competition to develop.

Because our network is based on fiber and coaxial cable, residential and business customers will receive extremely reliable telephone service with excellent clarity that is comparable to or better than that provided by existing telephone companies. Included in the advanced services we will offer are call forwarding, call waiting, caller ID, conference calling, automatic dialing and multi-featured voice messaging. Time Warner also will provide Integrated Services Digital Network (ISDN), which allows simultaneous transmission of voice and data over a single line and eliminates the need to create separate networks in a customer's home or business. To ensure its telephone networks will deliver the highest quality service, Time Warner recently signed a contract with AT&T Network Systems to provide its leading-edge technology in telephone switching systems, related transmission equipment and network management systems.

Simply put, Time Warner can provide more services at lower prices than telephone customers are now paying. And the prospect of competitive local telephone service is not a pipe dream. In December of last year, Time Warner began providing residential telephone service over its hybrid fiber-coax network to residents of three apartment buildings in Rochester, New York. Service has been free of failures or trouble, and the preliminary indications are that the customers are completely satisfied. No one has left the trial other than residents moving out of the buildings.

Time Warner has successfully completed all of its initial technology and operations tests in Rochester. We plan to begin rolling out regular telephone service to additional multiple dwelling unit buildings by late summer, and to begin testing single family residence technology in mid-summer. Regular telephone service should be available to single family homes from Time Warner by the fourth quarter of 1995.

Time Warner has also been active in development of "alternate access" telephone operations in connection with our metropolitan area cable systems. These operations generally provide connections between large businesses and their long distance telephone providers, between multiple business locations of a large company, and between long distance telephone company locations. These connections are used primarily for high volume voice and data communications, and do not require Time Warner to install switching equipment.

It is beyond dispute that the public interest will benefit from competition in the basic local exchange business. One need only look at the positive developments brought by competition in the long distance telephone business to forecast what will happen upon introduction of competition in the local telephone market.

In long distance, the emergence of powerful competition has led to lower prices, better service, greater customer choice and innovative new options. In the area of cost alone, competition in the long distance business over the past ten years has seen prices to consumers drop by more than 60 percent, while at the same time the cost of monopoly local phone service has gone up 13 percent.

As noted by Congressman Oxley in response to Time Warner's application to the Ohio PUC for permission to offer telephone service:

> There was a time when having a monopoly in local telephone made sense, but that time has passed. Competition empowers the consumer more than government regulation ever will. Two local phone companies are better than one, because it provides choice to the consumer and forces the companies to compete for business.

Time Warner has overcome numerous technological obstacles on the road to making its vision for the future of telecommunications a reality. With the assistance of U.S. West and its other strategic partners, Time Warner has successfully assembled a team of companies—each a leader in its field—and has orchestrated their efforts into the singular breakthrough embodied in this advanced broadband network.

It is not necessary to go into exquisite detail about the architecture of this network other than to note that by marrying fiber-optic and coaxial cable, introducing digital compression, and by adding mass storage servers, digital switches and powerful subscriber terminals, it is now possible not only to plug the growing number of PC's into immensely capacious broadband networks, but to turn ordinary TV sets into two-way digital devices. Consumers will be empowered with a new freedom to go "on-line" and explore the vast reaches of cyberspace, including Time Warner's critically-acclaimed Pathfinder site on the World Wide Web.

While Time Warner's pioneering efforts are certain to spawn many additional technological breakthroughs, the fundamental building blocks are all in place and have demonstrated the raw capacity of this advanced network. Fiber optics and digital video compression allow geometric increases in the capacity of cable systems to deliver video services and other data. Multi-access video servers provide the digital storage capacity for a library of movies and information, enabling thousands of customers to access this memory simultaneously. High speed packet switching is used to route video, voice, computer data and other digital information from libraries to individual customer terminals, at speeds light years ahead of anything possible over the twisted-copper-pair telephone network.

Thus, while the significant technological hurdles to Time Warner's realization of its vision have been overcome, numerous regulatory hurdles remain. The bipartisan legislation pending before this Subcommittee recognizes these barriers and adopts crucial affirmative measures to dismantle them.

II. ACHIEVING TIME WARNER'S VISION OF A COMPETITIVE TELECOMMUNICATIONS ENVIRONMENT—THE GOVERNMENT'S ROLE

As indicated, Time Warner has a clear vision of the future—a future in which the American public is the beneficiary of a wide array of new telecommunications technologies and of the information and services that these technologies will make possible. This vision does not look to the government to subsidize or dictate the development of these technologies and services. Rather, it looks to private companies willing to battle in a competitive environment. However, there is a role for government—a role that the Communications Act of 1995 can and does properly fill.

1. Elimination Of State And Local Barriers To Competition.

In order for Time Warner and others to compete in the market for local phone service, state and local barriers that restrict entry into this market must be removed. Entrenched local exchange carriers control over 99 percent of all local telephone traffic. While breaking this monopoly presents a daunting task, particularly in light of the enormous resources of the telcos, Time Warner and others are willing to compete. What stands in our way, first and foremost, is a myriad of state and local entry barriers that prevent competition in the local telephone market. While a handful of enlightened states are beginning to realize the benefits which flow from opening the local loop to wire based competition, the delays and uncertainties imposed by this process serve to thwart the goal of consumer choice.

For example, Time Warner has proposed to invest $500 million in the State of Ohio to upgrade its infrastructure with the capacity to provide local telephone competition. The State of Ohio has attempted to create a progressive regulatory atmosphere in an effort to attract these new technologies, create jobs and encourage economic growth. Even Ameritech, the local telephone company in most of Ohio, has shown signs that it is willing to cooperate in this cumbersome, time-consuming state

certification process. In other states, however, local phone companies have been openly hostile in their efforts to forestall the advent of competition.

Even in a forward-thinking state like Ohio, inordinate delays stand as barricades to the goal of local telephone competition. Time Warner filed its application eight months ago, and hearings have not yet even begun. No one can say when a decision might be made—but it could easily be 18 months to two years before Time Warner is allowed to proceed with its proposal. In the meantime, Ameritech has received video dialtone approval from the FCC and authority from the courts to construct cable systems to compete directly with Time Warner. Indeed, under the proposed legislation, telephone companies are granted immediate and unfettered entry in to the cable business, whereas cable companies continue to face the prospect of a drawn-out state certification process before being allowed to enter the telephone business.

Section 243 of the Communications Act of 1995 recognizes that companies such as Time Warner that want to engage in a marketplace battle with the local phone companies should not first be required to engage in a protracted regulatory battle. Fighting for entry on a state by state basis will cripple the development of competition. Therefore, it is absolutely essential that Congress, as part of a national policy of promoting competition, preempt existing state and local barriers to competition and prohibit the imposition of new barriers.

2. Limit The Expansion Of Municipal Regulation Over Telecommunications Services.

In addition to state and local entry barriers, there is the issue of the regulatory authority of cities. As a cable operator, Time Warner has had considerable experience with municipal regulation. Inherently, cities focus on parochial concerns; moreover, their expertise and resources vary considerably; and, most important, cities are essentially political bodies, not expert agencies. In short, cities are ill-suited to regulate national telecommunications networks.

Time Warner strongly supports the inclusion in the Communications Act of 1995 of Section 106 which is designed to ensure that municipalities do not expand their current regulatory powers over cable television to encompass the delivery of non-video telecommunications services. For example, cities should not be permitted to require municipal franchises for the provision of telecommunications services or otherwise restrict the provision of such services. Similarly, municipalities should not be permitted to require cable operators either to provide or to discontinue providing telecommunications services. Finally, cities must not be permitted to exercise rate control over telecommunications services or impose new taxes on such services.

While the role of municipalities in connection with the development of telecommunications competition must necessarily be strictly circumscribed, Time Warner acknowledges the historical role of municipalities in granting local franchises for the provision of traditional cable services. In order to create a level playing field for the development of video competition, all wire-based providers of cable service should be subject to equivalent local obligations and oversight. Time Warner agrees with the provision contained in Section 243 of the bill allowing cities to require telephone companies to provide comparable compensation to cities for the use of public streets and rights-of-way when they seek to transport video programming.

3. Competitive Checklist.

Time Warner's vision of the future includes competition in the delivery of video as well as telephony and other telecommunications services. As discussed, in order to achieve such a fully competitive telecommunications marketplace, Congress must knock down the *regulatory barriers* that impede entry into the local telephone market. Congress also must knock down the *private barriers* which exist by virtue of the unchecked ability of incumbent telephone companies to use their market power and bottleneck access over key network functions to keep their competitors at bay.

The best way to assure that such private barriers are dismantled is to condition the entry of telcos into new lines of business on a determination that telcos are not blocking competition in the local loop. Accordingly, the proposed legislation properly provides for an affirmative finding by the FCC that the following conditions for competition have been met:

- *Interconnection And Equal Access.* As recognized by Sections 242 and 245 of the bill, telcos should be required to interconnect with providers of other telecommunications and information services in order to ensure full interoperability and equal access. This should include a specific requirement for telcos to provide nondiscriminatory access to control network databases and other facilities and information integral to the efficient transmission, 1routing or other provision of telephone exchange services. Examples include databases that support services such as 911 as well as directory assistance and white pages.

- *Compensation.* A key element of the interconnection and equal access requirements must be a means for ensuring that carriers receive an appropriate level of compensation for terminating traffic originating on other carriers' networks. If the incumbent telco can impose an exorbitant interconnection charge, laden with so-called "contributions" to offset universal service obligations, competition will be stifled. Section 242 of the bill recognizes the potential for competitive abuse of the interconnection requirement, requiring that compensation be based on "mutual and reciprocal recovery of costs."

  The "mutual and reciprocal" standard is not defined in the bill. Time Warner believes that the most simple and effective approach is the "bill and keep" compensation arrangement currently used by incumbent telcos to connect with each other. While the legislation establishes that "bill and keep" is a possible compensation mechanism, protracted regulatory and judicial battles could be avoided if Congress were to simply codify the unambiguous "bill and keep" compensation arrangement.
- Unbundling. As Sections 242 and 245 of the bill recognize, it is critically important that telephone companies be required to make their services (including switching, billing, and access to individual homes) available on an "unbundled" basis at non-discriminatory rates.
- *Collocation.* Another provision properly included in Section 242 of the legislation requires the FCC to adopt regulations providing for the actual collocation (or, under limited circumstances, virtual collocation) of equipment necessary for interconnection.
- *Access To Poles.* The Pole Attachment Act of 1978 was adopted to address discriminatory practices engaged in by telephone companies and other utilities with respect to the use by cable operators of pole space. In recognition of this history, the legislation seeks to ensure that telecommunications service providers have access to poles and conduits at just and reasonable rates. Time Warner believes that additional provisions should be included extending such protections to poles and conduits owned by municipally and cooperatively owned utilities.
- *Number Portability And Dialing Parity.* The ability to "take your number with you" when changing telephone companies must be available as soon as possible. Lack of number portability is a major barrier to entry into local telephony, since many people who might otherwise change providers will not tolerate the inconvenience of a number change. Similarly, "dialing parity" requirements should be imposed to ensure that consumers are able to dial the same number of digits to reach a telephone number no matter whose network they use. Time Warner concurs with Sections 242 and 245 of the proposed legislation in their treatment of these issues.

4. Universal Service.

Time Warner strongly supports the concept of universal service, and we agree that each telecommunications provider should carry its fair share of the burden to ensure that universal service remains a reality. However, we flatly reject the notion that universal service should be maintained through subsidies flowing to particular telecommunications providers. Rather, such subsidies should flow directly to the consumers truly in need of such support.

Any reexamination of universal service must strive to unravel the universal service subsidies that pervade the present telecommunications pricing mechanisms, and to create an environment that is compatible with a multiple-provider market while assuring that nationwide ubiquity and connectivity are not compromised. It is only by disaggregating the many components that presently provide universal service support, and individually addressing their respective cost and merit, that the nation can shape a rational universal service policy as the local telecommunications market is opened to competition.

As competition emerges, telcos are arguing that the "contributions" to universal service are being drained away because they can no longer price their competitive services above cost to derive the contribution. Telcos are using this argument to urge that emerging competitors be restricted from providing local phone service, and that competitors subsidize the incumbent phone company through payments euphemistically characterized as "offsets" when competitors interconnect with the telcos.

The subsidies required to maintain universal service must be identified and separated from interconnection charges. Time Warner is willing to support universal service, but it is not willing to subsidize the telephone companies with which it competes. The only fair way to create a subsidy fund in a multi-provider market is

through an independent, neutral institution—possibly the state PUC. This approach would include several elements:

- To size the initial subsidy and funding requirements, the incumbent telco would identify the amount of subsidy required for it to maintain service to every subsidized customer.
- The Universal Service Fund would subsidize individual customers and/or high cost local exchanges as targeted by each state.
- All communications common carriers, including local and long distance telephone providers, wired or wireless, would pay a uniform percentage of revenues to the fund.
- All certificated, facilities-based local exchange carriers would be eligible to obtain subsidy payments from the fund on the same basis.
- After the initial universal service funding period, competition among the carriers for subsidized customers will have reduced costs to serve these customers. The difference between subsidized rates and non-subsidized rates must then be recalculated to set the universal service fund requirement for the next period.

5. Safeguards.

This legislation will, immediately on the date of enactment, repeal the long-standing prohibition barring telephone companies from providing cable service within their local service areas. This prohibition was originally imposed in response to a well-documented record of anticompetitive abuses by telephone companies when they were allowed to own and operate cable systems over 25 years ago.

As indicated, Time Warner welcomes competition in the delivery of video programming in conjunction with the development of a competitive telecommunications market. However, because telephone companies are being allowed to enter the video marketplace immediately, while the conditions for competition in telephony will not be achieved overnight, it is essential that safeguards be enacted to prevent telco cross-subsidization and other abuses. Among such safeguards appropriately contained in Section 201 of your legislation are the establishment of a separate video programming affiliate, the maintenance of separate books, records and accounts, and protections against discriminatory marketing practices.

In addition, the bill recognizes that telephone companies offering video programming should be subject to requirements equivalent to those imposed on cable operators by the Cable Acts of 1984 and 1992. For example, among other things, a telco that establishes a video platform would be subject to the same must carry, PEG and leased access, program access, privacy, customer service, and EEO requirements as cable operators. Of course, if a telco opts to operate as a non-common carrier video programming distributor, it would be subject to all of the Cable Act requirements, including local franchising.

6. Regulatory Relief For Cable.

Even with the removal of state and local entry barriers, the establishment (and enforcement) of conditions for competition, and the implementation of safeguards, there is one other ingredient that is necessary to ensure that the goal of competition in telecommunications is achieved—regulatory relief for cable television. The plain fact is that, by virtually every conceivable measure, the telephone companies dwarf the cable industry. Even a company such as Time Warner, widely referred to as a "multimedia giant," does not enjoy the same access to capital resources as even the smallest of the RBOCs. For example, local telephone companies have annual revenues of $100 billion and seven times the cash flow of cable companies.

In order to compete with these behemoths, cable companies—even Time Warner—need access to capital. Permit me to quote from the statement of Gerald L. Hassell, Senior Executive Vice President of the Bank of New York, submitted to the Senate Commerce Committee on March 21, 1995:

> Cable companies face a considerable disadvantage vis-a-vis the telcos in their ability to finance upgrades and new systems. While telco revenues exceed $100 billion annually, the cable industry generates only about $25 billion each year. Cable bond ratings are consistently much lower than those of the telcos, and cable's equity cost of capital is substantially higher.
>
> At the same time, cable's financial performance has suffered greatly in the wake of rate regulation. Despite continued subscriber growth, cable industry revenues were flat last year for the first time in history. Major cable companies experienced cash flow reductions of five to ten percent. The value of cable stocks dropped over by 6 percent from September, 1993 to date, while the S&P index rose by 6 percent. And most telling, in just the past year companies representing 17 percent of the nation's cable subscrib-

ers have either merged out of or are in the final stages of exiting the industry.

Cable's regulatory environment has had a significant impact on the industry's access to capital markets. In 1994, the amount of capital that the cable industry raised in the public debt markets totaled only $1.5 billion, which is an 87 percent drop from 1993's level. The entire "high yield" debt market experienced only a 38 percent decline. No major domestic cable company completed an initial public offering of equity during 1994, although several American cable companies operating in the United Kingdom, where cable regulation is much more supportive, did successfully undertake initial public offerings.

One step that the legislation takes that will assist cable companies as they seek capital is the provision protecting "clustering"—the practice of acquiring cable systems located in a common geographic region. Telephone companies historically have offered service throughout broad regions spanning several contiguous states. Cable operations, in contrast, have been franchised on a city-by-city basis (or, in some instances, on the basis of even smaller subdivisions). Many cable operators, notably Time Warner, have recognized that there are significant efficiencies and synergies to be gained in clustering operations on a regional basis. These synergies and efficiencies will make it easier for companies to attract the capital necessary to take on the entrenched, regional telephone companies.

If a cable operator is to hope to compete in the local telephone business, it must accumulate a service territory that is roughly comparable to the incumbent telco, at least in core urbanized areas. The legislation you have developed properly recognizes that cable operators must be allowed to freely cluster their cable systems without the uncertainties created by duplicative layers of regulatory review.

The other important step that the legislation takes is to provide relief with respect to cable rate regulation. Time Warner recognizes that the issue of cable rate regulation engenders a wide range of responses on all sides. However, we believe that if the issue is approached dispassionately, it is clear that the legislation has forged a reasonable response to dramatically changed market conditions.

In this regard, we note that even the most ardent supporters of the 1992 Cable Act indicated that rate regulation was merely intended as a stopgap—a measure of protection until competition could safely be relied upon to protect consumers. That time is at hand. With the enactment of the proposed legislation, Congress, with a stroke of a pen, will have paved the way for some of the largest companies in the world—companies with network passing virtually every home in the country—to provide video programming directly to American consumers in competition with cable television operators.

It is axiomatic that prices are constrained by the presence of a credible competitor long before that competitor has actually captured a particular market share. That is certainly the case with cable, where there not only is a credible prospective competitor in the form of the telcos, but a credible *actual* competitor in the form of DBS.

In June 1994, two DBS service providers unaffiliated with the cable industry began selling video programming in 23 states. DirecTV, a unit of GM/Hughes Electronics, has two DBS satellites in orbit and offers home viewers program packages containing 40 cable networks, 40 to 50 pay-per-view movies, 20 channels of *a la carte* programming, and 30 channels of digital audio recordings. USSB, a division of Hubbard Broadcasting, offers home DBS viewers a similar array of programming comparable to that available from many cable operators. DBS service is now available throughout the continental United States.

Analysts predict that DBS will be one of the fastest introductions ever of a new consumer electronics product. Within months of their launch, DirecTV and USSB attracted more than 100,000 customers. At the end of 1994, USSB and DirecTV reported adding some 2,000 new subscribers a day.[1] It is estimated that non-cable affiliated DBS companies will have approximately 2.2 million subscribers by the end of this year, and 5.1 million by the year 2000—an increase of more than 130 percent in just five years.[2]

And the competitive impact of wireless cable cannot be overlooked. In 1992, wireless cable was virtually unknown. But today, several prominent telephone companies have made significant investments in wireless cable technology. Just last month, Pacific Telesis paid $175 million for Cross Country Wireless, the nation's fourth-largest wireless operator. In March, Bell Atlantic and NYNEX invested $100 million in CAI Wireless, with an option to purchase 45% of the company for a total

---

[1] *The Atlantic Journal and Constitution*, November 6, 1994.
[2] Paul Kagan Associates, *Cable TV Investor*, May 18, 1994.

investment of $300 million.[3] Wireless cable subscribership is expected to increase 158 percent in the next two years to 1.5 million, and to 3.4 million by the year 2000.[4]

Faced with these fundamentally changed competitive conditions, regulatory relief is essential. Moreover, the debate over cable rate reform must not be allowed to obscure the fact that the relief proposed in H.R. 1555 is narrowly tailored. The basic tier of service, which contains local broadcast stations, PEG access, and other services specified in the 1992 Cable Act, will remain subject to local rate regulation. In addition, the regulatory relief afforded with respect to optional, non-basic "tiers" of service is tied to the provisions of the bill that are designed to foster telephone entry into the video marketplace. And during the interim, even the non-basic tier will remain subject to scrutiny whenever a modest threshold of subscriber complaints arise.

7. Set-Top Boxes.

Time Warner does not favor the provisions in the bill requiring the sale of cable descramblers to consumers. The retail sale of cable descramblers will not benefit our customers; it will only make it easier for dishonest people to steal our product.

The descrambler is the most cost-effective way for cable companies to control access to enhanced program offerings, such as commercial-free premium channels, pay-per-view recent feature films and special events. Unlike the telephone, which does not control access to the telephone network's features, the descrambler box is the cable system's gateway to extra-cost, optional programs and services. The descrambler permits us to deliver these services only to customers who wish to pay for them.

Allowing customers to buy their own descramblers will not save them money. Cable operators buy this equipment from the manufacturer in mass quantities and obtain volume discounts. It is therefore unlikely that the customer is going to get a better deal at the local electronics store.

In fact, there is a good chance that buying a descrambler will be a money-losing proposition. Here's why. Each manufacturer of descramblers has a unique, proprietary signal scrambling system that is protected by patents. So, for example, a General Instrument box does not work on a system that uses Scientific-Atlanta equipment. A customer who buys a cable descrambler is making a bet of several hundred dollars that he won't move out of town and that his cable operator won't upgrade to a new scrambling system during the seven-to-ten year life of the equipment.

Finally, the Congress should know that theft of cable service is a multi-million dollar crime. Creating a retail market for descramblers will further such illegal activities. Just since 1993, our systems serving portions of New York City alone had a total of 2,500 descramblers stolen in 25 robberies of our personnel and contractors, many at gunpoint. Criminals seek to assemble large quantities of descrambler boxes which are then modified to steal cable services and distributed on the black market. If large quantities of these boxes are available on the open market, it would be impossible for cable operators to keep track of which customers are lawfully authorized to receive scrambled services.

Time Warner, being both a cable operator and a producer of television programming, films and recorded music, is especially concerned about protecting the value of the intellectual property entrusted to us—not only for ourselves but also for the myriad of writers, performers, cinematographers and producers whose efforts come together in our programming. The key to successful prosecution of those who make a business of signal piracy has been the ability to prove that there is no legitimate retail market for any descrambler or component part. The vendors of black market descramblers attempt to avoid prosecution for assisting in theft of cable service by telling their customers to notify the cable operator that they have one of these devices. Of course, this never happens. These attempts by cable thieves to escape liability have failed in the courts thus far because *there has been no legitimate consumer market for cable descrambling equipment*. Courts have been willing to presume that a person making or selling a cable television descrambler to an individual is doing so with the intent of helping that person steal cable television programming, a violation of federal law.

If the Congress creates a legitimate consumer market in cable television descramblers, that presumption will no longer be possible. Each alleged illegal descrambler will have to be disassembled and the programming in each of its chips analyzed in order to prove that it is an illegal device. Consequently, it will be much

[3] *Broadcasting & Cable*, May 1, 1995, p. 16.
[4] Paul Kagan Associates, *Wireless Cable Investor*, October 24, 1994.

harder to prosecute those who are selling illegally modified descramblers or other devices designed to steal programming.

What I have said here is more than speculation. We have already seen the problems encountered by the home satellite industry, where customers necessarily own the descrambler that allows them to view the program selections they have paid for. As a result, there is a legitimate consumer market in satellite descramblers. However, the original descrambling system used by satellite programmers was quickly defeated by pirates. "Pirate" descramblers with special "chips" installed became widely available to anyone who wanted to steal the entire menu of satellite programming. Recently, and at great expense to both consumers and programmers, a new scrambling system was implemented that is supposed to be more secure. It remains to be seen how long it will last.

In short, selling cable descramblers at retail will do very little good for consumers and promises great harm to cable operators like Time Warner. For that reason, we urge that you not enact this provision.

8. Privacy Of Customer Information.

Finally, I would like to comment briefly upon the CPNI provision in Section 104 of H.R. 1555. The way that section is drafted, restrictions on the use of customer information would apply to all carriers. We believe that such restrictions should apply only to dominant local exchange carriers. We understand the need for these provisions to protect against the competitive advantage that results from control of customer proprietary network information by a dominant local exchange carrier. We oppose, however, applying these restrictions to all carriers, including emerging ones. To require an emerging carrier to share customer information with others and, in particular, the dominant carriers, runs counter to encouraging competition and may even buttress that dominance. These provisions are and should be primarily competitive safeguards, and thus they should apply only to dominant carriers.

The privacy study in the bill is one that we support. As a cable company, we are subject to the privacy protections of the Cable Act, 47 U.S.C. § 551. Other non-cable carriers are not subject to these provisions and, as a result, cable companies alone are responsible for detailed privacy requirements. We hope that this study will allow the FCC to consider appropriate solutions to provide for regulatory parity.

III. CONCLUSION

Time Warner strongly urges prompt enactment of telecommunications reform legislation. Congress has a unique opportunity to reclaim telecommunications policy from the courts and codify a framework that will allow competition to flourish.

Our experience in transforming cable systems into digital, broadband switched networks provides vivid proof that the technology is here today to provide consumers with a true choice in local telephone service along with vastly improved video and information services over a fully interactive broadband network.

Daunting regulatory barriers to realization of this vision remain. There exists today a fundamental imbalance in the video market. Competition has arrived for cable in the form of DBS, Wireless Cable and telephone company entry into cable, long before the telcos face any requirement to open up their local exchanges. While the federal courts have opened the door for telcos to provide cable television and the FCC is expeditiously granting video dialtone authority, state and local entry barriers and an outmoded rate regulation scheme prevent the cable industry from competing in the provision of local telephone service.

Time Warner commends the Commerce Committee on its bipartisan proposal designed to rectify this regulatory imbalance and establish new ground rules to foster fair competition.

Mr. FIELDS. Thank you very much.

Your statement, as all others, will appear in its entirety.

Mr. Cullen, vice chairman, Bell Atlantic Corporation.

STATEMENT OF JAMES CULLEN

Mr. CULLEN. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, my name is Jim Cullen. I'm vice chairman of the Bell Atlantic Corporation. I do want to thank you for the opportunity to appear before the committee today on behalf of the Alliance for Competitive Communications and Bell Atlantic to discuss H.R. 1555.

I would like to begin by commending you, Mr. Chairman, Chairman Bliley, Mr. Dingell, and your staffs for grappling with the important and the complex issues that H.R. 1555 addresses. The regional Bell companies support legislation that will open up all telecommunications and information markets to all competitors. Let me be specific. After listening to this afternoon's panel, unlike Mr. Allen who did not testify that the House should pass H.R. 1555, that he favors its passage, Bell Atlantic does favor and urge passage of H.R. 1555 with a more precise and specific checklist administered by the FCC, no open ended, actual competitive test, and no DOJ role. Bell Atlantic, in a word, wants and needs a bill. H.R. 1555 establishes a reasonable process for RBOC entry into the interLATA business, a competitive checklist administered by the FCC, and this checklist could—and we agree with Mr. Allen here—could be improved by making it more precise and more specific. As written, it includes a general obligation and gives the FCC the job to fill in some of the details later.

Also as this morning's discussion amply demonstrated, there is simply no way to get agreement on general open-ended ideas like actual competition. In fact, these rules may end up to be so complex that they will simply favor our opponents, who will use them to delay our entry. This is the name of the game. This is a debate about whether RBOC entry can be delayed, not about actual competition. A specific checklist would also make the 15-month FCC rulemaking unnecessary and eliminate this artificial long wait before a Bell company could even apply for interLATA. Also, the competitive checklist makes any actual competition test unnecessary because it would simply create uncertainties.

H.R. 1555, second, correctly returns the Antitrust Division to its normal position of prosecutor and advisor. There is simply no reason to continue the department's role as an additional administrative agency regulating my company's business.

On the issue of timing and parity, I do need to underscore that with this bill Bell Atlantic will not be able to enter the interLATA long-distance market for more than 2 years. However, nothing in this bill, as was pointed out this morning, prevents the FCC or the States from requiring intraLATA presubscription before that time. This creates the very real possibility that AT&T, Sprint, and other long-distance companies will offer a full range of services as a single provider to our customers while Bell Atlantic is forced to only offer part of the packages. If our customers can get a full package of services from AT&T, why in the world would they go out of their way to split this business and give Bell Atlantic a piece of it?

Finally, let me just interpret for you what commercially viable resale means. I heard that this morning. Commercially viable resale means we must sell residential local service well below its actual cost, and I will tell this committee and you, Mr. Chairman, that I am very happy to resell residential local service with exactly the same margin that Mr. Allen gets for reselling his long-distance service. There is a huge difference here.

Finally, we are also concerned with some of the sections of the bill relating to video dial tone. As Mr. Roberts told the press earlier this week, it is cheaper and quicker for cable to get into my business than it is for me to get into the video business. This bill does

create a complex set of new regulations to govern our entry into the video business. It will result in a 15-month delay in our getting into the business, a decision that has already been made in seven or eight different jurisdictions around the country. We can enter the business today.

So I appreciate the opportunity to be here today, and I look forward to working with this committee and the staff to make this bill the legislation that the people of our country have been waiting for.

Thank you.

[The prepared statement of James G. Cullen follows:]

PREPARED STATEMENT OF JAMES G. CULLEN, VICE CHAIRMAN, BELL ATLANTIC CORPORATION

Good morning, Mr. Chairman and members of the Committee. My name is James Cullen, and I am Vice Chairman of Bell Atlantic Corporation. I want to thank you for the opportunity to appear before this Committee again to discuss H.R. 1555.

I would like to commend the Chairman and his staff, as well as the Members and staff of the minority, for taking the time to grapple with the important and complex issues that H.R. 1555 addresses. The Bell companies believe that it is important for Congress to deal with these questions and to establish the public policy framework required to allow this country to advance into the Information Age and to pass a good bill this year.

COMPETITIVE ENTRY

Bell Atlantic and the other Bell companies support legislation that would open up all telecommunications and information markets to all competitors. Sound public policy would dictate that all markets would be opened at the same time. Consumers would surely benefit from the competition that would result. While the bill does not adopt this approach, it does at least establish procedures that are intended to open all markets within a relatively short time. We believe the bill could be improved if it moved more in the direction of simultaneous entry into local exchange, video and long distance and away from creating an environment in which the Bell companies would have to open their existing markets before they had new competitive opportunities. We believe that the bill should also be amended to allow us to immediately provide interLATA service outside our existing service areas.

In particular, we believe that H.R. 1555 establishes a clear and reasonable process for Bell company entry into the interLATA business—

A precise competitive check-list, the terms of which are understood by all.

State certification and FCC oversight of the process.

To verify that local competition is really possible, the requirement that some carrier actually be providing exchange or exchange access service somewhere in the state for which interLATA authority is sought.

The Antitrust Division returned to its role of prosecutor and advisor, no longer functioning as a regulatory agency.

With a little editing to eliminate ambiguities which will only lead to litigation and delay, this is the road map to the additional competition that the interLATA market so sorely needs.

There is one issue of timing that is troubling to me. Under the bill's procedures, Bell Atlantic will not be able to compete in the interLATA long distance market for more than two years. Nothing in the bill, however, prevents the FCC or the States from requiring intraLATA presubscription before that time. This creates the possibility that AT&T, Sprint and other long distance companies could offer the full range of intra and interLATA services to customers while Bell Atlantic could offer only part of the package. If consumers can conveniently get everything they want from their long distance company, there is no reason to expect that they will go out of their way to split off a piece of their business for Bell Atlantic. This is especially true where the long distance company offers them volume discounts based on all the services they buy.

I am not the only one who thinks that intraLATA presubscription would be bad public policy in the absence of interLATA freedom for the Bell companies. Judge Greene made this very point twelve years ago. In 1983, a number of long distance companies urged the Judge to require the Bell companies to provide intraLATA presubscription. The court concluded "to require the Operating Companies to provide the presubscription option [for intraLATA calls] to the interexchange carriers

would place the local companies at an almost insuperable disadvantage. This the Court will not do."[1]

The Commission in Chairman Bliley's home state of Virginia takes this logic one step further. It has consistently concluded that it would be fundamentally unfair to allow the long distance companies to provide intraLATA toll service before all local companies were allowed to provide interLATA service. "When one carrier (C&P) is prohibited from competing in a certain (interLATA) market, this is clearly an artificial and contrived restraint that waives advantages to competing carriers. Until this restraint is lifted by the courts, it will be impossible to have a level playing field in Virginia."[2]

This is not just an issue of fair competition or protecting the local telephone companies. Permitting intraLATA presubscription before allowing the Bell companies to provide interLATA service would harm consumers as well, as it would reduce competition in the intraLATA marketplace. Today, interexchange carriers must offer prices lower than those of the Bell company to induce consumers to use their intraLATA services, and they are doing precisely that. If those companies could provide a full range of services that the Bell company could not match, they would have no need for competitive pricing, as they would merely exploit their "almost insuperable" marketing advantage over the Bell company.

To fix this problem, I urge the Committee to amend H.R. 1555, adding the following provision to new section 245 of the Communications Act:

> "(g) Neither the Commission nor any State may order the implementation of toll dialing parity in an intraLATA area before a Bell operating company has been granted authority under paragraph (e)(2) to provide interLATA services in that area."

Another concern we have with the competitive aspects of the bill is in the provisions dealing with video programming. We are pleased that when the bill establishes new rules for video programming, it relieves us of the existing general requirements of title II of the Communications Act. However, the new provisions create a complex new set of regulations to govern my company's participation in a new business in which it will be the new entrant fighting against the incumbent cable company. These rules will only delay the competition in this industry that the public so clearly wants.

OPENING THE LOCAL LOOP

H.R. 1555 also establishes rules for other service providers to interconnect with local exchange carrier networks. We generally support the approach taken in these provisions. In particular, we commend the Chairman and the other drafters for recognizing that carriers should not be required to do what is "technically feasible" if it is not also "economically reasonable" and for making it absolutely clear that the costs a carrier incurs in offering unbundled services shall be borne by the users of those unbundled elements.

A couple of aspects of this section of the bill could be improved, however. For example, section 242 establishes that when facilities-based exchange carriers interconnect and deliver calls from one to the other, each carrier shall pay the other to terminate calls. This is perfectly reasonable.

It seems to require in addition, however, that each carrier must charge the other a rate that is based on the incremental cost of terminating a call. This would be reasonable if the two carriers were comparable, with similar networks and with similar histories of universal service obligations. This is not the case.... The existing local exchange carriers, like Bell Atlantic and some 1300 other companies, have built and paid for ubiquitous networks that reach every farm and inner city, every mountain top and back woods cabin. As common carriers, they have built extra capacity to ensure that they will be able to serve any customer who wants a telephone. This has been enormously expensive. The bill would ignore these facts and would allow the new competitive providers to get the benefit of these networks without having to bear any of the costs of their construction or maintenance.

Therefore, we would propose that the Committee substitute the following provision for section 242(b)(2)(A):

> "(A) IN GENERAL.—For purposes of paragraph (1), the terms and conditions for interconnection of the network of a competing provider of telephone exchange service shall not be considered just and reasonable unless such terms and conditions provide for the recovery by each carrier of costs associated with the termination on such carrier's network of calls that origi-

[1] 569 F. Supp. 1057, 1108 (D.D.C.), *aff'd*, 464 U.S. 1013 (1983).
[2] Interim Order at 4, Case No. PUC850035 (June 30, 1986)

nate on the network of the other carrier, including costs associated with the construction and maintenance of a ubiquitous telephone exchange network and the provision of universal service."

We will continue to work with the staff to suggest other improvements.

DEREGULATION

We strongly believe that competition is best for consumers and that unnecessary regulation harms both consumers and the regulated industries. Regulation is needed only where the marketplace has shown that it is unable to protect consumer interests. Congress should certainly not impose *new* rules and regulations where there is no public need for them.

H.R. 1555 generally moves in the right direction. It eliminates rate-of-return regulation at both the federal and state level and all price regulation for services that are truly competitive. Even where deregulation is not yet possible, it ensures that telephone companies have pricing flexibility to respond to competition. These are all much-needed reforms. We would urge that the bill take the logical and necessary next steps of applying these same rules to services regulated at the state level.

On the other hand, an eight-page section of the bill describes new regulations which the Commission must adopt concerning a carrier's use of information it has about the services it provides to its own customers. There is no problem here that needs to be fixed and the rules outlined in the bill would make it more difficult for our customers to deal with us. Every time the Commission has looked at this issue in recent years, it has found its existing rules satisfactory. Congress should not require yet another re-look at this time.

Thank you.

Mr. FIELDS. Thank you, Mr. Cullen.

Mr. Richard Devlin, executive vice president and general counsel, the Sprint Corporation.

Mr. Devlin.

STATEMENT OF RICHARD DEVLIN

Mr. DEVLIN. Thank you, Chairman Fields, for the opportunity to appear at this hearing and to share Sprint's views on the proposed legislation.

First, Sprint congratulates you, Mr. Chairman, the subcommittee, the full committee, and the staff for producing the Communications Act of 1995 as a result of a great deal of hard work, cooperation, and coordination among many parties, and the bill is also a testament to our your leadership, Mr. Chairman, in bringing together and balancing such a diverse group of competing interests in such a comprehensive bill.

Sprint believes that this bill could, as the framers intended, break up the local monopolies, lower consumer costs, broaden choices, create innovative new products and thousands of new jobs. We are recommending a few modifications which we believe will strengthen the bill and ensure that our common goal of a truly competitive local telecommunications marketplace is achieved.

Sprint believes that Federal legislation is needed to create the basic conditions necessary for local competition to develop. While there have been some encouraging and positive signs on both the legislative and regulatory fronts in the States to encourage local competition, the reality is that there is no meaningful facilities-based competition any place in the United States. This is a consequence in part of heavy Bell involvement in the State legislative process which causes local competition initiatives to be much less aggressive than H.R. 1555. Also, various Bell companies continue to speak the right words about welcoming competition, but they take actions that say just the opposite. Under H.R. 1555 that gam-

ing could be over. H.R. 1555 sets forth a comprehensive checklist of basic competitive conditions. Sprint supports these requirements.

There is some language in the interconnection and unbundling requirements that we would like to see strengthened. We refer to one example in our written testimony and will provide other suggested changes for the record.

Competition in the long-distance market has been one of the greatest pro-consumer success stories of the past decade. Since the government implemented the divestiture of the Bell companies from AT&T, long-distance calling prices have fallen by over 60 percent. New technology has been introduced, the market has grown dramatically, and consumers have benefited. These same results can be achieved in the local telephone market, but the government must take care to assure its actions, especially in removing the antitrust consent decree that prohibits the Bell companies from entering the long-distance market while they still have local monopoly power, do not either harm long-distance competition or reduce the opportunity for local telephone competition to flourish.

It is for that reason that the sequence of local telephone competition first is so important. If the Bell companies are allowed into long-distance now while they have monopoly power, their incentive will be to use that power to capture as much of the long-distance business as possible and then route that exclusively on their local access facilities, thereby foreclosing the lucrative access market to potential facilities-based competitors. In other words, if you let the Bells in first, facilities-based local competition will not occur.

We commend the inclusion of a waiting period in the bill before the BOC's can apply for long-distance relief. We think that significant progress can be made in 18 months, but it is going to take more time for facilities-based local competition to occur broadly.

Sprint and its three cable partners, TCI, Comcast and Cox, have announced this Nation's most aggressive assault on the local Bell monopolies, but even with such an accelerated approach that includes spending billions, it is a multiyear undertaking. We are concerned about the provision in the bill that allows BOC's to offer long-distance service in those States where an actual competitor did not seek to enter in 18 months.

Mr. FIELDS. Mr. Devlin, could I ask you to summarize, please.

Mr. DEVLIN. Yes.

Finally, Mr. Chairman, we are very pleased that the bill contains an impartial role for a government agency to evaluate and approve the BOC's compliance with a competitive checklist. Sprint supports the bill. We would like very much to work with you to make it stronger. We need a bill, and we are going to work for it.

[The prepared statement of J. Richard Devlin follows:]

PREPARED STATEMENT OF J. RICHARD DEVLIN, EXECUTIVE VICE PRESIDENT, SPRINT CORPORATION

Thank you, Chairman Fields, for the opportunity to appear at this hearing and share Sprint's views on the proposed legislation with the Subcommittee. Sprint's comments are focused primarily on two aspects of the legislation: the groundrules for opening up local telephone markets and the closely related issue of overriding the Bell System antitrust consent decree (or MFJ) to allow the Bell Companies into the long distance telecommunications market. Given the extraordinary impact of telecommunications on the U.S. economy, this legislation is one of the most important matters to be considered by the 104th Congress.

In that regard, Mr. Chairman, you, the Subcommittee, the full Committee and the staff are to be congratulated for producing the "Communications Act of 1995" (H.R. 1555); it's the result of a great deal of hard work, cooperation and coordination among many parties. The bill is also a testament to your leadership in bringing together and balancing such a diverse group of competing interests in such a comprehensive bill.

Sprint believes that the bill could, as the framers intended, break-up the local monopolies, lower consumer costs, broaden choices, create innovative new products and thousands of new jobs. We are recommending a few modifications which we believe will strengthen the bill and ensure that our common goal of a truly competitive local telecommunications marketplace is achieved.

COMPETITION IS THE KEY

The thrust of H.R. 1555 is to allow competition in all facets of information delivery. Sprint fully supports this goal and is prepared with its cable partners to invest billions of dollars to compete against the Bell monopolies, just as it spent billions of dollars to compete against AT&T in the long distance market when that monopoly was broken up by the MFJ.

It is indisputable that the introduction of competition into the nation's long distance telecommunications market has been a great success. The challenge before Congress now is to create the environment that will encourage competitive entry and bring those same benefits to local telephone customers.

LOCAL COMPETITION GROUNDRULES

Sprint believes that federal legislation is needed to create the basic conditions necessary for local competition to develop.

While there have been some positive legislative and regulatory initiatives in the states to encourage local competition, the reality is that no meaningful facilities-based local competition has developed anywhere. This is a consequence, in part, of heavy Bell involvement in the state legislative process, which causes local competition initiatives to be much less aggressive than H.R. 1555. Also, various Bell companies continue to speak the right words about welcoming competition but take actions that say just the opposite. Under H.R. 1555, that gaming could be over.

H.R. 1555 sets forth a comprehensive "checklist" of those basic competitive conditions, including the requirement that incumbent telephone companies must provide to new entrants: equal access to and interconnection with local networks to achieve full interoperability; reasonable and nondiscriminatory access on an unbundled basis to databases, signaling systems and other facilities or necessary information; access to poles, conduits and rights-of-way; resale without unreasonable restrictions; number portability; and dialing parity. Sprint fully supports these requirements.

There is some language in the interconnection and unbundling requirements that we'd like to see strengthened. For instance, we are concerned that the Bell Companies may try to avoid fully implementing some of the important interconnection elements by asserting that such may not be "economically reasonable." We would like to see that phrase defined in the bill so that it cannot be used as a loophole. We will bring to the attention of the Subcommittee and staff other minor changes that, we believe, would better advance the goal of local telephone competition.

BELL COMPANY ENTRY INTO LONG DISTANCE

Competition in the long distance telecommunications market has been one of the greatest pro-consumer success stories of the past decade. Since the government implemented the divestiture of the Bell Companies from AT&T, long distance calling rates have fallen by over 60%, new technology has been introduced at a rapid pace, the market has grown dramatically and consumers have benefited. These same results can be achieved in the local telephone market.

But, the government must take great care to assure its actions—especially in removing the antitrust consent decree that prohibits the Bell Companies from entering the long distance market while they still have local monopoly power—do not either harm long distance competition or reduce the opportunity for local telephone competition to develop and flourish.

It is for that reason that the sequence of local competition first is so important. If the Bell Companies are allowed into the competitive long distance market while they still have local monopoly power, their incentive will be to use that power to capture as much long distance traffic as possible, which would then be routed exclusively on their own local access facilities, thereby foreclosing the lucrative access market to potential facilities-based competitors. In other words, if the BOCs are al-

lowed to leverage their existing local monopoly to impair long distance competition, no facilities-based local competition would occur. Moreover, a decade of consumer gains in the competitive long distance market would be jeopardized.

The bill would require the presence of a facilities-based telephone exchange service provider in a state before a BOC can provide interLATA long distance service in that state. We interpret this provision to require a viable facilities-based wireline local competitor providing dial-tone services to both residential and business customers, and we request such language clarifications as necessary to remove any doubt as to the intended meaning of this provision. Sprint believes that this provision may be the most important in the bill, because it creates the proper incentives for the Bell Companies to open their local monopoly networks to competition and gives some assurance that local competition will become a reality. We congratulate the bill's framers for including this critically important safeguard.

We also commend the inclusion of a waiting period before the BOCs can apply for long distance relief. This will allow time for the regulators to establish necessary rules and for potential competitors to formulate plans and undertake negotiations with BOCs in targeted markets. Significant progress can be made in 18 months, but it will take more time for facilities-based local competition to occur broadly throughout the country.

Sprint built the nation's first all fiber, digital network, which forever changed the landscape of long distance competition. That multi-year endeavor would today be considered modest when compared to the logistical and financial challenge of making local competition a reality. Sprint and its three cable partners—TCI, Comcast and Cox—have announced this nation's most aggressive assault on the local Bell monopolies. But even with such an accelerated approach that includes spending billions, it is still a multi-year undertaking to establish the broad penetration that the Sprint-Cable Venture hopes to achieve. Sprint is concerned that allowing BOCs to offer long distance in those states where an actual competitor did not seek to enter the market within 18 months, would create the unintended consequence of ensuring that those states never have local competition.

In addition, while the bill requires the Bell Companies to provide some services (electronic publishing) only through a fully separated corporate subsidiary, no such requirement exists for long distance. We believe the same cross-subsidy, discrimination and other concerns exist with respect to long distance, and that a separate subsidiary requirement should be imposed.

Finally, we are pleased that H.R. 1555 provides a role for an impartial government agency to evaluate and approve the BOCs' compliance with the competitive checklist. Our experience in the states is that there can be and are a considerable number of areas where there can be good faith but heated disputes between the parties over precise implementation details. The federal government, in our view, is the appropriate overseer to ensure lawful conduct—as it was in long distance—during the transition from local monopolies to a competitive marketplace. We appreciate and support Congress' desire to minimize government intrusions into private business; but, in this case, we also believe that federal government involvement is critical to a successful transition to competition.

THE BELL COMPANIES ARE NOT SPRINT

In the course of the debate, some have argued that the Bell Companies should be given the same opportunities to participate in both local and long distance telephone markets as does Sprint. These arguments, however, often fail to reveal critically important factual and legal differences.

Sprint's local telephone operations provide about 6 million access lines (or approximately 4% of the market), mostly in rural areas scattered across 19 states. The U.S. Department of Justice has examined these facts at least three times since the advent of long distance competition and consistently determined that Sprint's local telephone operations lack market power and the ability to harm long distance competition.

Each Bell Company, on the other hand, provides monopoly service in a region with great traffic concentrations. In total, the Bell Companies cover over 80% of the U.S. market, including almost every major city. Equally important, the Bell Companies (unlike Sprint) have been subject to numerous government and private antitrust lawsuits, where their abuse of the local bottleneck to impede competition in the long distance and other markets has been well documented.

CONCLUSION

Sprint is committed to helping Congress pass meaningful and fair telecommunications reform legislation this year, and to making local telecommunications com-

petition a reality across the country. We look forward to working with you, and with Chairman Bliley and other members of the Committee, toward successful passage of this critically important legislation.

Thank you very much.

Mr. FIELDS. Thank you very much.

Mr. Royce Holland, president and chief operating officer for MFS Communications, we welcome you and your accent before this subcommittee.

STATEMENT OF ROYCE J. HOLLAND

Mr. HOLLAND. Thank you, Mr. Chairman and members of the committee.

I would like to congratulate you and the entire committee for a very comprehensive approach to telecommunications reform. I think that this bill correctly addresses many elements essential to opening the local exchange monopoly including, number one, the inclusion of a mutual and reciprocal composition for traffic exchange between competing local carriers; two, nondiscrimination for city franchises and access to polls and conduits and so forth where new entrants can enter the market in a timely manner; and number three is the elimination of a joint marketing restriction which was included at the eleventh hour in Senate bill 652 that would have a very bad impact on a lot of existing businesses including ourselves and about 30 to 40 other entrepreneurial companies that bundle local and long-distance service, a lot of it being resold to Bell company service and providing that service to small businesses and residential customers. That is the only thing in the Senate bill that essentially provides some type of new regulatory restriction that impacts on existing business. Other things may impact future opportunity. This really hurts our business and that of many others, and we were very pleased to see that eliminated from the draft bill in the House.

Due to time constraints, I'm going to focus on areas that we have of concern with the bill, although I could go on for quite a while on positives with it.

We think that, looking at the competitive checklist, the concepts are fine. However, some of the language needs a general beefing up, I think, to clarify matters. Specifically, caveats such as technically feasible and economically reasonable, whereas they may sound unobjectionable on the surface, in reality they create a loophole that you can drive a truck through for a lot of the provisions, and we feel that if some of this language is tightened that it can eliminate a lot of time wasted in regulatory proceedings and court proceedings and get the competition out there in the marketplace very quickly where it belongs.

Specifically, there were four areas I wanted to suggest for some general beefing up. The first area is local number portability. The language in the House draft, I would say, Mr. Chairman is about as lean as an old Texas steer that has spent the winter on the range rather than in the feedlots, and I would say to beef him up what we really need here are three things. One is providing for interim number portability as is currently provided by NYNEX, Ameritech, Rochester, and others until true local number portability is available. Two is cost sharing on a competitively neutral

basis of number portability, as is in the Rochester open market plan, and three is the need for an arbitrator like the FCC to specify exactly when true local number portability is technically feasible and economically reasonable. This language is all included in Senate bill 652. We would support it in this bill as well.

The second element has to do with the pricing of the unbundled element and specifically the true bottleneck element which is the local loop between the central office and the customer. We feel that this language should include to the effect that charges be just and reasonable and be cost based. This is definitely technically feasible. It is being done in New York today.

Number three, we feel we need more specific language in removing State and local barriers to entry. I know Congressman Bryant and Congressman Hall brought up exhibit A for why this is needed today, the legislation in Texas that has passed the House and will probably pass the Senate within a few days. It contains a buildout provision that could force new entrants to have to invest tremendous amounts of capital up front in order to be able to compete.

Now Mr. Whitacre this morning testified that you can't believe what you read in the newspapers. I will tell you that I have read the bill itself, and I can tell you, the newspapers were dead right on that there is a requirement that for the big four long-distance carriers to enter the local exchange market they have a very onerous buildout requirement and some ridiculous resale requirements too, and the president of Southwestern Bell of Texas just last week confirmed in testimony to the Senate in Texas that that provision also applies to us. What that bill effectively will do if it is passed, Mr. Chairman, is that local exchange competition will be declared persona non grata in Texas, and it will cause significant harm to the State's economy. I think that could be corrected in the draft bill.

The fourth area involves a universal service provision. We are in agreement that all carriers should contribute. However, we feel the bill could be improved by having a neutral administrator, having contributions targeted to low-income and high-cost rural subscribers, and also having competition for carrier of last resort.

In conclusion, there are two other provisions that I would like for the committee to consider adding to the bill. One would eliminate discrimination in the last 500 feet of local competition, which is access to tenants in buildings. The same provisions that are used for franchises and pole attachments could be used here. Finally, we think that a trust but verify role to determine actual competition would be helpful.

Thank you very much for allowing me to testify and for your leadership in reshaping telecommunications policy.

[The prepared statement of Royce J. Holland follows:]

Prepared Statement of Royce J. Holland, President and Chief Operating Officer, MFS Communications Company, Inc.

Mr. Chairman, members of this Committee, my name is Royce J. Holland, President and Chief Operating Officer of MFS Communications Company, Inc. ("MFS"), an entrepreneurial company seeking to bring competitive choices to business users of local telephone service. I am proud today to announce that MFS currently has a presence in 42 cities in the United States, as well as four international financial centers. In New York, Chicago, and Baltimore, we now offer basic dial-tone and local

92-967 0 - 95 - 4

calling services to small and mid-sized business customers, and we intend to extend this service to many other markets in the near future.

To best accomplish this goal, however, we need your continued support to revamp the federal telecommunications law, which has remained stagnant over the last two generations while the industry has exploded to the point where today it is the most vital sector of the U.S. economy, and perhaps the single-most important component of the global marketplace entering the next century. Particularly, I wish to commend the efforts of Subcommittee Chairman Fields and Committee Chairman Bliley for seizing the initiative in introducing H.R. 1555. This bill represents a significant bi-partisan foundation for the comprehensive, far-reaching overhaul of our telecommunications regulation system. I urge this Committee and the rest of the House to give serious and speedy consideration to H.R. 1555 so that this Congress may be remembered as the one that steered our industry successfully into the next century and ensured that our telecommunications capabilities remain the best in the world.

If we have learned anything from the lessons of recent economic history, it is that technology and markets change rapidly and the innovation needed to stay ahead of these changes frequently comes from the laboratory environment of entrepreneurial companies like MFS, not from staid and bureaucratic corporate enterprises. This situation has certainly been the case of our computer and software industries where icons of American business suffered serious setbacks and were forced to streamline and adopt the flexible and creative operating strategies of smaller enterprises. And now, in the telecommunications industry, the irresistible forces of changing technologies and markets are creating exciting opportunities for today's new entrants who, if legislators allow, may become the vehicles to improve the standard of living in American communities throughout the country and ensure continued American leadership in the world marketplace.

Although you will hear time and again from the Bell Companies and others that competition in local phone service is already well underway, the truth is that competitors to the incumbent local phone companies have captured little more than one-half of one percent of today's local telecommunications market. Even though entrepreneurial companies such as MFS have created limited opportunities to compete in a narrow range of services and markets, we cannot, in most instances, offer real local competition because many local and state policymakers continue to cling to the inherent monopolistic vision of telecommunications propounded for decades by the consolidated Bell system. This misguided view of our industry perpetuates exclusive and preferential treatment of the local phone monopoly. As a result, progress in upgrading our telecommunications infrastructure is held hostage by a patchwork of restrictive municipal and state regulations. Companies like MFS are compelled to spend excessive time and resources combating anachronistic local and state laws and regulations to gain entry into local markets, such that we cannot focus our efforts on the real task at hand—transforming technologies and markets to complete construction of the "information superhighway." In this regard, we hail the policy initiatives contained in H.R. 1555 which we believe will go a long way towards comprehensively opening the way to new products, higher service quality and lower prices in the local telecommunications marketplace.

I ask you today to contrast local telephone service markets with that of the long distance industry. In the long distance industry, competition has spurred the almost continuous replacement of older technologies by advanced systems. Vast sums have been spent by various long distance providers improving the quality and variety of services in that market. Competition in the industry is constantly growing and new competitors are frequently entering the market. As a result, the development of a technologically-advanced "interstate highway" of our nation's long distance communications system is near completion and has been entirely paid for by private investment to the enormous public benefit of communities throughout the country.

Meanwhile, since the AT&T breakup, we have witnessed considerably fewer changes in local exchange markets, where the Bell Companies continue to hold monopoly power and enjoy multiple monopoly protection in most states and localities nationwide. The Bell Companies have been painfully slow to modernize their facilities even when their networks have proven at times incapable of handling the avalanche of increased volume in local voice and data traffic. Even though the Bell Companies were slow to reinvest revenues to upgrade their networks (unless required to do so by state regulators), they have been anything but slow in steadily increasing local telephone rates whenever permitted to do so, ever since the AT&T breakup.

Despite these damaging facts, the Bell Companies have been relentless in demanding immediate entry into new telecommunications markets such as long distance and manufacturing. They do not hesitate to make these demands even while their monopoly control of bottleneck local facilities and anti-competitive practices

have yielded no real choices for over 99% of local telephone service customers! At least the Bell Companies have the good sense to tout what limited progress they have recently made in upgrading their facilities, although they conveniently omit the fact that such progress is most often the result of reacting to emerging competition from entrepreneurial companies like MFS in those areas that enjoy forward-looking regulators.

Against this backdrop, MFS comes before this Committee to reiterate the need for national telecommunications reform to allow competition to truly develop in local telephone service markets. Without such legislation, development of the "on and off ramps" of the information superhighway, which are the essential local telecommunications networks, will develop in a haphazard and incomplete way that is sure to leave many communities and businesses without the tools needed to survive in the "information age."

As the 104th Congress considers the overdue overhaul of the national telecommunications laws, I am encouraged by the initial efforts of Chairmen Bliley and Fields as well as Ranking Member Dingell and other Members of the Committee in forging a strong bipartisan consensus on the basic framework for telecommunications reform as presented in H.R. 1555. The basic framework forged by the Committee goes a long way towards removing the local and state legal barriers to entry that have impaired competitors like MFS from effectively competing against the incumbent local telephone company. As currently drafted, the bill provides a specific "checklist" test that would require incumbent telephone companies to interconnect with competitive carriers in a manner that would allow new entrants to offer a full range of services to prospective customers while not requiring the unnecessary and wasteful duplication of existing monopoly networks. The bill's checklist contains many of the measures necessary to ensure the development of an environment that would foster local competition, including provisions for reciprocal compensation. Although these provisions can and should be strengthened, we believe that it is significant that they are now recognized as integral to the development of competition in the local exchange market.

I also commend the drafters of H.R. 1555 for including a provision in the bill that prohibits state and local governments from assessing discriminatory franchise fees that have long plagued new entrants to the local telecommunications market. Currently, competitive telecommunications providers often are forced to pay franchise fees, usually in the form of a percentage of revenues, as a condition for providing competing local telecommunications services in a locality, while their most imposing competitor, the incumbent telephone company, often pays nothing. H.R. 1555 would require state and local governments, if they choose to apply franchise fees, to impose such fees *equally* on all telecommunications carriers. A similar provision was part of last year's telecommunications reform bills.

H.R. 1555 also properly omits a provision included in the Senate version of telecommunications reform, S. 652, which, if implemented, would effectively wipe out much of MFS' and other competitive providers' businesses. This provision—the so-called "Joint Marketing" restriction—would prevent MFS and many other small to mid-sized entrepreneurial providers from continuing to offer packages of local and long distance service to approximately 70,000 to 80,000 existing customers, even though these companies have the technical capability and regulatory authority to offer such service, and, in some instances, already have been doing so for over a decade. In effect, the Senate provision would saddle the newest and smallest competitors that do not have *any* market power with the same kind of regulatory restrictions reserved by the AT&T Consent Decree for monopoly actors such as the Bell Companies. The House has smartly decided not to follow the Senate's's example and impose such a crippling restraint on emerging competitors. We applaud the drafters of H.R. 1555 for their handling of this issue.

I would like to turn now to areas in the draft legislation that MFS believes could be greatly improved with some fine-tuning. Because of our real-world experience in entering the local telephone business as a challenger to entrenched monopolists, MFS has developed a unique understanding of the barriers to entry that must be overcome to make effective and sustainable competition a reality. With this in mind, let me share with you now those specific provisions that MFS believes should be strengthened in H.R. 1555.

1. Eliminate Potential Loopholes and Overbroad Standards. We urge the Committee to review carefully the section on local competition in H.R. 1555 with an eye towards removing potential loopholes and clarifying ambiguous language that the Bell Companies will almost certainly use to take advantage of their nearly unlimited resources and penchant for regulatory challenges and litigation. Specifically, many of H.R. 1555's unbundling and interconnection requirements imposed on incumbent phone companies, particularly number portability, are qualified by the

open-ended phrase "to the extent technically feasible and economically reasonable." At first glance, language that speaks benignly to "reasonableness" and "feasibility" appears at best helpful to the development of fair interconnection arrangements and at worst harmless to aspiring competitors. Unfortunately, MFS' experience proves otherwise. The Bell Companies often use such indeterminate standards as "reasonableness" or "feasibility" to argue endlessly with regulators and the courts about their proper interpretation as a means to delay and complicate the entry of competitors into the marketplace.

The recent case of MFS' complaint against Ameritech's subsidiary in Illinois provides an illustrative example. In that case, even though MFS had received certification from state regulators to operate as a competitive local exchange carrier in Ameritech's geographic territory in Chicago, Ameritech stubbornly declined to offer MFS the same interconnection arrangements that it offered to other certified carriers. Ameritech argued that MFS was a competitive carrier, unlike neighboring independent telephone companies, and, therefore, discriminatory treatment was "reasonable" as provided for by statute. After considerable debate and lost time and resources, the Illinois Commerce Commission finally ruled against Ameritech and ordered them to treat MFS as any other certified carrier. Ameritech has recently appealed the Illinois Commerce Commission's decision, seeking to overturn it in the courts.

This is but one example of the Bells' behavior when given the chance to challenge ambiguous—or even fairly clear—statutory standards. Any statutory uncertainty or loopholes would add considerably to the Bell Companies' already overwhelming bargaining power in interconnection negotiations with aspiring competitors. We urge the Committee, therefore, to exclude extraneous qualifying legislative language that would only increase the likelihood of costly delay in the form of lengthy administrative proceedings and eventually court litigation with no offsetting public interest benefit.

In the case of the specific qualifying language at issue here, there appears very little need or usefulness to expressly qualify interconnection requirements with the dangerously open-ended conditions of economic reasonableness or technical feasibility. First, the Bell Companies and other incumbent local telephone companies currently accept requests for their network functions, features, and services and receive deposits and other financial assurances associated with bona fide requests. Moreover, there are little to no constraints on the pricing of such products and services. In short, if a seller can attract buyers for its goods or services and can sell such goods or services at a profit in response to those prospective buyers' requests, then by definition the provision of such products and services should be deemed "economically reasonable." Second, H.R. 1555 already authorizes the FCC to issue regulations to implement the bill's interconnection requirements. In this capacity, the FCC could specify under its public interest mandate the kind of technologies or arrangements that would satisfy statutory requirements. Rather than providing the Bell Companies with another opportunity to impede competition, this is one area in which the Congress can rely instead on the expertise of the FCC and that agency's ability to issue reasonable regulations requiring technically available solutions to the bill's interconnection obligations.

2. Strengthen and Make More Explicit the Requirement of Local Number Portability: Require the Immediate Implementation of Interim Number Portability. We are heartened to note that H.R. 1555 contains specific recognition of the importance of local number portability in creating an environment capable of supporting competition in the local telecommunications market. We urge, however, that the reference to number portability within this bill be strengthened and made more explicit. The customer's ability to change service providers while keeping the same telephone number would finally put control of the telephone number in the hands of the proper party—that of the customer! The importance of this requirement to the development of local competition cannot be overstated. MFS strongly believes the ability to change local carriers without being forced to change one's phone number or incurring any unreasonable charges will signal the arrival of real competition in the local market.

In order for this legislation to provide customers control of their local telephone numbers, three important changes to the bill are necessary. First, legislation should recognize and require the immediate availability of *interim* number portability as implemented in the Rochester Open Market Plan, the NYNEX-MFS Agreement, and the NYNEX-Cablevision Agreement. This provision is particularly important since permanent number portability is still on the drawing board and may take a few years to implement. Second, legislation should not condition this critical requirement for local competition on "economic reasonableness or technical feasibility," which only allows incumbent local telephone companies the latitude to avoid or

delay the requirement and is unnecessary given the immediate availability of interim number portability. Legislation should also specify that true number portability replace interim number portability no later than three years after the bill's enactment. Otherwise, the incumbent local telephone companies would have no incentive to develop this capability. Finally, as in the case of the Rochester and NYNEX plans, the actual costs of implementing number portability should be recovered on a competitively neutral basis from all local telecommunications service providers. Legislation that does not expressly address the pricing of number portability will allow local telephone companies to charge excessive fees for such services and effectively stymie its development. Since all telecommunications users will benefit from competition in the local exchange, the costs of implementing true local number portability should be allocated among all local service providers, as was the case for equal access in long distance services (*i.e.,* allowing you to dial "1 + " the area code and number using any one of many long distance providers).

I note that the Senate telecommunications reform bill, S. 652, to be soon considered by the full Senate, explicitly includes provisions for both interim number portability and the competitively neutral allocation of number portability development and implementation costs among all local service providers. We strongly support these provisions and ask the House to add similar provisions in its bill.

3. Clarify and Expand Section on "Intercarrier Compensation between Facilities-Based Carriers." H.R. 1555 includes a section which correctly provides that no interconnection arrangement should be considered "just and reasonable" unless the terms and conditions of the arrangement include some measure of reciprocal compensation. However, we respectfully submit that this section should be expanded to apply to all charges related to unbundling and interconnection between carriers, instead of addressing only the significant but very narrow issue of compensation for the costs associated with the termination of one carrier's local calls on another carrier's network. This section should make explicit the requirement that all compensation exchanged between carriers for unbundling and interconnection services be "just and reasonable," or more precisely, reflect the actual costs of providing the service.

H.R. 1555 also includes a section requiring the incumbent local phone company to impute access and interconnection charges to itself. This section is critical to the completion of reasonable interconnection agreements because it protects competitive carriers from being charged access rates that far exceed the actual additional cost incurred by the incumbent carrier for providing a particular service. Therefore, in order to ensure that *all* unbundling and interconnection charges are covered by this imputation section, we urge the Committee to clarify and expand the bill's language to expressly include *all* charges that become part of interconnection arrangements, including specifically the costs that a carrier incurs in offering unbundled services and elements as described in H.R. 1555's proposed section 242(b)(4)(C).

The success of a "checklist" approach carried out through negotiated interconnection agreements could very well turn on the fairness of compensation issue. For this reason, we request that the Committee give special consideration to the concerns raised above.

4. Include a Provision that Ensures Competitive Local Telecommunications Providers Fair and Nondiscriminatory Access to Customers in Multi-Unit Buildings. MFS believes a provision critical to the development of local competition is missing from H.R. 1555. The bill includes no provision to ensure local telecommunications providers equal access to customer end-users. This omission is contrary to one of the basic principles behind telecommunications reform—to provide customers the freedom to choose among competing firms offering local telecommunications services. We recommend that a provision be added to the bill to ensure customer access to all service providers. Specifically, such a provision should prohibit multi-unit building owners from imposing unilaterally discriminatory fees or conditions on any new local telecommunications provider that are not assessed against the incumbent local telephone company. True competition can only be achieved if all providers enjoy equal access to prospective customers, which means freeing the "last 500 feet" between competitive telecommunications providers' networks and customers' premises from discriminatory treatment by building owners.

With increasing frequency, landlords of multi-unit buildings are either denying access to their buildings or are imposing discriminatory fees or surcharges on new telecommunications providers for the authorization to connect their networks in buildings to serve tenants. In many instances, landlords insist on receiving a percentage of revenues (generally 5%) derived from providing service to customers on the premises as a condition of entering the building. These terms, conditions and surcharges are not imposed on the incumbent local telephone company. Thus, even where new competitors such as MFS are permitted access to customers, they are

significantly disadvantaged competitively because they must bear a significant cost not borne by the local telephone companies—just to reach customers who choose to use our services!

Therefore, we urge the Committee to add a provision to H.R. 1555 that would prohibit building owners from imposing discriminatory fees or conditions on any local telecommunications provider that are not similarly applied to the incumbent local telephone company. Competitors in the local market will find it hard to succeed if they cannot reach end-users on equal and fair terms and conditions. Requiring building owners to treat all providers equally will promote the expansion of competitive service options and prevent a more uneven distribution of such services.

5. Strengthen the Bill's Provision on Preemption of State and Local Barriers to Entry by Addressing Conditions That Practically Deter Facilities-Based Competition. MFS maintains that H.R. 1555 needs to be more specific in removing legal barriers to entry currently imposed or about to be imposed on facilities-based competitors by state and local legislators or regulators. As drafted, H.R. 1555 in new section 243 to be added to the 1934 Communications Act, includes a provision entitled "Removal of Barriers to Entry," which would preclude state or local government authorities from retaining or erecting prohibitive barriers to entry in local telecommunications markets. However, the language in this section, in contrast to the more specific "checklist" provisions, is too ambiguous and does not address the many pernicious kinds of barriers that would "effectively prohibit" competitive carriers from entering the local telephone service business.

Instead of leaving perhaps the most important issue in national telecommunications reform for regulators or courts to interpret in interminable and costly administrative proceedings and eventually litigation, we urge the Congress to adopt language that specifically instructs state legislators and regulators as to the types of conditions that would constitute effective barriers to competition. For example, legislation should prevent states and local governments from retaining or imposing requirements that effectively keep facilities-based competitive carriers out of the market until they commit to construct redundant and prohibitively expensive networks that would completely duplicate major parts of an incumbent phone company's network. This kind of requirement represents the most onerous of burdens because it directly imposes as an entry regulation the single greatest economic barrier that new competitors face in the industry, *ie.*, the cost-intensive nature of completely replicating the infrastructure necessary to compete. Whereas a local facilities-based competitor will hopefully expand by gradually gaining customers and, consequently, attracting new capital to construct costly infrastructure, even this possibility is removed by state regulation that imposes as an entry condition the commitment of full network construction *before* a new entrant can even begin to impact a market. If lawmakers are serious about their desire to introduce competition in local telephone service markets, they cannot permit the imposition of extensive infrastructure construction requirements or other practical barriers as conditions to market entry. However, it is exactly this kind of protection of incumbent Bell Companies that currently exists, or is about to be added, in a number of states' telecommunications regulatory regimes.

At least one state is close to enacting a bill that would require competitive carriers to commit to building extensive in-state networks within 6 years time as a condition of that competitor's certification to offer local phone service. This provision would require companies like MFS to commit to spending hundreds of millions and possibly billions of dollars before even having the chance to develop a presence in the market. In a competitive environment as envisioned by H.R. 1555, market demands and customer needs should determine where and what technologies are employed.

We ask the Congress, therefore, to specifically remove such state-imposed barriers to entry so that MFS and other facilities-based carriers will have a meaningful opportunity to compete and do not have to expend important resources and years haggling over the effect of a particular state provision in front of state regulators and eventually in the courts, especially with regards to a provision that imposes such an extreme burden and most basic barrier to market entry as the extensive build-out requirement discussed above.

6. Maintain Strong and Effective Oversight Mechanisms During the Transition to Local Competition. Beyond the more straightforward and open barriers to entry that states and municipalities impose in the form of statutory or regulatory requirements, MFS and other competitive carriers face more subtle but just as damaging barriers that arise from our efforts to obtain interconnection with the Bell Companies' networks. H.R. 1555 appears to acknowledge the existence of these subtle barriers when it imposes strict, specific requirements on local telephone service providers as preconditions to any negotiated interconnection arrangement. Nonethe-

less, MFS believes that the bill should go further to ensure full compliance and good faith cooperation by the dominant providers even after these agreements are reached.

The Bell Companies have demonstrated time and again that they will not hesitate to use whatever means available to set competitive carriers back in our efforts to compete. For example, a number of times the Bell Companies have charged MFS fees well in excess of $100,000 to install a 10-by-10 foot enclosure for our equipment inside their central offices. In another case in California, Pacific Bell refused to provide us access to a routing feature that we have used for years in offering long distance service, so that we would be forced to route all of our short distance calls to Pacific Bell's network. These are just some illustrations of the kind of behavior we have been forced to fight against in our efforts to gain interconnection with the Bell Companies' networks.

To help remove these more insidious barriers to entry, we ask Congress to make part of legislation an approach that would borrow from a successful foreign policy strategy employed by the Reagan Administration in its negotiations for nuclear arms reductions with the former Soviet Union—that is, the so-called "trust-but-verify" approach. In negotiations with the Soviets, the United States demanded that strong and effective oversight mechanisms be included in any agreements to reduce nuclear weapons, both to make sure that the reductions were actually made and that the different provisions in the agreements, when implemented as an overall program, accomplished the objectives originally agreed to by the parties. We view the Department of Justice as playing a similar role here. The role of the Justice Department would be to "trust but verify" the implementation of statutory, regulatory and contractual provisions applicable to the Bell Companies.

We respectfully submit that no other agency has the background or expertise to play this pivotal role. The Antitrust Division of the Justice Department has considerably more experience and skill than any other government agency in assessing market conditions and judging whether particular business practices interfere with fair competition. MFS maintains that the Justice Department should be given sufficient oversight authority to ensure that the Bell Companies adhere both in theory and practice to the interconnection arrangements required under this bill and to provide an effective enforcement mechanism to force the Bell Companies to comply with any negotiated agreements.

7. Require That Contributions to the Universal Service Fund be Made on a Competitively Neutral Basis and Specify that the Fund Provide Support to All Carriers Serving Targeted Customers. MFS has long held that the mechanism for the calculation, collection and disbursement of universal service funds be non-discriminatory, service provider neutral and should promote consumer choice to the maximum extent possible. Funds should be collected from all local service providers using a non-discriminatory calculation measurement that accounts for the level of a provider's market presence. If all local service providers must contribute, then they should also be eligible to receive universal service support so long as they serve qualified customers. Regulators should not be able merely to designate a single carrier as a universal service provider and thereby foreclose the possibility that any other carrier could provide those same services and qualify for universal service fund support. Any carrier willing to serve qualified customers should be able to receive the fund's support. Legislation should not preclude rural and other qualifying customers from enjoying the benefits of competition.

In conclusion, I wish to thank again the Committee for this opportunity to discuss with you these most important issues and urge the Committee to amend H.R. 1555 to properly address the issues I have raised today.

Mr. FIELDS. Thank you, Mr. Holland.

Mr. Tom Shockley, executive vice president, Central and South West Corporation.

Mr. Shockley.

STATEMENT OF THOMAS V. SHOCKLEY, III

Mr. SHOCKLEY. Thank you, Mr. Chairman.

My name is Tom Shockley. I am executive vice president with Central and South West Corporation. We are headquartered in Dallas, and we are an electrical holding company that own electric operating companies in Texas, Oklahoma, Arkansas, and Louisiana.

I have submitted testimony, and, as you have told everyone else, I am assuming that that will be included, and it addresses many of the issues contained in the bill.

Mr. FIELDS. It will.

Mr. SHOCKLEY. I just have two comments that I think are extremely important that this committee consider as they fine-tune this bill as it moves forward. There has been so much said about great steps being gained with regard to competition and value for customers, and we applaud that and think it is certainly in the right direction.

The two steps that are important to us are that this bill opens up the availability for entry into the telecommunications business by virtually every company in the United States with the exception of the 14 companies that are 35 act companies, registered holding companies. It was spoken to by Congressman Boucher.

We appreciate your comments because we feel like that by allowing an amendment that would allow these companies to participate, it can substantially strengthen the bill and certainly move it in the direction that all of the members of the committee have indicated that they intend this to move, more competition, more access to capital, and we feel like that definitely we should be a player in this market if it is something that makes sense for us and our shareholders.

The other issue that is extremely important, and we would ask for your consideration, is an issue that corrects a situation that is currently contained in the bill, and it has to do with pole contact. In 1978, Congress passed a law that basically allowed the new entrant, that being cable TV, to have access to our poles at a subsidized rate, probably very appropriate then, but, as you heard this morning, the cable TV business, the cable business, is no longer a small upstart of a company, it is a huge, huge business. It is very inappropriate for our electric customers to have to subsidize any part of their being able to serve their customer, and a fair, cost-based rate for this service is what we would ask for you to fix in this bill.

I have no other comments, just those two. Please consider us as being players in this new market that you are moving to, and, second, please fix the subsidy and don't ask our electric customers, many of which can't afford cable TV, to subsidize cable TV.

[The prepared statement of Thomas V. Shockley III follows:]

PREPARED STATEMENT OF THOMAS V. SHOCKLEY III, ON BEHALF OF CENTRAL AND SOUTH WEST CORPORATION

I. INTRODUCTION

Good morning, Chairman Fields and Members of the Subcommittee. I am Thomas V. Shockley, III, Executive Vice President of Central and South West Corporation ("CSW"). Central and South West Corporation is a registered holding company under the Public Utility Holding Company Act of 1935 ("PUHCA").[1] It serves approximately 1.6 million electric customers in the States of Texas, Oklahoma, Arkansas, and Louisiana through its subsidiary operating companies: Central Power & Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company. If our pending merger with El Paso Electric Company is approved, we will also serve portions of New Mexico. My

[1] 5 U.S.C. §79 *et seq.*

views today are consistent with those of the other ten electric registered holding companies.[2]

As Executive Vice President of CSW I am responsible for overseeing all of our company's investment in enterprises other than the traditional utility business. Thus, it is appropriate that I appear before you today to convey CSW's views on participation by registered holding companies in the telecommunications business, the problems that PUHCA causes for such participation, and finally our separate concerns of the entire industry with the proposed provisions of H.R. 1555 dealing with pole attachments.

II. CSW IS ALREADY IN THE TELECOMMUNICATIONS BUSINESS

It comes as a surprise for many people to find that CSW, like many utility companies, is already in telecommunications by virtue of being in the electric business. The control of an integrated utility system in which all component parts are highly interdependent requires an extensive telecommunications capability. It is critical to our operations to be able to maintain real time control over all of our generating units, often located in remote rural areas, and other essential facilities. In most instances, the only way for us to achieve acceptable levels of telecommunications reliability is for us to own our own systems and equipment, and we are encouraged to do so by our regulators.

At present the CSW system maintains an extensive telecommunications infrastructure:

Central Power & Light Company ("CP&L") has a digital microwave system with a maximum capacity of 672 channels.

Public Service Company of Oklahoma ("PSO") has an analog microwave system with a maximum capacity of 600 channels. PSO also has over 110 miles of fiber optic cable serving the Tulsa area. This fiber system has a capacity of 2016 channels.

Southwestern Electric Power Company ("SWEPCO") has an analog microwave system with a maximum capacity of 300 channels. SWEPCO also has ten fiber links of 31 miles with fiber counts ranging from 12 to 20 fibers. Currently, SWEPCO's fiber terminal equipment provides a maximum of 672 digital channels. SWEPCO is installing between Shreveport and Welsh a 75 mile fiber optic system with 8064 channel capability with 24 fibers to meet internal network demands.

West Texas Utilities ("WTU") has an analog microwave system with a maximum capacity of 300 channels. Several digital microwave spur links are operating throughout our system with 24 channel capacity. The remainder of our operating subsidiaries' telecommunications transport needs are met through leased circuits.

Currently, the four operating subsidiaries operate a total of 148 land mobile radio stations, supporting 3100 truck mobile units and 900 conventional units. CSW is in the process of installing a new state-of-the-art, system-wide land mobile network to replace its outdated land mobile equipment and to accommodate future growth in land mobile needs. Land mobile units are typically interconnected with CSW's microwave and fiber communications systems.

Finally, last year CSW received permission from the Securities and Exchange Commission ("SEC") to form a new subsidiary, CSW Communications. CSW Communications has acquired CP&L's existing 185 mile 42 count fiber optic capacity and other demand-side management fiber in South Texas. CSW Communications will facilitate the expansion of fiber optic capacity throughout the CSW system. In addition, within the current restrictions of PUHCA, CSW Communications will market reserve telecommunications capacity to unaffiliated parties.

In summary, CSW has broad experience with the operation of telecommunications systems.

III. THE PROVISION OF REAL TIME ELECTRICITY PRICING AND OTHER ENERGY INFORMATION BY UTILITIES WILL ENABLE THE INFORMATION SUPERHIGHWAY TO BE BUILT SOONER

The extension of broad band communications over the "last mile" from existing long distance fiber optic lines to homes, businesses, hospitals, libraries, schools and

---

[2] Under PUHCA registered holding companies are generally those that operate multi-state systems. The other ten active registered electric utility holding companies are: Allegheny Power System, Inc., American Electric Power Company, Inc., CINergy, Eastern Utilities Associates, Entergy Corporation, General Public Utilities Corporation, New England Electric System, Inc., Northeast Utilities, Southern Company, and Unitil Corporation. In addition there are three gas registered holding companies: Columbia Gas System, Consolidated Natural Gas Company, and National Fuel Gas Company.

local governments would revolutionize the way that Americans use information. The best description of this potential transformation is clearly the "information superhighway"—a metaphor with which we are all familiar.

Possible consumer applications for the information superhighway are endless, but the immediate problem is how to get it built. Building the last mile will require significant capital, and there are few immediate sources of dependable revenue to justify the necessary investment. However, in this respect electric utilities have a solution.

One of the things that the information superhighway makes possible is real time electricity pricing. With real time pricing consumers are able to adjust their electric consumption automatically according to a continuously broadcast signal of their local utility's prevailing price. Many electricity consuming appliances, such as dishwashers, do not have to be run continuously. Thus, the natural result of making pricing information available is to shift electric consumption away from periods of expensive peak demand towards times when demand is less and prices are lower.

Customers like real time pricing because it will give them lower bills. Utilities like the idea because it will permit them to use their existing plants more efficiently. The environmental community likes the idea because it will allow utilities to defer the construction of new plants. Real time pricing is a potent demand side management tool.

The development of real time pricing is important for development of the information superhighway because electric generation is very capital intensive. Anything that avoids the need for construction of new generation can itself support large capital investment. Thus, real time pricing and related energy information services can be the "anchor tenants" for construction of the last mile because of their ability to help defer new electric generation. For only minimal additional cost, broad band capacity sufficient to support real time pricing and other energy management services can be expanded to allow capacity for additional uses.

Undoubtedly, the information superhighway will eventually be built one way or another. However, if electric utilities are involved in the process it will get built sooner because utilities have immediate applications at hand. In recognition of these advantages, other telecommunications providers such as long distance telephone companies, local access providers, cable TV systems, and local exchange carriers have approached electric utilities to explore development of broad band networks through partnerships and joint ventures. Public Service of Colorado recently announced an alliance with IBM to develop and implement telecommunications services that will allow the utility's customers to manage their energy use.[3] Tele-Communications, Inc., Pacific Gas & Electric Company (PG&E) and Microsoft Corp. have joined together to develop an interactive energy management system that PG&E is testing in California.[4] The economic advantage of partnerships between electric utilities and telecommunications providers has also been recognized abroad. Two British telecommunications companies recently announced that they had formed joint ventures with two large German electric utilities to develop telecommunications facilities in Germany.[5]

Investment in real time pricing and in the infrastructure necessary to provide it is a natural outgrowth of our traditional utility function. We see this technology as a new and significant way of meeting our supply needs. Considering CSW's predominantly rural service territory, it is crucial that CSW be able to begin working immediately with schools, hospitals, telecommunications providers, and other third parties in order to ensure the optimal routing and design of these systems.

CSW is impressed sufficiently with the potential for real time pricing that it has a major pilot project underway in Laredo, Texas involving 2500 homes using a dedicated communications system. We hope to validate the significant energy savings realized in other pilot projects, including some conducted by the Southern Company and Entergy, other registered holding companies. While we seek the ability to invest in telecommunications generally, our focus is on the energy management possibilities inherent in the information superhighway.

---

[3] *"PSC, IBM Form New Venture, Alliance's Goal: Help Ratepayers Manage Energy"*, The Denver Post, Feb. 1, 1995. p.C1.

[4] *"Landis & Gyr Joins Interactive Venture in Calif. With PG&E, Microsoft and TCI"*, Electric Utility Week's Demand Side Report, Feb. 16, 1995, p.5.

[5] *"Germany's Telephone Pie Is Just Too Big To Pass Up"*, The New York Times, Jan. 30, 1995, p. D1.

IV. INVESTMENT IN TELECOMMUNICATIONS IS PART OF WHAT WE CONSIDER TO BE A NECESSARY DIVERSIFICATION STRATEGY

It is important for Congress to realize that the old model of utility operation has changed. As a utility company we used to be able to focus on one thing—the building of large central station plants and their integration in one system. For better or worse Congress changed that with enactment of the Energy Policy Act of 1992 and the creation of exempt wholesale generators. Regardless of what happens at the retail level, we will be forced in the future to look at competitive alternatives in the wholesale bulk power market as an alternative to our own plants. While utilities are likely to retain an obligation to serve and to maintain reliability, we will not automatically be the principal builders of future electric capacity as we were in the past.

Some claim that there cannot be genuine competition as long as utilities stand between their retail customers and competing sellers of power. I do not agree with this view. Any reluctance by utilities to deal with competing sellers is disciplined through regulatory oversight by the Federal Energy Regulatory Commission ("FERC") and State commissions. In effect, utilities today are required by their regulators to act as market representatives or aggregators of demand for their retail customers, regardless of their own preferences. The bottom line results bear this out. Looking at 1992, for example, 63 percent of new generation brought on line was developed by non-traditional generators.

Increasing competition in wholesale generation combined with relatively slow demand growth means that CSW's earnings for our shareholders may become dependent upon the providing of other services, such as telecommunications, as a complement to our traditional utility business. While we have cut our costs and continue to do so, at some point we have no choice but to seek new markets.

Our ability to invest in exempt wholesale generators and foreign utility companies under the Energy Policy Act of 1992 is helpful, but not necessarily enough. The market for wholesale power is vigorously competitive. The basic problem is not that we are afraid of competition, but that we do not have the same range of opportunity available to other companies. We do not have the freedom to compete where we feel most able. In the brave world of competition new players are free to go in and out of what was once the gilded cage of the utility monopoly, but registered holding companies, among all other entities, remain uniquely locked inside. Our competitors can take any business opportunity as they find it: in, out or on the border of the utility business. We, however, remain confined to a narrow set of possibilities.

Power competition is a harsh discipline which will produce losers as well as winners. This fact makes it all the more important that registered holding companies have investment flexibility. Our expectation is that, regardless of what the marketplace produces, regulators will want us to retain an obligation to serve and to ensure reliability. If we have that role, but no longer have the exclusive right to provide new supplies, it becomes all the more important that we be able to maintain our financial strength in other ways.

For some of the reasons already described, telecommunications is a logical diversification choice for us, one that we feel compelled to pursue. There are many reasonable and prudent economic opportunities available to us in other areas as well. However, PUHCA stands as a significant bar to our investment in the information superhighway as well as other areas of diversification. We see no meaningful consumer protection function left in PUHCA. Therefore, CSW urges Congress to consider repeal of PUHCA in the near future.

V. PUHCA IS A SERIOUS IMPEDIMENT TO OUR BUSINESS IN GENERAL AND TELECOMMUNICATIONS DIVERSIFICATION IN PARTICULAR

A. The Requirements of the Act Cause Delays in Business Transactions.

While electric utilities have much to contribute to the information superhighway, PUHCA stands as a significant impediment, and in many cases an absolute bar, to participation by registered utility holding companies in this grand vision. Among other things, the Act pervasively regulates the corporate structure, investments and securities transactions of registered holding companies. The most significant of these requirements are described below.

Under sections 6 and 7 of PUHCA the SEC must generally approve the issuance of securities by any company within a registered holding company system. The Commission can refuse to approve any securities issuance that is not reasonably adapted to the security structure of the issuer and other companies in the holding company system, that is not reasonably adapted to the earning power of the issuer, or that

"is not necessary or appropriate to the economical and efficient operation of a business in which the applicant is lawfully engaged."

Section 12 of PUHCA prohibits loans from a utility subsidiary to the parent holding company. It also requires SEC approval for various intercompany transactions, including loans from the parent to a subsidiary and guarantees by the parent of a subsidiary company's obligations.

Section 13 gives the SEC authority to regulate contracts between companies in the same holding company system for the performance of services or construction or the sale of goods. Generally, such affiliate contracts must be performed at cost.

Under sections 9 and 10 of PUHCA the SEC must approve any acquisition of securities or an interest in any business by a company in a registered holding company system including the parent corporation. The SEC is required to make findings with respect to a number of matters including the consideration to be paid for the acquisition, the effect of the acquisition on the capital structure or functioning of the holding company system, and finally the possibility of detriment to investors, consumers or the public interest.

The practical effect of the above requirements is to make it very difficult for registered holding companies to conduct business outside of their core utility operations. For one thing, ownership of as little as ten percent of an entity by a registered holding company makes the entity a subsidiary subject to all of the above requirements under PUHCA. This fact tends to have a chilling effect on investment by potential partners in the entity. Moreover, despite the diligent efforts of the SEC staff, delay in obtaining required approvals occurs frequently. Unfortunately, market opportunities do not wait for regulatory action, and productive business opportunities are easily lost.

B. Section 11 of PUHCA Stands as an Absolute Bar to Many Transactions.

However, the most troublesome provision of PUHCA is found in section 11. Under section 11 a registered holding company is limited to ownership of "a single, integrated public-utility system and such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system." The SEC has interpreted this provision to require a "functional relationship" between any non-utility businesses to be owned by a registered holding company and its core utility operations.

Under the functional relationship test CSW and other registered holding companies are simply prohibited from taking advantage of many socially productive or economically promising opportunities. As historically interpreted by the SEC, the "functional relationship" test of section 11 prevents registered holding companies from investing in any enterprise that would do more than 50% of its business with nonaffiliated companies or for non-utility purposes.

This 50% requirement serves as a major stumbling block to registered holding company participation in the NII because markets do not segment themselves according to regulatory dictates. For example, the test could frustrate the purpose of the NII by making it impossible for registered companies to serve the needs of the public with the broad band lines that they install for real time pricing purposes. In addition, it may well be necessary to market real time pricing technology with interactive banking or other non-utility end use applications in order to find customer acceptance. Yet the 50% test may stand in the way of such arrangements. The pursuit of digital wireless technology by registered companies for internal communications purposes may have logical combinations with nationwide networks, but once more the investment restrictions of section 11 are likely to preclude such agreements. These and other possibilities indicate why PUHCA poses such a problem for registered holding company involvement in the NII.

Recently, the SEC has moved to loosen the application of the 50% test both in and out of the context of telecommunications investment. In particular, the SEC authorized the Southern Company to form a non-utility subsidiary that will provide 800 Mhz wireless communications both for Southern's utility affiliates and non-utility affiliates without market restrictions.[6] Nevertheless, even with these changes the restrictions of section 11 of PUHCA remain as a major impediment to registered holding company investment in telecommunications.

The extent of CSW's problem with PUHCA is indicated by the fact that in 1993 alone CSW made 138 separate filings before the SEC under PUHCA. The cost of these filings was enormous, whether measured in terms of legal expense, delay or lost opportunity.

---

[6] The Southern Company, SEC Release No. 35-26211 (Dec. 30, 1994); *see also* EUA Cogenex Corporation, SEC Release No. 35-26236 (Feb. 23, 1995).

At the same time as we labor with the difficulties of PUHCA, two exempt holding companies in Texas (both of whom have more assets than CSW) are able to invest in telecommunications or any other business without such restrictions. One of these companies in fact became a significant provider of cable television services. Several other utility companies around the country have owned cable companies, long distance providers and local telephone exchange providers for some time. The solution is not to make these companies subject to the same regulation we deal with since their telecommunications activities have not caused significant consumer problems. The solution is to give registered holding companies a comparable ability to invest.

VI. AT THIS POINT THERE IS NO VALID PUBLIC POLICY PURPOSE FOR DIVERSIFICATION RESTRICTIONS

PUHCA has only two basic policy purposes. One is the protection of investors. The other is the protection of consumers. CSW does not believe it can seriously be said today that the Holding Company Act today provides any valuable investor protection. The capital markets regularly demonstrate that investors will vote with their feet (or their proxies) when they believe that corporate management is not advancing their interests. This discipline is far more effective and efficient than active government regulation could hope to be. Utility investors (both shareholders and bondholders) are no different than investors in other businesses. In both cases the key protection—the requirement for timely and accurate disclosure of financial information—is found in laws other than PUHCA, particularly the Securities Act of 1933 and the Securities Exchange Act of 1934.

With respect to consumer interests, there are only two real concerns with diversification: 1) cross subsidy problems arising from affiliate transactions; and 2) indirect effects on utility cost of capital from diversified enterprises.

The first problem is dealt with if FERC and State commissions have the power to decide whether the cost of items purchased from an affiliate can be passed through in a utility's rates, and if regulators can ensure that any assets sold by a utility to an affiliate are sold at a fair price. In fact, H.R. 912, discussed later in my testimony, ensures that FERC and State commissions do have such ratemaking review over affiliate purchases. In addition, State laws, as well as certain provisions of PUHCA, ensure that sales of assets by utility subsidiaries of registered holding companies to affiliates are subject to regulatory approval.

The second problem is dealt with if FERC and State commissions can adjust for any negative effects of diversified enterprise in setting allowable rates of return for electric ratemaking purposes. In fact, FERC has exercised this authority in the past. Moreover, at the roundtable on PUHCA held by the SEC last summer there was testimony that State commissions routinely distinguish between costs that should be borne by shareholders and those that should be borne by customers.

The remaining policy reason for maintaining diversification restrictions has disappeared. The original object of diversification restrictions under PUHCA was the preservation of regulated utility capital for the purpose of ensuring adequate and reliable supplies of electricity. In turn, the concern with preservation of capital rested on the assumption—valid in 1935 but not in 1995—that utilities had near absolute monopolies in their service territories.

Congress assumed in 1935 that utilities were the only ones who could provide electric service. Utility holding companies had been the financial vehicle through which much of the U.S. was electrified. They had also proved to be vulnerable to financial abuse under the regulatory conditions of the times. So Congress took some pains in PUHCA to ensure that the capital of holding companies would be maintained in order to ensure electric supply.

Today the premise of monopoly on which PUHCA rests has changed, and utilities are not the only suppliers of electricity. If national policy dictates that competitive markets are to ensure incremental electric supplies, then there is little basis for paternalistic concerns with utility capital, or for distinguishing between utility companies and others under PUHCA. In particular, the ascendance of market forces means that there is no real policy justification for the diversification restrictions placed on registered holding companies under the Act.

VII. UTILITY EXPERIENCE WITH DIVERSIFICATION IN THE 80'S PROVIDES NO BASIS FOR OPPOSING CHANGE

At every juncture, diversification opponents cite utility experience in the 80's as the reason why diversification restrictions should not be relaxed for registered holding companies. In fact, utilities that diversified have outperformed utilities that didn't based on such indicators as return on equity, earnings per share, common

stock price, and yield and price to earnings ratio.[7] Various utilities, such as TECO Energy, Black Hills Corporation, and Montana Power, have done very well with diversification. But even if we assume for a moment that the experience was a disaster, it still does not provide a legitimate basis for maintaining diversification restrictions.

For one thing, it is difficult to see how the narrow snapshot of less than ten years' experience outweighs the rest of the historical record. The story of American corporations is the story of the successful evolution of lines of business rather than the static maintenance of them. Thousands, perhaps hundreds of thousands of American companies, have successfully embarked upon new enterprises since the founding of this country. I know of nothing which suggests that utility companies are any more or any less competent than other corporations that have successfully tried new businesses.

It appears that what opponents of diversification really want is a guarantee of success, but that is simply not possible. Business entails risk. Moreover, the fact of risk is just as true inside the utility business as outside of it. In their microscopic scrutiny of failures in diversification, opponents seem to forget that plenty of utility companies have made mistakes in the utility business—ones that far exceed the cost of the worst diversification failures.

There is a business maxim which says "Do what you know." I believe this is good advice which argues against jumping into completely unfamiliar enterprises. The problem with current law, however, is that it takes this useful proverb and turns it into an inflexible regulatory edict. What any company "knows" is a constantly changing matter, and the wisdom of entering a new business should ultimately be a matter of boardroom rather than bureaucratic judgment. The issue for us is one of control rather than appropriate business strategy.

VIII. H.R. 912 ADDRESSES THE NEEDS OF CONSUMERS AND REGISTERED HOLDING COMPANIES

CSW believes that H.R. 912 introduced by Congressmen Gillmor and Boucher with cosponsorship by Chairman Fields and Congressmen Hall, Hastert and Tauzin, takes appropriate steps to allow registered holding companies to enter the telecommunications business while ensuring protection of consumer interests. Specifically, the bill would:

- Allow registered holding companies to engage in providing telecommunications and related services.
- Require such activities to be pursued by means of subsidiaries that are separate from a holding company's utility operating companies.
- Require the maintenance of separate books and records identifying affiliate transactions.
- Require the performance of independent audits at the request of a State commission.
- Clarify that the FERC and State commissions retain their ordinary power to review the pass through in electric or gas rates of the costs of telecommunications services purchased from affiliates.

For all of the reasons discussed in my testimony, CSW urges the Committee to incorporate the provisions of H.R. 912 into H.R. 1555.

IX. THE POLE ATTACHMENT ACT AND PROPOSED AMENDMENTS DO NOT FAIRLY APPORTION ATTACHMENT COSTS AND HARM ELECTRIC CONSUMERS

Finally, Mr. Chairman, I conclude my testimony today by turning to an issue completely separate from our concerns with respect to PUHCA—namely compensation for pole attachments. As members of the subcommittee are aware, in 1978 Congress granted cable companies a temporary subsidized pole attachment rate to foster the growth of the then-nascent cable industry. Originally, the provision was to expire in five years but the cable companies convinced Congress in 1982 to extend the subsidized rate indefinitely. The original intent of the Pole Attachment Act, 47 U.S.C. § 224, has largely been achieved. Today, cable companies are no longer a nascent enterprise but rather part of a successful industry, as cable wires pass by more than ninety percent of the Nation's residences. Now cable companies are seeking deregulation of their industry. We believe that as a condition precedent they should be re-

[7] J. Rollins, "Diversification Redux," Electric Perspectives (Sep./Oct. 1993), p. 15; see also Comments of Central and South West Corporation Part B, *Request for Comments on the Modernization of Regulation of Public Utility Holding Companies,* SEC File No. S7-32-94 (February 6, 1995).

quired to relinquish their federally-subsidized rates for pole attachments. Retention of the subsidized rate serves no public policy interest, as the purpose of the pole attachment statute has now been fully realized. Perpetuation and extension of the subsidy only serve to harm electric utility customers who pay more for electric service when the cost of utility poles is not defrayed fairly by the other companies that use the poles. In order for a truly competitive marketplace in telecommunications to thrive, CSW together with the rest of the electric utility industry believes that subsidies and preferences that distort a level playing field should be eliminated.

After reviewing the provisions of H.R. 1555, which purports to foster competition, the electric utility industry is convinced that the bill actually has the potential to impede competition. Section 105 of the bill amends the Pole Attachment Act by expanding and extending its present scope and granting additional privileges and rights to cable operators and telecommunications companies. First, this Section would expand the definition of "pole attachment" to include attachments by cable television systems for the purpose of providing cable service or any other service. Second, this Section would for the first time empower the FCC to regulate the rates charged by utilities to all telecommunications providers, not only cable television providers. Third, this Section would require the FCC to prescribe new regulations that would have the effect of increasing costs for electric utilities and their customers, while enabling cable companies and telephone companies to pay a disproportionately small share of the costs of the total cost of poles. Finally, the bill, as drafted, would require only electric utility pole owners (as opposed to other pole owners) to provide access to their poles, ducts, conduits or rights-of-ways to cable television systems and telecommunications providers, thus dramatically expanding the present scope of the Act and raising a potential constitutional issue regarding the "taking" of utility property.

The electric utility industry is concerned by the lack of justification for such an extraordinary measure. At present, telephone companies, other telecommunication providers and electric utilities pay negotiated market-based rates for the use of poles. The proposed bill threatens to replace this marketplace competition with regulation that would shift the costs and burdens of pole ownership toward investor-owned utilities and their customers. (We would note that municipal and cooperative electrics are exempt from regulation.) This is counter to Congress' highly touted goal to move away from traditional regulation and toward efficient competition. To remedy the current problems with the Act and to curb future problems with the proposed pole attachment provision, CSW and the utility industry urge a return to the principles of the Boucher Amendment dealing with pole attachments that was approved in the House during the last Congress. The Boucher provision fairly apportioned the cost of providing, maintaining and utilizing the pole among all attaching parties and would solve the problems found in the current version of H.R. 1555.

Chairman Fields, that concludes my testimony. I would be happy to answer any questions.

Mr. FIELDS. Thank you, Mr. Shockley.

Mr. John Anderson, executive director of the Electricity Consumers Resource Council.

STATEMENT OF JOHN ANDERSON

Mr. ANDERSON. Thank you very much, Mr. Chairman. I appreciate the opportunity to present our views before you today.

I would like to note that I am accompanied by Paul Cicio of Dow Chemical who is also chairman of ELCON's Federal Relations Committee and a member of our board of directors.

My comments today are limited to a very narrow issue, and that is proposals to allow registered electric holding companies to enter the telecommunications industry.

ELCON is a national association of electricity consumers. We have only 28 members, many in Texas, but they represent over 5 percent of all of the electricity consumed in the United States today, so we have a very strong interest.

I am also here on behalf of the Coalition for Customer Choice in Electricity, CCCE, which is an ad hoc coalition of over 25 national and State trade organizations and 100 large industrial corpora-

tions. Both ELCON and CCCE support real competition. Our members know well the power of competition since they operate in highly competitive domestic and international markets. Real competition results in customers receiving goods and services at the very lowest prices associated with the quality of service that they desire, but unfortunately we do not have a competitive electricity market today, we don't even come close, and the FERC activities that I think have been discussed are actually a step backwards rather than a step forward.

Customers are captive to monopolistic providers of electricity. They do not have the opportunity to shop for these services. If their local provider is efficient the customer benefits, but if the local provider is for any reason inefficient the customer has no choice but to pay the higher rates. It is in this context that I today address proposals to allow registered holding companies to enter and attempt to compete in the telecommunications industry. Their argument is seductive. They point out that exempt electric companies are allowed to diversify, but registered holding companies say that it is anticompetitive and unfair to keep them at bay. They assert that the entry of registered holding companies into the telecommunications industry would level the playing field and provide additional competition, thus benefiting customers. If this sounds too good to be true, it is. If they are under scrutiny, the fallacies of the registered holding claims are clear.

First, there is absolutely no assurance that registered holding companies would be successful in their proposed ventures in the highly competitive and capital intensive telecommunications industry. Long-distance carriers, especially AT&T, learned very expensive lessons as they transitioned from monopoly to competitive operations. With few exceptions, registered holding companies have exclusively operated in monopoly markets. They have a long and hard learning curve to master, and the probability of failure is high.

Second, the track record of monopoly utility ventures in various diversification attempts is simply terrible. Exempt holding companies have been allowed to diversify into many different businesses unrelated to their electric operations. Their successes have been few and far between while the losses have been significant. My written testimony has some specific examples of that.

The third fallacy is that we should not be concerned about utility diversification because regulators will protect utilities customers from any losses. Unfortunately, regulators themselves have grave concerns, and in fact the National Association of Regulatory Utility Commissioners expressed its opposition to allowing registered holding companies into this business in a May 4 letter to this committee.

A fourth fallacy suggests that proposed legislation allow any registered holding company to participate in telecommunications even if captive customers receive no benefits. It is not sufficient for captive customers to theoretically be held harmless, they should actually benefit from any diversification funded with their dollars or with their creditworthiness. No diversification should be allowed in the name of a customer until the official protectors of the customers have initiated protections that they define as necessary;

and, finally, notwithstanding any stated protections against cross-subsidization in the legislation's language, harm may still come to the captive ratepayers because the government regulation, in attempting to protect the financial health of utilities, may not protect captive ratepayers from the effects of failed diversification. Let's face it, regulation is a poor substitute for real competition when it comes to consumer protection.

There are several ways to protect consumers from possible abuse from failed diversification efforts. One approach would be to try to strengthen amendments to H.R. 1555 to include more stringent regulatory protections. This is a very difficult task. I list seven such protections in my prepared testimony. But such regulatory fixes are difficult to define and implement, and, further, they miss the real problem. The real problem is the fact that electric customers do not have choice. Customers are captive and thus subject to exploitation by monopolists. The solution is not to keep customers captive and allow registered holding companies with monopoly power to diversify into highly speculative activities unrelated to their electric business.

Mr. FIELDS. Mr. Anderson, could I ask you to summarize please.

Mr. ANDERSON. Yes, I will, Mr. Chairman.

The solution is to give customers choice in electricity supplies, the same concept that H.R. 1555 is trying to do for telephone service. Customer choice works, customers want choice, and we would be glad to work with you to try to get it.

Thank you for the opportunity to be here, Mr. Chairman.

[The prepared statement of John Anderson follows:]

PREPARED STATEMENT OF DR. JOHN A. ANDERSON, EXECUTIVE DIRECTOR, ELECTRICITY CONSUMERS RESOURCE COUNCIL

Thank you for the opportunity to present the views of the Electricity Consumers Resource Council (ELCON)[1] on proposals to reform United States communications law. I appear before you today also representing the Coalition for Customer Choice in Electricity (C^3E).[2]

My comments are limited to a very narrow issue: proposals to allow registered electric holding companies (RHCs) to enter the telecommunications industry. Specifically, I address a proposed amendment to H.R. 1555—a bill to promote competition and reduce regulation in the telecommunications industry. H.R. 912 is offered as an amendment to H.R. 1555. H.R. 912 would permit registered utility holding companies to participate in the provision of telecommunications services.

INTRODUCTION

ELCON is a national association of industrial consumers of electricity. ELCON was organized in 1978 to promote federal and state policies that assure an adequate, reliable and efficient electricity supply—but at competitive prices. We have only 28 members. However, these companies represent more than 5 percent of all of the electricity consumed in the United States. A fact sheet listing the ELCON membership is attached to this testimony.

---

[1] ELCON was organized to promote the development and adaptation of coordinated and rational federal and state policies that assure an adequate, reliable, and efficient electricity supply at competitive prices. ELCON member companies own and operate manufacturing and other facilities throughout the United States and in many foreign countries. ELCON member companies produce a wide range of products that are essential for sustaining a robust economy and for promoting and maintaining a high quality of life. These products include: steel, chemicals, petroleum, motor vehicles, aluminum, industrial gases, machinery, glass, paper, food products, textiles, and electronics. The 28 members cogenerate or generate some of their electricity requirements.

[2] C^3E is an ad-hoc coalition organized in February 1995 in order to represent industrial concerns before Congress. Current activities include the combat of PUHCA and PURPA legislation.

C^3E is an *ad hoc* coalition of over 25 national and state trade organizations and over 100 large industrial corporations. C^3E supports greater competition in electricity. However, C^3E is opposed to any changes in the Public Utility Holding Company Act of 1935 (PUHCA) unless and until consumers have choice in the selection of their suppliers of electricity. A listing of the supporters of C^3E is attached to this testimony.

Both ELCON and C^3E support real competition. Our members know well the power of competition since they operate in highly competitive domestic and international markets. Real competition results in consumers receiving goods and services at the very lowest prices associated with the quality of service they desire.

In a competitive market, producers are forced to: (1) produce efficiently and (2) meet the competition in terms of what price they can charge their customers. If any producer were either inefficient or tried to charge more than the market-determined price, consumers would switch suppliers and buy from a competitor.

Unfortunately, we do not have a competitive electricity market today. We don't even come close. Customers are captive to a monopolistic provider of electricity. They do not have the opportunity to shop for these services. If their local provider is efficient, and some certainly are, the customer benefits. However, if the local provider is, for any reason, inefficient, the customer has no choice but to pay the higher rates.

All too often today, consumers suffer by being captive to inefficient monopolistic suppliers who have made large and expensive mistakes. Indeed, some customers pay two, three or four times as much as others for similar service. For large commercial or industrial customers, such rate differentials become penalties equivalent to millions of dollars each year relative to customers fortunate enough to be served by more efficient low-cost electricity suppliers. Those lucky customers might be the competitors of the customer paying the higher rates.

It is in this context that I today address proposals to allow RHCs to enter and attempt to compete in the telecommunications industry. Their argument is seductive. They point out that exempt electric holding companies are allowed to diversify. The RHCs then argue that it is anticompetitive and unfair to keep the RHCs at bay. They assert that the entry of the RHCs into the telecommunications industry would "level the playing field" and provide additional competition in telecommunications, thus benefitting consumers. In fact, they assert that consumers will benefit to the tune of nearly $20 billion dollars per year from a combined program of fiber optics-based load management and demand side management alone. If this sounds too good to be true—it is!

FALLACIES WITH THE RHCS' ARGUMENTS

Under scrutiny the fallacies of the RHCs' claims are clear. First, there is absolutely no assurance that RHCs would be successful in their proposed ventures in the highly competitive and capital intensive telecommunications industry. Long distance carriers, especially AT&T, learned very expensive lessons as they transitioned from monopoly to competitive operations. With few exceptions, RHCs have exclusively operated in monopoly markets. They have a long and hard learning curve to master. The probability of failure is high. The potential for losses is great.

Second, the track record of monopoly utility ventures in various diversification attempts is simply terrible. Exempt holding companies have been allowed to diversify into many different businesses unrelated to their electric operations. Their successes have been few and far between, while their losses have been significant. Some have been absolute disasters. For example: Pacific Enterprises diversified into discount drug and sports equipment retailing, and oil and gas operations. They absorbed $2 billion and brought the company to the edge of bankruptcy. FPL Group acquired interests in cable television, insurance, and citrus fruit production. It has been reported that conservatively, FPL Group's diversification has cost shareholders and the company more than $1.2 billion. Tuscon Electric Power invested in hotel, car financing, real estate, a Tennessee bank, a California savings and loan and other ventures. TEP's stock crashed from a high of $65 per share in 1986 to a low of $3.50 per share in 1991.

Other examples of failed diversification attempts are contained in an attachment to this testimony.

Overall, past utility diversification into non-electric businesses have resulted in failures. Data contained in two Edison Electric Institute studies emphasize this point: Electric utilities had invested over $300 billion in non-utility assets by the end of 1992. The average return on non-utility assets for 1992 was approximately 1 percent. Only 5 of the 52 utilities reporting both assets and return achieved at

or above the utility's rate of return. 24 of the 52 sampled achieved returns of less than 1 percent on assets.

The PUHCA restrictions on RHCs prohibiting them from diversifying into unrelated businesses has benefitted consumers by protecting the RHCs from such failures.

A third fallacy is that we should not be concerned about utility diversification because regulators will protect the utility's consumers from any losses. Unfortunately, regulators themselves have grave concerns. Specifically, proposals such as those contained in H.R. 912 remove jurisdiction over telecommunications transactions from the SEC. By doing so, it creates, and not fills, regulatory gaps.

No single regulator would oversee holding company finances, thereby increasing the risk of business failure.

It is argued that state commissions can regulate transactions directly affecting the regulated electric business. However, RHCs will construct layers of corporations between the public utility (or its holding company) and the communications entity. Specifically, a "communications entity" is defined to include a person who engages in telecommunications activities "indirectly through ownership of securities or any other interest." This permits acquisition and ownership, without advanced federal review, of an unlimited number of corporations, provided each corporation owns a corporation which owns a communications entry. Multiple corporate layers make regulation more difficult, if not impossible. State regulators may not be able to penetrate the many layers, only the final layer. Since transactions between affiliates of RHCs are not regulated at the state level, there would be few conditions, if any, that states could impose that protect ratepayers from direct harm. In addition, FERC cannot fill the gap given the *Ohio Power* decision.[3]

A fourth fallacy suggests that proposed legislation allow any RHC to participate in telecommunications even if captive consumers receive no benefits. It is not sufficient for captive customers to, theoretically, be held harmless. They actually should benefit from any diversification funded with their dollars or their credit worthiness. No diversification should be allowed "in the name of the consumer" until the official protectors of the consumers have instituted protections they define as necessary. Such protections include, but are not limited to:

1. Assuring that the proper rule is "lower of market or fully allocated book" where a utility purchases goods or services from its affiliate.
2. Assuring that the proper rule is "market price" where the utility sells goods or services to any affiliate.
3. Assuring that regulators have access to the books and records of both the utility and all of its affiliates, as well as those of any third party who is or will become a joint venture to the diversification, to the extent that access is relevant to the protections of captive customers.
4. Requiring that the relevant state regulatory authority makes an affirmative finding that it has the authority and the resources necessary to protect consumers prior to the diversification.

Finally, notwithstanding any stated protections against cross-subsidization in the legislation's language, harm may still come to captive ratepayers because government regulation, in attempting to protect the financial health of utilities, may not protect captive ratepayers from the effects of failed diversification. Let's face it, regulation is a poor substitute for real competition when it comes to consumer protection.

H.R. 912 attempts to build a "fire wall" between the utility operations and the diversification efforts. Unfortunately, the wall is neither secure nor high enough for the reasons stated above.

RECOMMENDATIONS

PUHCA was enacted following gross abuses by utility monopolists harmed consumers. Allowing RHCs to enter the telecommunications industry, while consumers are kept captive, is bad policy—sort of a "deja vu all over again."

There are several ways to protect consumers from possible abuse from failed diversification efforts. One approach is to strengthen H.R. 912 to include more stringent regulatory protections. This is a difficult task. For example, provisions such as the following could be added to the existing language: Condition diversification on advance review by a regulatory body to ensure that captive consumers actually benefit from the diversification. Require a determination that prohibits overly complex corporate structures. Preserve the authority of state commissions to determine whether individual registered holding companies should enter a particular tele-

[3] 1954 F.2nd 799 (D.C. Cir. 1992).

communications business. Strengthen the standards for evaluating interaffiliate transactions to prevent cross-subsidization. Clarify that regulatory commissions have the authority to deny any costs they have deemed unreasonable. Require nonrecourse financing of telecommunications investments and prohibit debt guarantees of financing by the holding company or its subsidiaries. Limit financial investment into combined diversification investment to the smaller of a percentage of retained earnings or a percentage of total capitalization. Ensure that regulators and intervenors have access to the books and records of the holding company or any associate company. Prohibit the energy utility from using its monopoly power over captive customers to market telecommunications services.

Such regulatory "fixes" are difficult to define and implement. Further, they miss the real problem.

The real problem is the fact that electric customers do not have choice. Customers are captive and thus subject to exploitation by monopolists. The solution is not to keep customers captive and allow RHCs with monopoly power to diversify into highly speculative activities unrelated to their electric business. The solution is to give customers choice.

Customer choice is a very realistic proposal. It works. Reliability does not suffer. The experiences in many foreign countries where choice is allowed clearly demonstrates this fact. Customer choice will greatly improve the planning process. Those that make investments truly will take the risk. Customer choice will guarantee that activities actually desired by consumers will be forthcoming. That's a great improvement from today's world.

Once customers have choice, the market can and will be able to protect customers from the market power of any supplier. Customers who do not want to pay unnecessarily high prices simply can vote with their dollars—or shuffle their feet—and buy from another supplier. Then, and only then, will all consumers be willing to discuss the amendment, if not the outright elimination, of PUHCA.

Customers want change. We want competition. Sadly, competition is not even close to being a reality in the current electric industry.

Rather than falling for the utility argument that it is unfair to restrict RHCs from making the same mistakes that exempt holding companies have been allowed to make, we believe that is unfair to keep customers captive to utilities that err. Utility's customers, unlike its stockholders, are unwilling partners in diversification efforts. Stockholders who become disenchanted with the diversification decisions can sell their shares and leave. Customers cannot.

It is time for customer choice in electricity! Then, and only then, can consumers protect themselves from utility errors brought about by failed diversifications such as entry into telecommunications.

Unfortunately, proposals now before Congress to allow RHCs into the telecommunications industry have the cart before the horse. They allow utilities to use captive customers as anchors to speculative diversification efforts. They should be opposed.

Prohibiting RHCs from entering the telecommunications industry in no way deprives consumers from the benefits of special managerial experience or skills. Nothing prevents those individuals from setting up their own corporation to engage in these activities.

Thank you for your attention. I look forward to your questions.

Mr. FIELDS. Well, thank you. I thank the panel for your expert testimony.

The Chair will recognize himself for 5 minutes, and, Mr. Levin, let me begin with you. Basically, the same line of questioning that I asked Mr. Roberts earlier.

With a facilities-based competitor being required as a condition for FCC verification—and, again, you know, the intent is that the loop is really open, and I will point out there is healthy skepticism as to whether facilities-based competitors will emerge—and from your company's perspective, could you again gauge the interest that your company has? And I'm not going to ask you to tell us anything that is proprietary, but we would like to have an understanding of, you know, how you see this opportunity to compete.

Mr. LEVIN. Mr. Chairman, our interest is powerful. The only skepticism I see is the skepticism of Wall Street that doubts wheth-

er there will be a bill and there will be certainty in the capital markets in financing our entry into the telephone business.

We are today in Rochester providing telephone service to consumers in apartment houses on a test basis. We are planning to start charging them shortly. We will go into residential areas later this summer. We will then move into New York City. We have applications in Ohio ready to go. We have built a technical center in Denver which is probably, I think, the highest of the art monitoring facility that has been approved by one of the long-distance companies. We are building sonnet rings with self-healing fiber in 18 of our cable systems to provide business telephony and which would also provide redundancy for our residential market, and the irony for me is that in the State of Florida where we have built the most sophisticated switch digital system in the world we are not, up until recently, depending on this bill or some State action, able to carry telephone.

Mr. FIELDS. Let me, again, do the same thing as I did with Mr. Roberts, probe just a little bit. Let's assume that the legislation does pass and it passes in a form very close to what we have introduced, and let's assume that Wall Street finally does get the wake-up call and believes that you are a competitor in that local exchange business. And, again, this is going to be a little redundant, but you do plan to enter the residential and commercial marketplace, and if you could kind of give us a roll-out time.

Mr. LEVIN. Well, our schedule is now. We have now demonstrated to our own satisfaction that we can power our system to provide power in the event of a failure. We have a telephone switch up and ringing. The interconnection that we have made with Rochester Tel, which somewhat parallels the kind of checklist that is in this bill, is now working for us, and at the cable show you could see several manufacturers of what is called a home interface unit which will be manufactured in quantity this summer so that we will be in the residential switched marketplace providing not just normal telephone service but lots of services that aren't otherwise available this year.

If we get this legislation, which is an absolute requirement for us, in a State like Ohio, instead of waiting and having to answer objections and going through a process, there will be the kind of national policy preemption so that we will not have to go through 40 States.

Mr. FIELDS. How many States are you in now?

Mr. LEVIN. You mean applying for telephony?

Mr. FIELDS. No. How many States do you have——

Mr. LEVIN. We are in approximately 36 States.

Mr. FIELDS. In a facilities-based way.

Mr. LEVIN. As a cable operator, yes, although, Mr. Chairman, we are basically clustering in several key States in a geographic pattern very similar to what the telephone companies did around the turn of the century so that we can accumulate a market position to go up against the local telephone companies.

Mr. FIELDS. And is it your intent then to engage in a good faith negotiation to put yourself in a position to offer local telephony?

Mr. LEVIN. Yes. I mean obviously in the State of New York there has been enough of an incentive from the State PUC to have the

kind of negotiation that eventuated in number portability and a lot of the other provisions in this bill.

We appreciate the provision, Mr. Chairman, that you have in this current bill that provides an oversight for good faith negotiations on the kind of interconnection that is absolutely necessary.

Mr. FIELDS. The Chair's time has expired.

The Chair will recognize the gentleman from Massachusetts, the ranking minority member, Mr. Markey.

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

Mr. Levin, I want to say first of all that I agree with your vision 100 percent, and I think you are going to do extremely well in the market, and I compliment you on the vision and the courage which you bring to this issue, and I think that your public statements about how confident you are that you are going to move much more quickly than the telephone companies in getting into their business than they are going to be able to get in your business is probably right on the money, which brings me to my question, because I do think that that is going to be the case technologically.

You state in your testimony on page 7 that it is beyond dispute that the public interest will benefit from competition in the basic local exchange business. Now in support of this assertion you cite in your testimony the lower prices that long-distance competition has brought consumers in that market. You know, the prices in the competitive long-distance business have dropped 60 percent over 10 years while prices in the monopoly local phone service business have risen 13 percent.

In addition, you assert on page 20 that it is axiomatic that prices are constrained by the presence of a credible competitor long before the competitor has actually captured a particular market share. That is certainly the case with cable where there not only is a credible prospective competitor in the form of a telco but a credible actual competitor in the form of DBS.

Now on the previous panel, your colleague Brian Roberts acknowledged that in spite of the presence of an actual competitor in the form of DBS he knows of no operator, no cable operator, anywhere in this country who has reduced his prices as a result of this competition. So under your axiom, this could only be explained if DBS is only a competitor and not a credible competitor. Would you not agree?

Mr. LEVIN. Absolutely not, Congressman Markey.

First of all, we are really talking about not a simple price schedule. Under the current regulatory regime the entire packaging of prices is regulated by the FCC in the implementation of the 1992 Act, so we don't really have much flexibility in pricing, but it is very clear to me——

Mr. MARKEY. There is no restraint on your going downwards.

Mr. LEVIN. And there have been lowered prices.

Mr. MARKEY. So do you disagree with Mr. Roberts that there has been——

Mr. LEVIN. I don't think Mr. Roberts had an ample opportunity to understand—to answer the congressman's question. I think, in fact, the restraint that is imposed on the cable industry now by the competition coming from the sky—and I can tell you as an operating matter that each day we pay attention to service, pricing, pic-

ture quality, because the same cable services are coming from the sky, there is actually more—because they are digital pictures——

Mr. MARKEY. So you don't believe we should wait 15 months to totally deregulate cable then. It should happen right now?

Mr. LEVIN. I think we have been very prudent, the cable industry, in suggesting modest rate deregulation that is reflected in this bill.

Mr. MARKEY. If you believe that DBS is a credible competitor today, then logically you would contend that you should be able to deregulate totally rather than after the next election.

Mr. LEVIN. Congressman, because I am a political realist and the most important thing for me is the passage of this legislation, and I think for the cable industry to act responsibly, to have modest rate deregulation so we can secure passage of this bill that is satisfactory to you, to the administration, as well as to the Republican majority, that is our objective.

Mr. MARKEY. But, you see, I disagree with you. You are not seeking modest deregulation, you are seeking radical deregulation after the next election.

Mr. LEVIN. No, no, hardly.

Mr. MARKEY. Rather than going for deregulation which you believe the marketplace would in fact be able to absorb and protect consumers——

Mr. LEVIN. I respectfully disagree, Congressman Markey. The industry has not sought to overturn the regulation of broadcast basic, which is where the fundamental broadcast station, public educational, and governmental access channels are available. I think under normal circumstances you would have found most industries that would have come in and sought immediate deregulation of the entire package.

Mr. MARKEY. Well, it seems that the need that the cable industry cites for deregulation is the need for capital which they hope will become more readily available from Wall Street once you increase your cash flow.

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

Mr. LEVIN. It is very clear that we do need a bill to provide certainty so that we can construct this national infrastructure for the benefit of our worldwide economic leadership. This is not about cable rates, it is about America's leadership in the information superhighway.

Mr. FIELDS. The gentleman from Ohio.

Mr. MARKEY. If rates are not going to go up, Mr. Levin, if rates are not going up, why do you object to a bad actor provision?

Mr. FIELDS. I don't want to do this to my friend, but I'm going to treat my friend just as I'm treating every other member of the committee.

The gentleman from Ohio is recognized.

Mr. OXLEY. Thank you, Mr. Chairman.

Let me just follow up a little bit with Mr. Levin since I had mentioned TW in my opening remarks and in questions later to the first panel. What is your plan in Ohio? I know you are looking at Cincinnati and Columbus. Are your plans to target both the business lines as well as residential? Can you bring the committee up to date as to where you are in that process.

Mr. LEVIN. The answer is yes, we would like to provide a full range of telephone services. We are currently in many communities providing some business access—that is, connecting businesses to long-distance carriers with dedicated circuits, and we find it helpful to be constructing some of those facilities because ultimately we do want to provide residential switch service, and these business facilities will be helpful redundant wire line capability. But it is our intention in the State of Ohio, if we weren't otherwise precluded, to provide telecommunications services throughout all of our cable systems in the State of Ohio.

Mr. OXLEY. And currently, as I understand it, you are in litigation or at least have issues pending before the Public Utilities Commission of Ohio.

Mr. LEVIN. That is correct, we have to go through, and there have been obvious objections raised to our going into the business, which is precisely why I think it is important for there to be some kind of Federal preemption, or we will be doing it State by State for many years.

Mr. OXLEY. Thank you.

Mr. Devlin, I know Sprint has been seeking capital to build the infrastructure. You have engaged in an agreement—pending agreement with the French and the Germans. I wonder if you could describe that for the committee, exactly why that was contemplated and what you plan to do with that capital.

Mr. DEVLIN. Yes, Congressman Oxley, we would be happy.

Sprint is proposing to enter into a comprehensive global joint venture with two European entities. As part of that, the European entities would like to make a minority investment in Sprint. Each of the two companies would like to make a 10 percent investment in Sprint. The amount of money we are talking about is approximately $4 billion. Sprint could use this money for a lot of things, including funding its joint venture with the cable companies where we recently bid over $2 billion to get capacity for the next generation of wireless. Also, to build out competing facilities-based local telephone companies requires extraordinary amounts of capital, and if our deal goes through and we get the necessary government approvals that is what we intend to use it for.

Mr. OXLEY. Speaking of necessary government approvals, as you know, we have been looking at the whole issue of section 310(b) of the Communications Act as it results in essentially a 25 percent limitation on foreign ownership. Was your company compelled to study all of your investors as to their nationality before you could enter into this agreement with the French and the Germans?

Mr. DEVLIN. Yes. Actually we still don't have approval. You know. The historical context for this bill was a concern that foreign interests during a time of war would take control of the radio waves. But over time it has had the perverse effect of holding up our transaction where two minority investors were 10 percent investors each, and we have in addition roughly 5 percent foreign investors that we determine from our market study. The combination of those threw us over the 25 percent level, and now we have got an application pending at the FCC which our competitors are trying to—they are trying to prevent that transaction from going forward.

Mr. OXLEY. Don't you think that 310(b) presents an artificial limitation on that type of investment, and, indeed, shouldn't companies such as yourselves that are forward looking and seek to grow be able to have access to capital wherever it may be?

Mr. DEVLIN. Absolutely. Access to capital is key. This is a minority investment. The money will create jobs, make us a stronger competitor in the global market, and, you know, as a matter of public policy that kind of thing should not be prohibited.

Mr. OXLEY. Thank you.

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

The gentleman from Michigan, the ranking minority member of the full committee, Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

I have become generally aware of the questions raised by amendments which would permit electrical utilities into the telecommunications business, and the basic idea is a fair one, but Mr. Markey got a communication from the chairman of the SEC which I would ask be put in the record at this time.

Mr. FIELDS. Without objection.

[The letter follows:]

SECURITIES AND EXCHANGE COMMISSION,
WASHINGTON, DC,
May 9, 1995.

The Honorable EDWARD J. MARKEY,
Ranking Democratic Member,
Subcommittee on Telecommunications and Finance,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN MARKEY: Thank you for your letter dated May 8, 1995, regarding H.R. 1555, the Communications Act of 1995, and related legislation, H.R. 912. Provisions in H.R. 912 would amend the Public Utility Holding Company Act of 1935 ("1935 Act") to allow regulated utilities to enter the telecommunications business.

The Commission's testimony of July 29, 1994 before the House Subcommittee on Telecommunications and Finance noted that diversification by public utility holding companies into telecommunications raises significant consumer protection concerns. The Commission is nearing completion of its year-long staff study of the regulation of public holding companies under the 1935 Act. The study will assess the ways in which federal regulation of public utility holding companies can best serve the interests of investors, consumers, and the general public in the years to come. To that end, I believe that it may be advisable for Congress to defer consideration of diversification by regulated utilities into telecommunications until such time as Congress has the opportunity to consider the recommendations contained in the study.

Please do not hesitate to contact me if you require additional information.

Sincerely,

ARTHUR LEVITT,
Chairman.

cc: The Honorable Jack Fields; The Honorable Thomas J. Bliley, Jr.; The Honorable John D. Dingell; The Honorable Dan Schaefer; and The Honorable Frank Pallone, Jr.

Mr. DINGELL. And I was curious. Mr. Cullen, Bell Atlantic is prohibited under the legislation before us from cross-subsidizing its other services. Isn't that so?

Mr. CULLEN. Yes, sir.

Mr. DINGELL. Now, Mr. Shockley, you are here testifying for this provision. Would you be banned by the amendment that you are suggesting from cross-subsidizing, and would you be required to set up separate accounts and so forth the same way?

Mr. SHOCKLEY. Yes, we absolutely would. There would be no opportunity for that to happen.

Mr. DINGELL. Now I'm curious. You have agencies which are regulated—rather, electrical utility companies which are regulated by the States. Those are usually utilities which do business in a single State, and you have a number of them which do business in a number of States. The regulation there is different, is it not? In one instance most of the sales or almost all of the sales are State regulated. In other instances some are regulated by the States and some are regulated by the Federal Government. Isn't that right?

Mr. SHOCKLEY. We have three of our four units completely contained in one State. We have one unit that operates in three different States. The facts are, all of those predominantly get all of their direction with regard to retail regulation at the State level, wholesale regulation from FERC.

Mr. DINGELL. Now who would regulate the units which are regulated—who would regulate the entry into the telecommunications business and the other things of the States which are regulated by the State utility regulatory agencies?

Mr. SHOCKLEY. It would be our expectation that with regard to any regulation that comes from the telecommunications side, that would be the same entity that would regulate that service provided by any other company.

Mr. DINGELL. That would be with regard to the State regulated, but it would be different with regard to those where you have sales which are regulated by the Federal Government.

Mr. SHOCKLEY. Basically we have our wholesale rates set by the Federal Government, by FERC, okay?

Mr. DINGELL. So those States—rather, those utilities which are regulated by the Feds, because they do business in several States, would be regulated differently than those who are regulated only by a single State because they do business entirely within a State, would they not?

Mr. SHOCKLEY. No. We ask for all of our retail rates to be set by each State that we operate in. Even the company that operates in three States has its retail rates set by each of the States that it operates in. Each of those bodies would have full authority to review any expense that is recovered from those ratepayers.

Mr. DINGELL. Now who would regulate to see to it that you didn't use ratepayers' moneys under the amendment we are discussing to cross-subsidize the construction of telecommunications facilities?

Mr. SHOCKLEY. I think that the issue would be more concerned with setting rates that our customers would have to pay.

Mr. DINGELL. I'm not even talking about the rates. I'm just curious, who is going to see to it that there is not cross-subsidization? Mr. Cullen and Bell Atlantic can't. I gather that you may or may not be barred from doing so because of the regulatory structure which you confront. In the case of the States, they could continue to address that question. In the case of Federal sales, they might not. What do you have to say to that?

Mr. SHOCKLEY. Well, with regard to capital formation, that would be a separate issue from actual setting rates, and in fact if your our customers never have to explore or cover any of the cost associated with any of our nonregulated activities, that could not be then any cross-subsidization.

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

Mr. DINGELL. Well, you are more comfortable in that than I am. Mr. Cullen doesn't have a holding company, you have a holding company. Holding companies give you much more freedom to move capital around.

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

Mr. DINGELL. I'll come back and ask further questions.

Mr. FIELDS. The gentleman from Colorado, Mr. Schaefer.

Mr. SCHAEFER. Thank you, Mr. Chairman.

Mr. Levin, I find it a little bit disturbing by the continual harping on the possibility of cable rates when we do have open competition or will have open competition out there even more so in the future, and that is going to take care of a lot of the problems with whatever is charged to the consumer.

The thing that bothers me—and I would like to have you expound on it just a little bit—is, where is it that the current FCC rules hamper your ability to package and market entertainment for your consumers, and also how fast you can respond to the consumers needs right at this time?

Mr. LEVIN. We have probably the most microscopic, micromanaged set of rate regulations American business has ever been subject to in the implementation of the Act. I find that the management of our cable companies spends probably 50 percent of its time trying to figure out, wading through about 1,000 pages of regulations, how to charge the customers so that we can get a reasonable return on our investment because basically this isn't a rate decrease kind of regime, it is essentially setting up a set of tiers and rules and regulations as to how you can package individual program services, so it has very little to do with the consumer, and in fact I think what has irritated the customer more than rates going up or down is the incessant change and notification that services have been moved from one package to the other, and that I think has been the principal difficulty here. I know of no company that can meet its consumer requirements while the packaging format is artificially established in Washington.

Mr. SCHAEFER. I thank the gentleman, and I would like to wholeheartedly support his argument there.

Mr. Anderson, in my way of thinking there are two monopolies left in this country, the telephone service and power distribution, as far as I'm concerned, and just to help the members of this committee who don't deal with the power issues as readily as we do, can you give us an idea on the state of competition in electrical distribution at this point?

Mr. ANDERSON. Yes, Congressman Schaefer, there is a lot of talk today that there is a lot of competition already in the electric industry. There has been an increase in competition in generation of electricity, but it is extremely limited even so, and utilities can put up a lot of barriers even in that particular instance.

But from a customer's standpoint there is no competition. Customers now are locked into the local utility, they really have no choice to buy power from other sources. Some customers, larger ones, perhaps today have a few options available, but many times they are not very economic options. They could generate their own power, or they could try to build a transmission line to hook up to another utility, or some things along that line, but they are rel-

atively limited options. But the smaller customers don't have any options whatsoever, and this is of course the concern.

Mr. SCHAEFER. Mr. Shockley, how much fiberoptic cable has CSW laid in the last 5 years, and how much do you anticipate laying in the next year or so, just approximately?

Mr. SHOCKLEY. We have a little bit of fiberoptic cable in our unit in Oklahoma, about 110 miles. We also have about 150 miles of fiber that we have laid in our Central Power and Light unit in south Texas, and we are currently in a pilot project running some fiber in the city of Laredo to connect a plant which will give our customers considerable choice over their management and use of electricity.

Mr. SCHAEFER. I guess this leads up to my question then, the ratepayers who, unlike the telephone users, in the near future, haven't any choice in who delivers their electricity and they are being forced to pay for the fiber that eventually would be used for commercial telecommunications. Is that correct?

Mr. SHOCKLEY. No. I think that the situation would be that the fiber that we have installed—with the exception of the pilot project in Laredo, the fiber we have installed has been solely for the use of our customers and is in the rate base.

Mr. SCHAEFER. So in other words—but still this is the fiber that would carry telecommunications. Is this correct?

Mr. SHOCKLEY. It could if those facilities were transferred, but at this point we are looking for opportunities to move forward with new facilities that would be in a separate facility. We have just received approval this past year for CSW Communications which would invest in those facilities and be kept separate from the facilities used by the electric customers.

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

The gentleman from Virginia, Mr. Boucher.

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

Mr. Shockley, let's continue with the discussion. Let me go back to your comment earlier concerning pole attachments, one of the more technical areas that I suppose we will deal with, and ask you if the formula that we achieved last year in the bill that was passed in the House of Representatives would satisfy the needs of the electric utility industry with regard to pole attachments.

What we achieved last year was a balance in which everyone would pay fully allocated cost for attaching to the pole with the exception of the cable industry, as it exists today, which would continue to enjoy its current incremental cost rate. But as the cable industry begins to offer something other than cable TV service, as it offers data or as it offers telephony, then on a cable company by cable company basis, as they offer those additional services, they then also would be elevated to fully allocated cost. Is that a fair balance, and would that meet the needs of your industry?

Mr. SHOCKLEY. Well, it would certainly be an improvement over the situation that exists in the bill now, H.R. 1555, and that would probably be a fair solution. I guess I would be of a mind that the industry is quite mature and at some point it seems like fully allocated costs would be fair on all services.

Mr. BOUCHER. Which is precisely where we would wind up, with fully allocated costs being borne by everyone in the rate they pay.

Mr. SHOCKLEY. Right.

Mr. BOUCHER. Let me turn now to the question of electric utilities offering telecommunications services, and the precise issue as raised by Mr. Dingell relates to the potential that the registered companies could cross-subsidize and have their electricity ratepayers bear an inappropriate charge because they would be subsidizing the cost of providing a competitive service, namely telecommunications. I think that would not happen, and let me just indicate why I think it would not, and then I would like your response.

First of all, you would be required to operate your telecommunications business out of an entirely separate subsidiary.

Mr. SHOCKLEY. That is correct.

Mr. BOUCHER. And that separate subsidiary would be required to maintain separate books and records with regard to its business distinct from the business of the electric utility holding company. Beyond that, the State Public Service Commission would in each of the States in which you operate retain the authority to decide what charges could go into the utility rate base, and so it would be a decision for the State PUC to decide whether or not a given investment that you make in fiber optic cable that would be shared between the electricity business on the one hand and your telecommunications business on the other could be placed in your utility rate base and to make decisions with regard to what part of that investment, if any, should be placed in the utility rate base. Is that basically a correct statement of the way that regulation would work?

Mr. SHOCKLEY. Yes, absolutely, and to the extent those services were offered to affiliate companies, those transactions, as you are well aware, get intense scrutiny at the State level.

Mr. BOUCHER. All right. So there are adequate safeguards against the potential of cross-subsidy as you enter the business of offering commercial communications services.

Mr. SHOCKLEY. That is correct.

Mr. BOUCHER. You are a great witness. I want to thank you for those answers.

Mr. SHOCKLEY. You are a great questioner.

Mr. BOUCHER. But Mr. Devlin, let me ask you one question. Mr. Markey complimented the vision of Mr. Levin, a compliment I would like also to extend to Mr. Levin, but also to Sprint for the vision that you have in telecommunications services. With your long-distance and local exchange operations, with your cable alliance, with the new investments that you have made in a nationwide PCS service, with your international service aligned with Dutch—with German and French telecoms to compete throughout the world, I think it truly is a comprehensive vision, and my question to you is this. Given the success of your long-distance service and your six million lines of local exchange service—and there having been no problems presented with regard to your using that local exchange six million lines as a bottleneck that would disadvantage your long-distance competitors in any regard—why is it that the long-distance industry continues to complain that, given that excellent example of the Sprint network and how well it has operated, that we have something to fear from the Bell operating

companies using their local exchange as a bottleneck when they also enter the long-distance business?

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

Mr. Devlin, if you want to answer.

Mr. DEVLIN. Yes, I would. I would very much appreciate the opportunity to answer this question because I understand it comes up frequently at a number of hearings.

I think to answer it first of all I need to explain a little more about Sprint's local telephone companies. We are a very small local telephone company. We are roughly 4 percent of the access lines in the country, but, more importantly, we are diversely spread out over 19 States; 90 percent of our exchanges are 10,000 lines or less; we serve largely rural customers. So, when the Department of Justice looked at Sprint's acquisition of a long-distance company, they said listen, even if the local telephone companies do something there, there is not adequate concentration or size to impair long-distance, in contrast to the Bell operating companies; they are very highly concentrated in regions, and they also have a history that we don't have. That is, they have a history of being defendants in antitrust suits, major antitrust suits, and were found by the judge in the most recent suit of engaging in serious anticompetitive acts. We simply don't have that history. We work hard with our local telephone companies to prevent them in any way from favoring Sprint Long Distance. Sprint Long Distance is a totally separate company from our local telephone companies. Unlike what the bill proposes, we don't come together until we hit the chairman, CEO, of the company.

Mr. FIELDS. Thank you, Mr. Devlin.

Mr. White, the gentleman from Washington.

Mr. WHITE. Thank you, Mr. Chairman, and, Mr. Holland, I would like to put you in the hot seat just for a minute since you have been ignored here for the last little series of questions, and I wanted to ask you a little bit about your experience in the State of Washington. I know that you have got a fiberoptic network that your company operates in the Seattle area. I know also that Washington State has a fairly liberal competitive regulatory regime, allowing some competition in the local loop, and I would like to have you tell us a little bit about your experience in the Seattle area and what you think that tells us about the ability of people to compete with local providers.

Mr. HOLLAND. Yes, sir, Congressman. We are in the process of constructing a network throughout the Seattle-Puget Sound area, a fairly broad network, and we have also installed a state-of-the-art digital switch with both local and long-distance functionality there for providing both local and long-distance service.

The State of Washington was one of the first States to authorize competitive local dial tone, which was about a year ago. They are currently working through a lot of the competitive checklist issues that are very similar to the House bill here. As those are implemented, we are going to see local exchange competition in Washington. I think it will be very robust, and I think the Washington Utility and Transportation Commission is to be commended for being very forward looking.

Mr. WHITE. Have you had an opportunity yet to get into some negotiations with the local telephone provider, with U.S. West and others, and can you tell us what that experience has been like?

Mr. HOLLAND. Yes. That experience has not been very productive anywhere throughout the U.S. West territory, unlike NYNEX and Ameritech, who have been the most forthcoming toward negotiating true competitive local exchange agreements.

For instance, our agreement with NYNEX in New York and the one we signed 2 weeks ago in Massachusetts embody most of the concepts of this bill. Our agreement with Ameritech at the Department of Justice on the Ameritech plan, a very similar type arrangement. U.S. West has in general drug their feet on those, probably not as bad as a couple of the other Bell companies.

Mr. WHITE. Is it your sense, having looked at the bill that is under consideration today, that the sort of things we have included in the checklist would help you solve those problems, or do you think you need more to have the ability to negotiate effectively with U.S. West to get what you need to operate your network?

Mr. HOLLAND. Yes, sir, that checklist would greatly help us to negotiate with U.S. West. I think you know from a concept standpoint, as I testified, if we could beef up a few of the things like number portability and pricing of the unbundled local loops, that would be even be more helpful.

Mr. WHITE. Let me ask you another question just in terms of how you expect to compete with a big company like U.S. West in a local environment. It does strike me that although, of course, they have been there a lot longer and they are a lot bigger and they have got the network, on the other hand, they have been a regulated monopoly for decades and decades. Does that provide an advantage to a company like you that isn't used to being a regulated monopoly and maybe a little more nimble, perhaps able to take advantage of some of the opportunity that is exist in the marketplace?

Mr. HOLLAND. That is a very good question, Congressman White. We are not unique but I would say rare in the communications business in that we have never had a monopoly before and don't enjoy one today, I guess if "enjoy" is the right word. Therefore, our objective isn't to keep U.S. West or the other Bell companies out of long-distance, we just feel that that ought to be used as a carrot to make sure the local loop is opened up and there is actual competition. Once the carrot goes away, there is not a lot left there to get it done.

Whether they will be at a disadvantage, I don't think they will. I think it is a management issue. If you have had a monopoly for 80 years, you do have to make adjustments. I certainly think AT&T in the last 11 years has made adjustments, but I think they all have to recognize they are going to lose market share. In a competitive environment if competition is really working you are not going to keep 100 percent share or even 90 percent share.

Mr. WHITE. I don't want you to divulge any proprietary information, but what kind of market share do you think you will be able to achieve if you are able to compete with them?

Mr. HOLLAND. My feeling is, and I probably shouldn't be so presumptuous to say MFS will do it, but let's say all competitors I

would think over time would achieve probably a similar 40 percent share that the competitors have in long-distance.

Mr. WHITE. Thank you very much.

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

The gentleman Mr. Pennsylvania, Mr. Klink.

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

Let me start with Mr. Cullen. Were you here for the testimony of the first panel?

Mr. CULLEN. Yes, sir.

Mr. KLINK. Did you hear Mr. Whitacre from South West Bell testifying that he is very much interested in getting into the cable business? Is it the same for Bell Atlantic?

Mr. CULLEN. Yes, sir.

Mr. KLINK. I would assume that you have those interests too. Do you have an idea of the amount of time it would take you to get up and running to be competitors with the cable operators?

Mr. CULLEN. Right now we are dependent on two things, Congressman Klink. One is development of the technology that will allow us to install a full service network. We estimate that to be at least a year away, and that same estimate is true for the MMDS system that was referenced earlier. So while we will be running trials and we will be pushing manufacturers, not being one ourselves, our current estimate is that is at least a year away. And, second, we are very dependent on this archaic, outdated, ludicrous FCC 214 process which requires us to file specific technology plans similar to asking IBM what their plans will be 5 years from now, so we have recently had to suspend the filings we made last year and planned the year before and reconsider the technology that we will be using. So those are the two gating factors. Within about a year we hope to be there.

Mr. KLINK. How many subscribers—and I'm asking you in general terms. I understand it is very difficult for you to answer specifically. But how many subscribers do you think you would be able to reach in that year or 15-month period, let's say, going out to January 1997? How widespread would your network be in cable, would you imagine?

Mr. CULLEN. With a full service network it will not be very widespread at all by January 1997, it will just be getting up, and it will be an extension of our current telephone network. If the MMDS digital technology works as we think it will, we may be able to reach, say, 20 percent of our subscribers by that time. So that is a technology that, with transmitters in place, it is a line of sight transmission, and you can reach a significant number that way, unproven and not yet done.

Mr. KLINK. We have heard a lot of testimony here today—of course obviously it is true—that people don't have much of a choice in who their local phone provider is. How much choice would you expect that people in towns like Aliquippa and Beaver Falls and places like that in southwestern Pennsylvania would have in choosing a local provider in that same period of time?

Mr. CULLEN. Well, we haven't come up with the name Metropolitan Fiber Systems because they intend to go to Beaver Falls, Congressman, and so I think it will be some time before you get competition there.

Mr. KLINK. I'm talking about competition for local phones.

Mr. CULLEN. For local phone service.

Mr. KLINK. Okay.

Mr. CULLEN. And that is precisely why we are concerned about the test which requires actual competition. I listened to 2 hours of discussion trying to define actual competition this morning, and we couldn't do it. A perfect illustration of why we need specific ground rules and agreements in a checklist to open the markets for competition.

Mr. KLINK. Who do you see being the competitors to provide that local phone service in some of those communities like the ones I mentioned?

Mr. CULLEN. I also heard this morning from Mr. Allen and others that, while they agree it should be there, none of them had plans to be there themselves in the next several years, so I think competition from the sky—the phrase we heard Mr. Levin use—may describe what is going to happen here. It may appear somewhere, but we don't know. Brian Roberts was the only one that indicated an intent to do it along. Along with their partners in Sprint, their estimates are somewhere between 12 and 24 months to get started.

Mr. KLINK. Okay.

If I could talk to Mr. Levin, the same question. How do you foresee the involvement of companies like Time Warner in local telephone? How long would you think it would take you to do it?

Mr. LEVIN. I think, Congressman, I have already testified that we are ready to go right now. It is not a question of years.

Mr. KLINK. I understand that you are ready, but given the same time frame, out to January 1997, how extensive would you expect during the time frame, so we are comparing apples to apples—how extensive would you expect your network would be in that amount of time?

Mr. LEVIN. Well, we already have a network that covers today nine million subscribers, and it will be 11.5 million by the end of the year. It is a question of being able to add some facilities to those networks in order to carry telephony, and our plan is to start in Rochester this year, go into New York City where we have a million subscribers, and to go into Ohio where we have 700,000 subscribers, and then branch out. So in 1½ years I expect to be in a significant number of our cable systems delivering telephony.

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

Mr. KLINK. How much time are you expecting to compete with Mr. Shockley to deliver electrical services though?

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

The gentleman from Illinois, Mr. Hastert.

Mr. HASTERT. I thank the chairman.

Mr. Cullen, you were here before to hear the other testimony. As you realize, I talk slow and would appreciate it if you would talk fast to get to the answers here.

Mr. CULLEN. I'll do my best.

Mr. HASTERT. I did get cut short. I didn't get Mr. Allen's final answer out here.

Mr. CULLEN. There weren't any, as I remember.

Mr. HASTERT. I beg your pardon?

Mr. CULLEN. There were none, as I remember, Mr. Hastert.

92-967 0 - 95 - 5

Mr. HASTERT. Well, maybe there was a final point to make.

To follow up on the discussion I had with Mr. Allen this morning, if you will recall, one of the things that he said that they had to have—I said, would you have business and/or residential in the final facilities-based competition test. He said no; no, he couldn't have that, he would have to have residential and/or business, in that order. Why do you think he said that?

Mr. CULLEN. Because if we meet that test he will then come up with a third category that we have to have, and so Mr. Allen has no plans to invest a dime in providing residential local service. He will be very happy to resell our service already priced at half its true cost and purchase it and resell it. In fact, as you heard, he would like to discount it by another 50 percent, so we would have to sell it at 25 percent of its true cost. At that rate we will be having Burger King sell it with Whoppers. And so the fact of the matter is that Mr. Allen is not interested in going into the residential local service business, he is interested, as the other long-distance cartel members are, in erecting barriers and tests that we can never meet, no matter how hard we try.

Mr. HASTERT. So you think this is a way to game the system. If you put in a residential test instead of a business test, they could drag this thing out. Big companies like AT&T could cherry pick the business. He did say that when MCI and Sprint came into the business in the early eighties the first thing they went for was for the commercial side of the business.

Mr. CULLEN. Right. It is today, as it has been described by Wall Street analysts, a benign and stable oligopoly with comfortable, stable pricing, no price war but a marketing and advertising war. They are very interested in keeping the RBOC's out. We may in fact disturb the equilibrium of the long-distance market. So I think the record speaks for itself. We are happy to meet every test, every checklist item. Let's just be clear up front, or we will be here 5 years from now debating what real, actual competition is.

Mr. HASTERT. In your opinion then, will it take longer than the 18 months stated in the legislation before you can file or be able to offer any long-distance service?

Mr. CULLEN. I think if we can be very specific and drive the checklist items, as in some way it was done in the Senate, to specific opening requirements so we all understand them, there is no reason to wait 15 months for the FCC to design these rules, and if we can meet these tests and open our markets, then I think we should be allowed in, and I would point out that despite all of the sound and fury, I don't believe AT&T has petitioned to offer local service in more than two or three States, if that, in 12 years.

Mr. HASTERT. Thank you.

Thank you, Mr. Chairman. I got done ahead of time.

Mr. FIELDS. Well, thank you very much.

The gentleman from Illinois Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman.

I would like to step back for a moment from this particular line of questioning and state this. A recent Department of Education study found that only 3 percent of our Nation's schools' classrooms are connected to any network, 90 percent of our classrooms have no phone lines, a shipping clerk at Wall-Mart has more advanced

telecommunications technology at her fingertips than a schoolteacher, the information revolution seems to be leaving our schools behind, and I would like to ask a series of about three questions of Mr. Devlin, if you don't mind.

Do you think that access to our Nation's classrooms should be a core principle of universal services, and, if you do, what are some of the qualities of that core principle?

Mr. DEVLIN. Congressman Rush, tough question; it is really a tough question. In an environment where there are regulated monopolies, which is basically what we have at the local telephone company level right now, as a matter of public policy the regulators can decide to subsidize communications to schools. It gets real hard to do in a competitive environment, that is, to designate, say, Sprint, for example, a long-distance competitor and say that we have some special obligation in that regard. It is a very, very tough problem, the issue of subsidies for social policies. I'm sorry I don't have a good answer for you.

Mr. RUSH. Well, do you believe that the Federal Government has a role to play in promoting access to telecommunications technology to the Nation's classrooms?

Mr. DEVLIN. Well, I think there is a role to play in encouraging that, but for the Federal Government to mandate, I think it is very problematic.

Mr. LEVIN. Congressman, if I could point out that in the cable industry we have not only Cable in the Classroom, which is the program services that are provided to many schools, but I think many cable operators, including our own—I'm not sure where your statistic came from, but we must have a large majority of the schools in our franchise areas we have hooked up to basic cable, and in most of our franchises there is a requirement for what is called educational access and, where facilities are provided to educational institutions in the franchise area, to use television as an educational tool and to plug into the network. So I do think there have been real efforts, and I think it is also something that all the telecommunications industries can devote their attention to. There is no one answer, but we do have examples where it is working.

Mr. RUSH. No further questions, Mr. Chairman.

Mr. FIELDS. The Chair just will state, he appreciates the gentleman's line of questions and points out that in section 250 we anticipate some of the interest of the subcommittee and would look forward to working with the gentleman with his interest.

The Chair now recognizes with anticipation the gentleman from New York, Mr. Frisa.

Mr. FRISA. Thank you, Mr. Chairman.

No high sticking now.

Mr. Levin, I was curious in terms of the technology that you have been employing and plan to employ with regard to providing telephone service, will it continue to be fiberoptics, or will you use wire?

Mr. LEVIN. Well, in fact, Congressman, it is a more elegant technology than the existing telephone system because fiberoptic is connected to the last mile of coaxial cable but the signals that are carried are all essentially digital, so when we offer a telephone service

there is no hard copper wire, it is essentially a radio frequency, so we can turn the signal on and off.

For example, what that means in terms of versatility, that if somebody brings a fax machine home over the weekend and you want to connect that just for the weekend and have the capability, we can turn that on and off with a digital signal as opposed to going in with a copper wire. So in effect the technology itself offers the opportunity for many more services. The fact that it is digital means that there is not a lot of noise, and I don't think we have even applied our ingenuity yet to the kinds of services that can be offered that way. It is no different from sending a movie down the line or accessing a picture from the Time-Life Library.

Mr. FRISA. And what percentage of our your cable system is now fiberoptic?

Mr. LEVIN. We are in the process right now in this year, 12 of our largest systems we are building out, and it takes about 3 years to build out a system, so within the next couple of years we should eventually be at 95 percent of our systems will be completely fibered.

Mr. FRISA. And will the fiber go right into the home, or will it go to a cluster in the neighborhood?

Mr. LEVIN. No. We woke up one day and realized that we had a substantial benefit, and that is the last—what is called the last mile of coaxial cable, the most expensive part of the system, when it is married to a fiberoptic trunk in the neighborhood, can carry all the signals that we need to provide these future services, so that essentially what is called a fiber co-ax hybrid architecture, fiber is taken to the node or to a neighborhood of several hundred homes, not fiber to the curb and not fiber to the home.

Mr. FRISA. Thank you.

Mr. Cullen, what plans does Bell Atlantic have in terms of providing video? Will it be through a wire mechanism?

Mr. CULLEN. Our plans currently are somewhere between the hybrid fiber co-ax system that Mr. Levin just discussed, which had been our filing with the FCC, and a much more serious look now at what is called fiber to the curb, in effect going to a cluster of perhaps 24 homes; hybrid fiber co-ax goes to a cluster of 250 to 500 homes, and as soon as manufacturers can provide us with the technology, with the software platform, and with the integration, we will be building it, we will be there, and we will be offering video services.

I might also point out that the legislation, however, would prevent us from doing this for another 15 months while the FCC recrank through their ground rules and started us all over again. So as written the added rules for video dial tone will actually slow us down a great deal.

Mr. FRISA. Will you also provide telephone service through the fiber?

Mr. CULLEN. We will initially use common facilities but when we get to the home probably maintain separate telephone facilities. As we get enough cable customers though, we will look at opportunities to integrate and run both telephony and video over the same fiber or co-ax cable or copper line, probably exactly the same configuration then that Time Warner will have.

Mr. FRISA. So then it is conceivable at some point in the future that there could be—there will be two fibers running into a neighborhood, one maybe to a smaller cluster than the other, and essentially that is what will happen?

Mr. CULLEN. I think that is the vision, exactly right, and in fact if we can accelerate this process, reduce the rule setting procedures, I think we can begin to achieve that vision in major markets, as Mr. Levin suggested, because we do intend to be there and we intend to be competing on the video side.

Mr. FRISA. Perhaps in my remaining few moments I could ask what your comment is to this proposition. At some point if we get a third and a fourth carrier—I'm concluding, Mr. Chairman.

Mr. FIELDS. The time of the gentleman has expired.

Mr. FRISA. It seems as though it would be inefficient to have three or four or more fiber systems running into a neighborhood or a cluster, and I wonder if there is not a fiber company that would do nothing but lay and control——

Mr. FIELDS. The gentleman's time has expired. I appreciate the tenacity of the gentleman.

Mr. FRISA. Thank you, Mr. Chairman.

Mr. FIELDS. The gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman.

I represent small towns in rural areas in Tennessee, Middle Tennessee, and I want to ask a couple of questions on how they may be impacted by this bill. First of all, I think at least at first it is inevitable there is going to be some amount of cherry picking, and so if that is the case in local service either you are going to have to have a healthy universal service fund or the rural area's phone bills are going to go up, so I might start with Mr. Holland to get your experience.

If a competitor under current law is allowed to resell local phone service in the rural market, does the reseller or the incumbent carrier get the subsidy, and does this bill change that arrangement or not?

Mr. HOLLAND. In general, competition is going to start out in the urban areas. In fact, in a lot of States rural areas and rural telcos are exempted from certification of competitors. It is limited to tier run local exchange carriers, which are large ones. I think over some period of time competition may come to rural areas. Specifically with regard to the question of reselling to provide local exchange service in the rural area——

Mr. GORDON. The subsidy, will you be competing for that subsidy?

Mr. HOLLAND. I would assume that the subsidy would go toward the payment or the upkeep of the local distribution facility, which is the big difference in cost in serving a rural area and an urban area. It is that last wire from the central office to the home.

If the resale price did not include the true underlying cost of that wire, and the upkeep of that wire and the capital expense associated with it, I would assume the subsidy should appropriately go to the company that is owning and maintaining that wire. If the reseller was indeed charged a fully allocated cost specific to that facility they were reselling, then that cost would be recovered from

the reseller and the subsidy should appropriately go to the reseller. So I think it is more a matter of cost allocation.

Mr. GORDON. But under this bill who is going to be the arbitrator for what——

Mr. HOLLAND. Pardon?

Mr. GORDON. Under this bill, how are you going to determine or be an arbitrator for that fee or whether you are being subsidized or not?

Mr. HOLLAND. It is our opinion in that that language should be related more to the long run incremental costs associated with reselling their local loop facility in that regard, and in that regard the reseller would not be necessarily charged the fully allocated costs of retaining the loop. That may be an appropriate case where the subsidy would flow toward the company that owns the wire. I think it could be dealt with either way.

Mr. GORDON. Does anybody else have a quick comment?

Mr. CULLEN. I just want to mention, under the bill there would be a joint committee, State and Federal, and the consensus of the U.S. Telephone Association small telco organizations is exactly what was just said. If they own the facility and have the provider of last resort obligation throughout a territory, that they should be receiving the universal service subsidy.

Mr. GORDON. Let me ask a quick question now of Mr. Levin.

I guess another concern that I have in the small towns and rural areas concerning cable is, under the bill the large cable systems will—I guess it is 15 months before they will be deregulated, yet the small systems are immediately deregulated, and the small systems are probably the most likely to have the least amount of competition. What is the protection that my folks can expect?

Mr. LEVIN. Well here again, Congressman, the signals that are coming from the sky on DBS are primarily directed initially at smaller systems or outside of urban areas, so you have that competition.

Mr. GORDON. But in the next 15 months?

Mr. LEVIN. Oh, it is there now. It is there today.

Mr. GORDON. So you are saying it is more geared toward the rural area than the urban area?

Mr. LEVIN. I'm just stating a geographic fact that the satellite signals, first with the C-band and then KU-band and now with the small dish, have been going into the smaller territories because that is where a lot of that activity began several years ago. So I'm saying that is a competitive constraint.

Second, I think it is important for small systems to have this relief immediately, because what you want in these smaller towns is their ability to upgrade their facilities to provide the kind of services that are going to be in the more urban areas. I think that is very important for small cable operators. They should be freed and released to do the same kinds of things almost immediately and not be hamstrung on rates.

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

The gentleman from California, Mr. Cox.

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

I would like to ask Mr. Levin about set top boxes, if I might. We have had an opportunity——

Mr. FIELDS. Is the gentleman's microphone on?

Mr. COX. I'm sorry, it is, but it is not anywhere near the gentleman.

We have had an opportunity to consider this issue both formally and informally, and I'm hoping we can satisfy every member of the committee that we are doing the right thing, and I know that your concern is that dishonest people not steal your product. Can you think of any technological way that we can harmonize the interests of retailers and others who want to get involved with your interest in protecting your product?

Mr. LEVIN. I think there are several interests here. First, clearly you need a denial device to secure the intellectual property so that we don't have this trading in stolen signals, but perhaps even more important than that is the fact that you have to look at this system. The set top box is not some disengaged piece of electronic hardware, it is an integral part of a distributed processing system that includes what is at the head end of a cable system, the switch that is along the lines, and the set top itself. This is an integrated system.

You are used to looking at a computer that has all these systems within a box. I'm describing a cable system where what is essentially in a computer box is now spread out or distributed throughout the system, and that set top box is an integral part of the system that has to be technologically geared to what signals are being sent, and as a matter of fact from the consumer's point of view there is great benefit in having the cable operator buy and change out in mass production the technological advances in that box; and, finally, I would say to you, Congressman, that in this case the marketplace, that is, the consumer electronics industry the cable industry, everybody dealing with this issue, that is who should be concentrating on some kind of standards. If you try and put them in a bill you will throttle the technological development of really what is the most interesting part of the business.

In Orlando, for example, we have a set top box that is more powerful than any main frame computer that is in existence today. If somebody tried to set standards in a bill, we wouldn't have that set top box going for us today.

Mr. COX. I hope that we can resolve those issue as we move on in the hearings, the markup, and so on.

Mr. Shockley, I wonder if I could ask you to clarify for me part of your testimony that I think I understand but I'm not altogether to sure. Are you suggesting that section 105 of the bill is unconstitutional—that is, the section that you believe might violate your Fifth Amendment rights under the takings clause?

Mr. SHOCKLEY. Your question refers to the current contracts we have for pole attachment?

Mr. COX. I don't know. Your testimony says that, to paraphrase, section 105 of the bill raises a potential constitutional issue regarding the taking of utility property.

Mr. SHOCKLEY. Yes, our concern is that that piece of our business is being subsidized by our electric customers, and we feel like that we should urge you to make a change so that there is a fully allocated cost.

Mr. Cox. I'm just wondering whether you are confident at this point in making a constitutional argument.

Mr. SHOCKLEY. Well, that may be a little bit strong.

Mr. Cox. Okay.

Mr. SHOCKLEY. But I'm afraid if it wasn't strong you all wouldn't fix this, so we were hoping that you would move forward in fixing it.

Mr. Cox. All right. Well, it helps me to know just exactly how much you think is wrong with the provision.

The new regulations that the FCC is going to write under this provision, you say, would have the effect of increasing costs for electric utilities and, I take it, for their customers. How does that work, and how much are we talking about?

Mr. SHOCKLEY. We think that there is an energy management aspect of this that is going to be very beneficial to the customer, and specifically in our pilot project in Laredo, Texas, we are giving a group of customers, 2,500 of them, choice, time of day rates, where they can not use electricity during certain times of the day and then choose to use it when it is cheaper, and our indications are that the customer may, by his own ability to move load from one time of the day to another and virtually have no change in his life-style, perhaps reduce his bill by as much as 15 percent.

Mr. FIELDS. The time of the gentleman has expired.

The gentleman from New York, Mr. Manton.

Mr. MANTON. Thank you, Mr. Chairman.

My first question is to Mr. Levin, and first of all I would join several of my colleagues on the committee in praising Time Warner for its vision and aggressive pursuit of the broad-band interactive network in every home. I think it is right on the mark. Your Quantum System has been a great success in my own district in Queens, New York.

It seems to me that your industry is poised to become a very important competitor in delivering telephone service. Your co-ax and fiber passes more than 95 percent of American homes. What would be the effect on all of your plans if we are unable to get this bill through this Congress as quickly as we can?

Mr. LEVIN. Well, thank you, Congressman Manton.

Obviously it would be a real setback for us. You start with the fact that our capital raising requirements really depend on the certainty of Federal legislation. Without that, I think we are going to have great difficulty.

Second, we are going to have to make our way through about 40 States now that do not have the kind of provisions that encourage the delivery of telephony and telecommunications by cable, and that is going to take us an extended period of time; and, finally, this bill would provide the kind of supervision of mandatory interconnection that is really necessary for us to complete telephone calls; and, lastly, I would say the cable rate deregulation, modest as it is, would be very helpful to us.

So it would be a real setback for us not to have a bill.

Mr. MANTON. Thank you.

My final question is for Mr. Cullen, and if it is proprietary just stop me.

Bell Atlantic must have done some market research about how much of the long-distance market you expect to get within your region once you are permitted to provide long-distance. What are the results of that research, if you can state it?

Mr. CULLEN. Congressman, the fact of the matter is that AT&T is five times the size of the average RBOC. They spend $500 million a year on advertising. They are the most widely recognized brand name in history. Against AT&T, MCI, and Sprint, our expectation is to get single digit market share if we are lucky. We will be a small regional carrier. There is no one in the free world of sound mind and body who thinks that we can remonopolize this market. So it is a very small share. In fact, it is the share that AT&T describes as the inelastic segment of their market, 50 or 60 percent of their customers who do not sign up for their discount plans, whose rates in fact have gone up 9 percent in the last 2 years. We are willing to go for the inelastic segment, $5, $10, $15 a month. We think that is a very good market, and so we are happy to pick up the crumbs, the pennies, the nickels, and the dimes here.

Mr. MANTON. I'm not going to take up a collection for Bell Atlantic, but I think you have been pretty candid, and in spite of the somewhat bleak picture you are very optimistic about the nickels and dimes, so that shows there is competition even at the low end of expectation.

Thank you.

I yield back the balance of my time.

Mr. CULLEN. Mr. Chairman, if we do have a second, I see the light is still on.

Mr. FIELDS. The gentleman from New York has the time.

Mr. CULLEN. Oh, sorry. I just wanted to take 10 seconds on a question Mr. Klink had asked that you reminded me of.

Mr. MANTON. I'll yield.

Mr. CULLEN. That as we pass 20 percent of homes with MMDS at the end of 1996, that does not mean we will serve even a fraction of those homes. So by the end of 1996 I think the telephony expectation in that market is that we will be serving a very small fraction of cable homes, although our transmission may pass up to 20 percent.

I just wanted to clarify that. We do not expect to get 20 percent market share by any stretch.

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

The gentleman from Ohio, Mr. Gillmor.

Mr. GILLMOR. I pass, Mr. Chairman.

Mr. FIELDS. The gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Mr. Chairman, can I come back, let Mr. Klug go ahead of me? I'm just waiting for my question to come down.

Mr. FIELDS. The gentleman from Wisconsin, Mr. Klug.

Mr. KLUG. I hope they are fast. I admire your endurance and thank you and would like to give you the opportunity to see the next panel. So let's hope Cliff has his questions in hand because I'll pass.

Mr. FIELDS. Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

I think the basic question is, under the pole attachments, how they are treated, and do you think they are fair?

I have heard initially from a group of people that are very happy with how we handle pole attachments, the fair and reasonable markup that will be done, but I have heard from others that they don't think it is fair, so I would like a little bit of, shall we say, feedback from you folks. Do you think what we did in the telecommunications bill dealing with pole attachments is fair?

Mr. LEVIN. Yes.

Mr. HOLLAND. I agree as well.

Mr. STEARNS. Is there anyone who dissents?

Mr. SHOCKLEY. How did you word the question? I must if they agree.

Mr. CULLEN. I'm starting to think I must disagree here.

Mr. STEARNS. Do you think the language we use for setting up how the pole attachment—how you would charge people that want to get on the pole is fair?

Mr. SHOCKLEY. In the current H.R. 1555?

Mr. STEARNS. Yes.

Mr. SHOCKLEY. No, we do not.

Mr. STEARNS. Okay, and that is what I would like to know, why don't you think it is fair, and what would you do to amend the bill, to change it?

Mr. SHOCKLEY. Well, we think it needs to go to a fully allocated cost so that each of the users carries an equal burden for the amount of use that is being used rather than a very slanted, subsidized way to calculate that. In the bill that was advanced last year from Congressman Boucher, we had addressed that and were very satisfied with that as being much more fair.

Mr. STEARNS. And that is what I have heard, that somebody has indicated they want to see the Boucher amendment offered again, so I guess more to the point is, do we need the Boucher amendment as a markup under this bill?

Mr. SHOCKLEY. Yes, I think we do.

Mr. STEARNS. Is there anyone else that perhaps agrees with him or feels strongly enough to disagree? I see some hesitation there.

Mr. HOLLAND. Let me just make a comment on it. I think that in the draft bill this issue is covered very well. It is handled on a nondiscriminatory basis, it is cost based, it includes imputation, and it is something that is long overdue.

To give you an example of the anticompetitive aspects of not addressing this issue in the bill, today we pay Bell Atlantic in the Washington, DC, area for conduit lease a factor of five times more than we pay NYNEX in New York City right in Lower and Midtown Manhattan, for the same conduit, the most expensive area in the world. It is unfair, and it is anticompetitive, and I think the bill addresses it very well in order to clean up that particular issue.

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

Mr. FIELDS. Thank you very much.

On behalf of the subcommittee members I want to extend our appreciation for you sitting here and offering expert testimony.

We will now prepare for the third and final panel today.

The Chair would like to reconvene the third panel. We will hear first from Mr. Richard Brown, vice chairman of Ameritech; then Mr. Laurence Harris, senior vice president for MCI; then, third, Mr. Robert Boaldin, president Elkhart Telephone Company; then Mr. Wayne Perry, vice chairman, McCaw Cellular; Mr. Bennett Hooks, president of Buford Television; and then, finally, Mr. Charles Houser, CEO, Corporate Telemanagement Group.

We will begin with Mr. Brown who is the vice chairman of Ameritech.

Mr. Brown, before you begin let me also say to the panel that we would like for you to keep your remarks within 5 minutes. At the end of 5 minutes I will ask you to summarize.

Please begin.

STATEMENTS OF RICHARD BROWN, VICE CHAIRMAN, AMERITECH: LAURENCE HARRIS, SENIOR VICE PRESIDENT, MCI; WAYNE PERRY, VICE PRESIDENT, McCAW CELLULAR COMMUNICATION, INC.; ROBERT BOALDIN, PRESIDENT, ELKHART TELEPHONE COMPANY; BENNETT W. HOOKS, JR., BUFORD TELEVISION, INC.; AND CHARLES HOUSER, CEO, CORPORATE TELEMANAGEMENT GROUP, INC.

Mr. BROWN. Good afternoon. That is fair. Good afternoon, Mr. Chairman and members of the subcommittee. I'm Dick Brown, vice chairman of the Ameritech Corporation. We appreciate the opportunity to return to this subcommittee on behalf of Ameritech.

When I appeared before this subcommittee 2 years ago I predicted that competition from other providers and technologies was just around the corner. I outlined the tremendous consumer and economic benefits competition would bring. I urged the subcommittee to remove the regulatory and legal obstacles to impede competition. I even offered the subcommittee a road map for the transition to full competition. It was Ameritech's Customers First Plan. At the time those predictions seemed brash and Customers seemed to some dangerously radical, but, if anything, my forecast was too conservative. Indeed, even though the debate about reforming the law remains bogged down, competition in the Ameritech States has literally exploded. In fact, just last week AT&T filed to provide local service in Chicago and Grand Rapids, Michigan, and is now running full page ads targeted at Ameritech's current business and residential customers. Three million customers see these ads literally every day. They are coming, and the ad says that it takes little time to get to market.

We at Ameritech do not fear this competition. To the contrary, we believe it will provide maximum benefits to us, to our share owners, to our customers, and to the American economy, and we believe that given the chance to compete we will be successful, but to date we have not been given that opportunity, so we took matters in our own hands.

We first proposed Customers First at my appearance in March of 1993, and finally last month, after more than a year of discussions, we reached agreement with the Department of Justice on the contours of a Customers First long-distance trial to take place initially in Chicago and Grand Rapids, Michigan. The Department has now submitted a proposed order outlining the parameters of

the trial to Judge Greene for his approval. AT&T, MCI, and others have agreed to the trial.

Since we first unveiled the proposal 2 years ago, the underlying framework has remained the same, the facilitation of local competition linked to relief from the modified final judgment long-distance restriction.

Let me stress, however, that we do not view Customers First as a substitute for legislation. It is a limited trial subject to conditions which we believe will prove unnecessary, some of which we agreed to only on a trial basis. We continue to believe that progressive legislative reform is appropriate to provide a permanent national framework for telecommunications policy. We pursued Customers First because conditions in our market demanded action and the legislative logjam showed no signs of breaking.

Ameritech is hopeful that this year Congress will finally provide a breakthrough. We commend you, Mr. Chairman, and the subcommittee on deciding to replace the MFJ's outdated lines of business restrictions with policies that promote rather than restrict competition. We are puzzled, however, by several provisions in the bill that undermine rather than promote balanced and open competition, and in particular I can see no reason for the 18 months delay before Ameritech can apply for long-distance relief. Coupled with the FCC's 90-day review period, the earlier we could receive long-distance entry is 21 months after the date of enactment. Both the Illinois and Michigan commissions have issued orders that would satisfy the checklist in this bill, and we are now in the process as we speak of implementing those conditions.

So a full 15 months of the moratorium are devoted to the FCC promulgation of regulations. We think that is unnecessary. Since the Illinois and Michigan commissions have already examined these issues, tailored their orders to local conditions, we see no reason whatsoever for delaying action in these two States while the FCC gives the same issues yet another look. We believe, Mr. Chairman, we have served our time. I strongly urge you not to hamstring the delay of State regulators who are pursuing procompetitive policies that are consistent with the bill's competitive checklist.

Mr. Chairman, we are ready to compete. Our States are doing everything they can to let us compete, and, most importantly, consumers in our area are demanding the benefits of competition, so we ask you not to deny them that choice.

We thank you for the opportunity to be here today. I will be happy to answer any and all of your questions.

Thank you.

[The prepared statement of Richard Brown follows:]

PREPARED STATEMENT OF RICHARD H. BROWN, VICE CHAIRMAN, AMERITECH CORPORATION

My name is Richard Brown, and I am Vice Chairman of Ameritech Corporation, which provides telecommunications services in Illinois, Michigan, Wisconsin, Indiana, Ohio and Missouri. In addition, we have interests in telecommunications companies in Norway, Poland, Hungary, New Zealand, and other countries around the world. I appreciate the opportunity to appear before the House Telecommunications and Finance Subcommittee today on Ameritech's behalf. The public interest is well served by the close attention that the Congress is now giving to telecommunications

reform legislation. Ameritech supports this effort and applauds the dedicated work that has gone into it.

Legislative reform in the telecommunications field is hardly a new subject. Ameritech's Chairman, Dick Notebaert, testified last year before this subcommittee stressing the urgency of such reform. A year later, the need for a comprehensive national policy that recognizes today's technological and market place realities is even greater. We are hopeful that telecommunications reform legislation will pass in the 104th Congress and be signed into law by President Clinton. Mr. Chairman, I want to recognize your leadership and your subcommittee's key role in getting us there.

My testimony today will focus on three related areas. First, I'll describe the state of competition in the Ameritech region. Second, I'll summarize our Customers First Plan, which includes a proposed long distance trial in Chicago and Grand Rapids recently endorsed by the Department of Justice. Finally, I'll share with you Ameritech's views on H.R. 1555, the Communications Act of 1995.

THE STATE OF COMPETITION

Competition in local exchange service is a reality today in the Ameritech region. We already face competition for business access and local toll service for both business and residence, and several competitors already have been selling local exchange services. Much more competition is around the corner, including recently announced competition from AT&T. Let me give you some of the highlights:

- *Competitive access providers* are now using state-of-the-art fiber technology to serve areas such as downtown Chicago, the Interstate 88 technology corridor in DuPage County, the Interstate 90 corridors, O'Hare airport and surrounding area in Illinois, and Grand Rapids and Detroit, Michigan, providing long distance access alternatives to customers in our region and, increasingly, local exchange service as well. In Chicago, for instance, two leading CAPs are already certified to provide local exchange service and a third, MCI Metro, has applied. The attached map illustrates the extent of this competition.
- *Long distance carriers*, such as AT&T, MCI and Sprint, have announced their plans to compete aggressively in local exchange markets. AT&T has been running full-page advertisements in cities like Chicago, Detroit, Cleveland and Indianapolis which seek to win over our local toll customers. On Wednesday of last week, AT&T applied to regulators in Illinois and Michigan for approval to offer local telephone service in Chicago and Grand Rapids. AT&T's Chairman was quoted as characterizing this as a $90 billion dollar opportunity. AT&T has to do nothing more than file a relatively routine application to compete for *all* of Ameritech's business. Ameritech, on the other hand, has to endure a seemingly endless battle to offer customers what they want.
- *Cable television networks* are fast installing fiber technology that permits them to carry both voice and data traffic. There are already two cable/telephony trials underway just in Chicago. Time-Warner alone plans to carry telephone service over cable systems in 25 cities. A consortium of the six largest cable companies is proposing to build equipment that would allow them to send, receive, and switch telephone signals between cable systems.
- *Wireless technologies*, including cellular service and Personal Communications Services (PCS), also promise tremendous competition against the wireline local loop. AT&T successfully bid to provide PCS in Chicago, and other Bell Companies compete with us for cellular services. With the ongoing conversion from cellular to digital technology and new competition from PCS, wireless prices are likely to become economically competitive with wireline services. Indeed, through our cellular system in Kauai, Hawaii, Ameritech is offering local telephone services in competition with the local telephone company. These changes have led FCC Chairman Reed Hundt to predict that there may be 100 million wireless subscribers within a decade. Hundt, Chairman, FCC, Address Before the Annual Legislative Conference, National Association of Counties 5 (Mar. 5, 1995).

The defenders of the status quo argue that we have the vast number of local customers and until that changes dramatically, we should be barred from the long distance business. They are wrong in concept. Our business, like many other businesses including the long distance business, derives a disproportionate share of revenue from a relatively small number of customers.

On average, 30% of a LEC's revenues comes from 1% of the customer base. For Ameritech, our business customers comprise just 10% of accounts and 33% of subscriber lines, yet they generate about the same total revenues as all residential customers combined. The top 20% of Ameritech business accounts in Illinois generate

81% of business revenue; the top 2% of business accounts generate about 54% of all business revenue. Residential demand is also concentrated so the top third of Ameritech's residential customers in Illinois account for 55% of total residential revenue and 66% of non-local loop revenue. This concentration permits competitors and new entrants to easily target the most lucrative customers.

And, that is exactly what is happening. For example, we estimate that in Chicago and Grand Rapids, CAPS gained 30% of the private line and high capacity business in just three years. More significant are competitive inroads in the local toll business among medium and large businesses. In Chicago, AT&T alone receives about 40% of the revenues from these customers. In Grand Rapids, CAPs and long distance carriers have captured over 60% of large business. Recently, we have seen the impact of local competition grow to residential customers' toll calls and local services. Many of the long distance carriers have strongly marketed so-called dial-around calling. AT&T, in particular, has targeted residential customers.

Consumer demand for "one-stop shopping" for telecommunications services is leading to rapid business integration between long distance carriers, CAPS, wireless companies, and cable systems—all pursuing both local exchange and interexchange service in one form or another. Ameritech today has less than half of the total revenue from the average customer's total telecommunication usage, including local, long distance and cellular services. This trend toward complete end-to-end telephone service is typified by the AT&T/McCaw merger but is visible everywhere as new joint venture announcements appear in the press on almost a daily basis. The import of these changes is clear. In the very near future, the major providers of telecommunications services—long distance carriers, CAPS, cable and wireless companies, and, hopefully, LECs—will compete with each other head-to-head at every level.

AMERITECH'S CUSTOMERS FIRST PROPOSAL

As a result of these competitive developments, we chose to advocate a new approach to the MFJ—competition in both local and long distance services. For the past several years, the Customers First initiative, which would accelerate competitive entry into the local exchange market in exchange for Ameritech's entry into the long distance market, has been a major commitment for Ameritech. Under the multi-layered regulatory and legal system that applies to our company, in order to enter a new line of business it is necessary to file separate applications before the FCC, various state regulatory agencies, the Department of Justice and, of course, Judge Greene whose court oversees the MFJ. Given this obstacle course, some have asked why we chose to pursue the Customers First project at all. The answer is that we at Ameritech have long understood that a competitive market in both local and all long distance services would best serve consumers, and that this is the direction in which technology is moving our industry—whether we liked it or not. The question was, and still is, will the policy makers recognize this and remove the barriers that stand in the way of consumers receiving the services they deserve.

As a business, our option was clear: we couldn't cling to the status quo, but instead we must embrace the inevitable changes brought about by technology and the dynamics of the market place. Accordingly, Ameritech decided to become an advocate of free and open markets and through that advocacy, help shape the telecommunications policy in the areas in which we operate.

In March, 1993, we filed our initial Customers First proposal with the FCC. Our proposal generated positive discussion of more open telecommunications policy. Customers First also had its detractors, the same companies that oppose our entry into long distance. We realized that our plan could easily bog down in the regulatory system for years, during which time we would face increasing competition in the local exchange market but would be denied the ability to compete in the interexchange market.

Faced with the possibility of endless delay, we concluded it was time to move our proposal out of the realm of rhetoric into the marketplace of reality. Accordingly, we approached the Department of Justice to see if it would support a limited trial that could demonstrate our belief that our presence in the long distance market would be pro-competitive and decidedly in the public interest. To their credit, the Department of Justice agreed to consider such a proposal.

We filed our trial waiver proposal at the end of 1993. Our discussions with the Department intensified after telecommunications reform legislation failed to pass last year. Long and hard negotiations produced a proposal that we were able to circulate for public comment in December, 1994. There were numerous responses to our proposal, many of which asked for additional detail. Between January and March of this year, we worked hard to address the concerns of third parties who

provided comments. During the course of these negotiations, Ameritech agreed to a number of conditions to satisfy questions raised by these comments. In the end, we were able to reach agreement on the contours of a Customers First trial to take place initially in Greater Chicago, Illinois and in Grand Rapids, Michigan. Let me take this opportunity to thank those members of the Subcommittee who supported our efforts.

With the filing with the decree court on April 3, the Department of Justice indicated its full support our proposed trial. Exercising its responsibility as "Prime Mover" in this field (*United States* v. *Western Elec. Co.*, 900 F.2d 283, 294 n.12 (1990)), the Department has asked Judge Greene to lift the interexchange restriction to allow the Customers First trial to proceed, subject to conditions set forth in the Proposed Order. The trial proposal, Assistant Attorney General Bingaman has stated, "is the result of thorough, tough negotiations between the Department, Ameritech, and AT&T, and immense efforts by state regulators and others," and it strikes a balance that "protects the consumer," "promotes real competition in the local telephone markets," and "will increase service and lower prices in both local and long distance markets."[1] Attorney General Reno also has stated that Ameritech's plan "will bring real competition to the local market for the first time and, as a result, more competition for the long distance market as well," and has acknowledged that "[c]ompetition means increased choices, decreased prices—a double victory for the American people." *Id*. Like the Department, the Consumers Union, AT&T, MCI, Sprint, and MFS, support the trial.

The heart of the Customers First trial is the lifting of entry barriers to local exchange markets through state regulatory action and the entry of Ameritech into the interexchange market under the framework of the Proposed Order submitted to Judge Greene. The Proposed Order prohibits Ameritech from providing interexchange services until Illinois and Michigan regulatory authorities have taken concrete steps to open the local exchange market to competition.

In addition, Ameritech must satisfy the Department of Justice that we have offered inter-connection to the carriers and unbundled our loops and ports in both trial LATAs, and we must allow non-facilities-based competition through resale of unbundled loops and ports. We must put non-discriminatory arrangements in place to allow competitors to share pole attachments and conduits, and provide support for 411, 511, and 911 services for those who want to connect their own facilities. We must provide technical and interconnection information on a non-discriminatory basis. We must offer to list competitors and their customers in our White Pages and allow competitors to include information in our books. We must work diligently to provide number portability. And, we must arrange for reciprocal compensation and be able to implement dialing parity. The Order strengthens Ameritech's obligation to provide interexchange carriers with equal access to its local exchange operations, and it requires operation of Ameritech's interexchange facilities through a separate subsidiary.

We expect to satisfy all these conditions and begin the trial promptly. We have every confidence that this initiative will prove to be dramatically pro-competitive.

You may ask why would we agree to all this. Aren't we giving up a lawfully endowed monopoly? The fact is that technology took away a good part of what was a local bottleneck and changes in public policy have taken away the rest. And, while we don't necessarily like every word of the proposed order, we accepted it because it's time to move ahead, and, absent legislation, this was the only way for us to do so.

TELECOMMUNICATIONS REFORM LEGISLATION

The Customers First trial is not a substitute for legislation, and its features should not be replicated under a new law. Important as Ameritech's experience with Customers First has been in the formulation of our policy views, we certainly do not regard it as a template for legislation. After all, Customers First is only a trial, conducted with the goal of gaining practical experience with open competition. That trial is subject to a large number of conditions—all of which we expect will prove to be unnecessary to protect competition, and some of which we agreed to because this is only a trial. In fact, the Justice Department, in its brief filed before Judge Greene last week, acknowledged that some of the safeguards in the draft order might be lifted as we gain experience during the trial. Legislative reform, in contrast, will provide a permanent solution and look to the long-term future of telecommunications. The Customers First trial also was designed to be conducted with-

[1] Press Release, Department of Justice, April 3, 1995, p.2.

in specified geographical areas. Congress' focus, by contrast, must necessarily be national in scope.

At the heart of all of the Congressional reform initiatives has been a broad consensus of opinion that the line of business restrictions under the MFJ and the waiver process before the decree court are now obsolete. We agree. This is truly a topsy-turvy system and one that has no claim to perpetuation under any new legislation.

Mr. Chairman, your bill, H.R. 1555, would create a new structure for seeking relief from the current MFJ restrictions on our entry into long distance and manufacturing, an approach that mirrors the philosophy driving our Customers First proposal. It appropriately links local and long distance competition. We believe that if competitors are allowed to enter our local market that we should likewise be allowed to enter their long distance market. The checklist approach of HR 1555 accomplishes this goal. Obviously, we at Ameritech think that this makes a great deal of sense and commend you for taking this approach.

We are troubled, however, by the lack of simultaneity in HR 1555. The bill would restrict us from seeking entry into long distance for 18 months from the date of enactment, and then grants the FCC a three month review period, delaying our entry for at least 21 months. At the same time, the bill preempts the states from restricting local competition as of date of enactment. In the Ameritech region, the state Commissions have already endorsed local competition. The Michigan and Illinois Commissions have entered detailed orders requiring the unbundling of our local loop and many of the conditions included in the HR 1555 checklist. Therefore, even if your bill required the opening of our local loop immediately on date of enactment and authorized our entry into long distance, Ameritech still wouldn't have true simultaneity; we are in the process of opening our local loop *today*. However, to further delay our entry into long distance while our competitors are gaining a foothold in our market is patently unfair and is not real competition. We urge you to facilitate open competition in all markets as soon as possible by allowing the Bell Companies to seek entry into the long distance market on date of enactment.

Ameritech's commitment to competition does not end with telephony. In January 1993 we announced our plans to invest $4.4 billion to construct a digital video network that will connect 6 million customers in our region to interactive information, entertainment and traditional cable television services. By the end of this year, Ameritech will use this network to begin delivering a wide range of video services, including video on demand, home health care, interactive educational coursework, distance learning and information services. We will provide these services in competition with incumbent cable companies, with consumers reaping the benefits of this competition.

HR 1555 addresses our entry into the video services market. Ameritech's successful challenge to the provision of the 1984 Cable Act prohibiting our entry into video programming has freed us to offer these services in our telephone service area today. Moreover, we have received approval from the FCC to begin construction of our system. The bill imposes a separate subsidiary requirement and joint marketing restrictions on our video operations that would not apply to our competitors. While we question the necessity of these restrictions, at a minimum, they should apply equally to monopoly cable systems seeking to provide telephony services.

HR 1555 also contains provisions restricting Bell company entry into the alarm monitoring services business. In 1991 the Bell companies were freed by court decision to offer information services, which include alarm monitoring services. Under current law, there is no restriction whatsoever on our provision of these services. Therefore, in December 1994, Ameritech purchased an alarm company, SecurityLink. We view our entry into the alarm business as a highly attractive growth opportunity for our investors and a valued service to our customers.

HR 1555 would turn back the clock by banning Bell companies from offering alarm services until the year 2000. Our local exchange competitors are not subject to this ban and could easily add alarm services to the list of "one stop shopping" services they intend to offer. Moreover, Ameritech is already at a competitive disadvantage in its alarm monitoring offering—we cannot provide long distance connections to any of our alarm customers because we are prohibited from offering long distance services. This entry restriction is in clear conflict with the open market, deregulatory and procompetitive goals of this legislation. It provides special treatment to the existing alarm monitoring providers and does no more than protect that industry from competition.

While we don't think this ban is good public policy, we do support the grandfather provision contained in HR 1555, which allows us to continue to provide services to our SecurityLink customers. That provision, however, requires clarification to ensure that we are authorized to "grow" that business.

Ameritech looks forward to working with the Subcommittee and its staff throughout this process towards our common goal of enacting telecommunications reform legislation this year that will usher in a new competitive era. Once again, we appreciate the opportunity to share our views with this Subcommittee today, and I look forward to your questions.

Business Telephone Revenues--Downtown Chicago

Mr. FIELDS. Thank you, Mr. Brown.

Mr. Harris, who is the senior vice president of MCI, thank you for being here.

STATEMENT OF LAURENCE HARRIS

Mr. HARRIS. Good afternoon. I am Larry Harris, senior vice president of MCI Communications.

Thank you for the opportunity to allow MCI to testify before this subcommittee regarding telecommunications reform and the issues raised by H.R. 1555, the Communications Act of 1995.

MCI commends you and Chairman Bliley for introducing legislation that seeks to open up the local telephone monopoly market to competition and which recognizes the need for appropriate sequencing in moving toward a fully competitive, fully deregulated marketplace. It is essential that full and fair competition in the local market precede Bell entry into adjacent competitive markets, and MCI is pleased that H.R. 1555 accepts this important principle.

MCI believes, however, that the provisions concerning the competitive checklist need to be strengthened and revised in order to meet their intended goals. We believe in some instances there may be some ambiguities in the language, and we would hope that this committee would look at that language and clear up what they consider ambiguities. In my written testimony I have submitted the issues that we are concerned with. At this point I just would like to deal with a few of them.

Actual competition. We believe that actual competition in the local market means a real facilities-based competition for comparable services. I was pleased this morning to hear Chairman Fields and Chairman Bliley say that that was the intended purpose of this language and that if there was any ambiguity that it would be cleared up in committee.

The second issue which is of great concern to us is the issue of separate subsidiary. The reason MCI believes a separate subsidiary is necessary is that we believe it is the only way to monitor whether in fact there is true competition. If there is not a separate subsidiary, the danger is that the local telephone company could cross-subsidize their competitive services with monopoly revenues, therefore putting us, the long-distance companies, at a disadvantage. Second, it is the only way we know whether they are imputing access charges to their long-distance service the same as we will have to pay to them. Long-distance we believe deserves the same protection of a separate sub, the manufacturing, electronic publishing and alarms gap.

Another loophole which we are concerned about is the affiliate. As we read the bill—and this may not be the intention—we think that an RBOC could invest in an affiliate who is either a long-distance carrier or could become one and thereby bypass the provisions of this bill. It is a concern. We would, with your permission, like to submit language clarifying that.

The next item I would like to deal with is resale. The only criteria we really have on resale is that it be economically viable, economically work for us. The Rochester experiment with the 5 percent discount would not work for us. We could not make any money

on it. It would be literally the old adage, losing money on every customer.

Local number portability. We see language in the bill in several places talking about technically feasible and economically reasonable. That concerns me. I'm an original MCI-er. I go back to the seventies negotiating with the Bell system. In fact, Chairman Allen mentioned it this morning. One example was that MCI wanted connections to foreign exchange and common control switching arrangements. We were told that it was not technically feasible, and we were told that for several years. Finally, the U.S. District Court in Philadelphia ordered those interconnections, and 5 days later we had them, so obviously they were technically feasible. It is a very dangerous thing. I know that is not the intention. We ask just for clarification so that doesn't slip through the loophole.

True number portability can be done quickly and efficiently. Yesterday, MCI, Metro, DSC Communications, Nortel, Siemens, Stromburg, Karlson, and Tandem Computers demonstrated a true number portability solution that does not require the incumbent telephone company to continue switching every call. The companies utilized existing technology and developed software which operates with the switching signal equivalent the RBOC's currently employ. We can do number portability today.

The next item: Again, we urge the committee to consider that any services we buy on resale should be cost based.. We do not have a problem with the RBOC's making a profit. If I may finish up with just one more point.

Mr. FIELDS. Okay.

Mr. HARRIS. We think there should be a role for DOJ, and the reason we do, we think they are the historical monitors of competition. MCI would not exist today if there were no consent decree. We think it works.

Thank you for your time.

[The prepared statement of Laurence Harris follows:]

PREPARED STATEMENT OF LAURENCE E. HARRIS, SENIOR VICE PRESIDENT, PUBLIC POLICY, MCI COMMUNICATIONS CORPORATION

Good morning, Mr. Chairman and members of the Subcommittee. My name is Larry Harris. I am the Senior Vice President, Public Policy of MCI Communications Corporation. It is an honor to have this opportunity to testify before the Subcommittee on critical issues regarding telecommunications reform generally and, more specifically, on issues raised by H.R. 1555, the "Communications Act of 1995."

I commend you and Chairman Bliley for introducing legislation intended to open local markets to competition and, critically, to ensure that the RBOCs face full and robust facilities-based competition *before* they are permitted to enter the long distance market. MCI looks forward to working with you to obtain legislation that achieves this result.

We all share a common goal: vigorous competition in *all* telecommunications markets characterized by expanded entrepreneurial opportunity, unprecedented technological innovation and lower consumer prices. The legislative challenge facing the Congress is how best to bring competition to the monopoly local telephone market. It is essential to ensure that this occurs *before* the Regional Bell Operating Companies (RBOCs) are permitted entry into adjacent competitive markets, so that they do not remonopolize the industry and reverse a decade of gains for consumers.

Mr. Chairman, MCI is pleased that H.R. 1555 contains most of the essential elements ("checklist" items) for local competition and requires that the RBOCs comply with the checklist before they are allowed into the long distance market. But, as I will describe later, while the legislation identifies most of the key elements, the language in some instances appears to be ambiguous and is certain to lead to RBOC evasion, manipulation and delay.

It is worth noting that the Bell Companies have a long history of protecting their monopoly and impeding the ability of competitors to interconnect with their system. Given this history, Congress should not assume that any checklist aimed at opening the Bell network is guaranteed to achieve the desired results. Moreover, it is important to take account of the significant time and resources it may take before local competition is a reality and can actually restrain anticompetitive behavior by the RBOCs. At a minimum, the requirements imposed on the RBOCs must be specific and other mechanisms must be in place to make it enforceable.

H.R. 1555 seems to recognize the right sequence—facilities-based competition for a full range of local services comparable to those offered by the Bell Companies must precede RBOC entry into the long distance market. However, as presently drafted, the bill does not achieve this goal. The bill may permit a Bell Company to provide statewide long distance service if only a small, new local rival offers only a narrow range of local services in a very limited geographical area of a state. If a company is offering local service to three customers in Houston, does that mean that SBC (formerly Southwestern Bell) is then allowed to originate and terminate long distance calls from the entire state of Texas? I respectfully request that the bill be revised to ensure that real competition is in place and that viable, facilities-based competitors are offering similar services as the incumbent monopoly before the RBOCs be allowed to enter into the long distance market.

While I am not convinced it's possible to write any checklist that the RBOC's lawyers wouldn't try to litigate, the possibility will be lessened by being as specific as possible. For example, the RBOCs are required to provide number portability as part of the checklist if it is "technically feasible and economically reasonable." These terms are ambiguous and should be eliminated. True number portability—not some "interim solution" that leaves the RBOCs squarely in the middle of every call—is so important to the development of effective local competition that it must be available before the RBOCs are allowed into long distance. In fact, Mr. Chairman, just yesterday, MCI, MCImetro, DSC Communications, Nortel, Siemens Stromberg-Carlson and Tandem Computers, Inc. demonstrated a true local number portability solution that does not require the incumbent telephone company to continue switching every call. The companies utilized existing technology and developed software which operates with the switching and signaling equipment currently deployed in local telephone networks.

Also, the bill does not ensure that the resale of local services is available to potential competitors in a manner that is economically viable. If this legislation's intended goal—real local competition—is to be met, then local exchange carriers must be required to provide commercially-feasible resale priced on a wholesale basis, without any restrictions. Competition developed in the long distance industry in large part because unrestricted resale at wholesale rates was available without restrictions.

Critical post-entry safeguards such as separate subsidiaries and strong imputation requirements are also needed. The bill properly establishes separate subsidiary requirements for electronic publishing, manufacturing and alarm monitoring services but fails to require them for RBOC provision of long distance services. Long distance needs and deserves these protections as much as these other market segments. Separate subsidiaries reduce the risk of discrimination because they make it easier to determine what services and information the local affiliate is providing the long distance affiliate, and how much the long distance affiliate pays for them. Also, by eliminating shared costs and by making sales between the entities more visible, separate subsidiaries make it harder for the local company to cross-subsidize the activities of the long distance company.

Finally, the legislation includes no role for the Department of Justice. Historically, the Department of Justice has had the pivotal role in implementing and maintaining safeguards that protect and encourage competition. The Section VIII(C) test, which was supported last year by all of the RBOCs and this year by Ameritech in a recent agreement announced by the Department of Justice, is a reasonable, common-sense test to use in determining when the RBOCs should be allowed into the long distance market. Without the Department of Justice involved in these determinations, there are too many risks: the risk of anti-competitive monopolistic practices by the Bell companies; the risk of a market that, ironically, will be more regulatory, less open and less receptive to entrepreneurial opportunity; and the risk of literally hundreds of new antitrust suits and more litigation and regulations. Prior to the consent decree over 80 private antitrust suits were filed. Since divestiture, there have been virtually none.

OVERVIEW

In addition to providing more specificity on MCI's concems with H.R. 1555, my testimony will also focus on two markets: the market for local telephone services and the long distance market. The first and most urgent telecommunications policy priority is to bring competition to *local* markets. There is currently *no* meaningful competition in local markets. It is a monopoly—pure and simple. As a result, the price of local service has increased over the past decade at the rate of inflation.

During the same period, the price of virtually all other telecommunications services and products has decreased—in the long distance market, by nearly 70% in real terms. That is because long distance and other markets have become intensely competitive even while the RBOCs have retained their local monopolies. Accordingly, any legislation must create the environment that will ensure competition in local monopoly markets. To accomplish that goal, Congress must establish basic market-opening ground rules and preempt state and local laws and regulations that preclude effective local competition. Mr. Chairman, MCI commends you for introducing legislation that speeds the realization of these goals.

It is important to recognize that mere elimination of legal and regulatory barriers to local competition alone will not cause local competition to develop overnight. There is no magic wand. There are significant economic and technological barriers. Companies like MCI are attempting to surmount all of these barriers. MCI has committed hundreds of millions of dollars to develop a competitive alternative to the local Bell monopolies—just as MCI spent billions of dollars to develop a competitive alternative in long distance against seemingly unbeatable odds.

Removal of legal and regulatory entry barriers is a crucial first step before new entrants will make the massive investments necessary to build new local telephone networks. Capital markets will not put these huge sums at risk unless and until the law is changed to give potential competitors a fair opportunity. Even after legal and regulatory barriers are removed, it will take time for these investments to occur and to pay off. In the meantime, the expert federal agencies must oversee the transition to ensure that artificial barriers are removed and to monitor the progress of competitors.

Once that fundamental step has been accomplished and effective local competition has emerged, restrictions needed to protect competition in other markets from Bell bottleneck abuse can be—and should be—lifted. The issue of Bell entry into long distance has never been a question of *whether*, but *when*: either when a Bell Company divests its local monopoly or when effective competition develops in the local telephone services market.

However, if the pro-competitive safeguards of the consent decree are lifted prematurely, the result will be catastrophic for both consumers and competitors. The Bell Companies will leverage their local monopolies and seek to recreate the vertically integrated Bell System that stifled competition for so long in all telecommunications markets. We would likely end up with a dramatic concentration of power in the telecommunications, information services, and media industries, leaving only a few integrated companies that would not compete aggressively against each other. The result would be less rapid technological innovation and significantly higher prices than vigorous competition would produce. If the sequencing isn't done right, there is a grave risk of replacing regulated telephone monopolies with much larger unregulated multimedia monopolies. The hundreds of entrepreneurial companies, many now operating in the states of members of this committee, would be seriously injured or would go out of business. Small businesses are the real job creators and a key source of innovation in the U.S. economy. Legislation must create an environment in which market forces, not monopolies, decide which companies survive.

Mr. Chairman, without proper safeguards, the industry will become mired in the kind of regulatory and legal proceedings that so preoccupied state agencies, the FCC and the courts in the 1970s. The need for regulation and litigation will *increase*, because regulators will have to struggle with the problem that they have never been able to solve: how to force the Bell Companies to act contrary to their monopolistic incentives and cooperate with companies against which they are competing.

Of course, the Bell Companies have it within their power to enter the long distance business *tomorrow*. If they don't want to wait until effective local competition develops, they can provide long distance service immediately by spinning off their local telephone business. All the Bell Companies have to do is make a choice between their local bottlenecks and long distance. Once they give up their monopoly power, there is no reason why they cannot provide long distance service.

It is no surprise that the Bell Companies have been unwilling to make this choice. They want it both ways. They want to keep their local monopolies *and* compete in the long distance business. But they do not want to compete in long distance with-

out the unfair anticompetitive advantages that simultaneous retention of their local bottlenecks would provide. The last thing they want is a level playing field.

Allowing them such an unfair advantage would cripple the prospects for local competition and threaten to roll back the progress achieved in long distance since divestiture severed the tie between local and long distance. Long distance competition has flourished because long distance carriers have been able to compete on an equal basis. The Bell Companies lost the incentive and ability to discriminate in favor of an affiliated long distance carrier.

The progress in long distance competition should be preserved and progress toward meaningful competition in local services should begin. An open, deregulated marketplace characterized by entrepreneurial opportunity and technological innovation will best serve consumers—as well as ensure Americas leadership in information technologies well into the next century.

LONG DISTANCE COMPETITION: SUCCESS STORY FOR THE ECONOMY AND CONSUMERS

Such a marketplace exists today in the long distance industry. Mr. Chairman, the changes spurred on by the Department of Justice and the FCC have meant that Americans now have multiple options for long distance telephone service. Both large and small entrepreneurial companies now compete in the long distance industry. In California and Texas, over 100 companies offer a variety of long distance services. In Colorado, Florida, Illinois, Massachusetts, Ohio, Oregon, Oklahoma, Pennsylvania, Virginia, Washington and Wisconsin, over 40 long distance companies are today offering service. The vigorously competitive long distance industry has been a windfall for the U.S. consumer and the engine for the unprecedented technological innovations sweeping the telecommunications industry.

A study by Dr. Robert Hall of Stanford University, *Long Distance: Public Benefits from Increased Competition* (October, 1993), confirmed what the world already knew—that competition both spurs technological innovation and development and lowers consumer prices for goods and services:

- *Drove real long distance prices to American consumers down by more than 60 percent between 1985 and 1992, net of access charge reductions.* Since 1992, long distance prices have dropped even further. Professor Ham recently updated his study to reflect long distance price changes in 1993 and 1994. He found that real long distance prices continued to decline in 1993 and fell again in 1994 by 5 percent. As of today, Mr. Chairman, the vigorous competition in long distance has produced a nearly 70 percent decline in real prices. The same long distance call that cost $1.77 (in 1994 dollars) ten years ago, would cost less than 58 cents today. Exhibits 1 and 2 provide graphic evidence of these significant price reductions.

  Vigorous price competition abounds in the long distance industry. Many discount plans are available. All long distance customers—both residential and business—have numerous opportunities to cut their long distance bills substantially by signing up for one of these many options. For example, business customers that make term commitments can save by 20, 30 or 40 percent. Similarly, residential customers that make use of various calling plans, such as MCI's new Friends and Family program, can also save from 25 to 50 percent. Discounting dramatically lowers the effective price to the customer and is the principle mechanism by which vigorous and aggressive price cutting is achieved.
- *Created a vibrant long distance market with thousands of innovative services offered by hundreds of carriers.* (A listing of MCI's major products is attached as Exhibit 3).
- *Caused quality to soar as long distance companies criss-crossed the nation with fiber optic networks that today comprise the Information Highway.* Digital transmission, particularly digital fiber, enhances quality. The dropped calls, echoes, and noisy lines that once plagued the pre-divestiture Bell System long distance service are a thing of the past. Calls across the country now typically sound as though they are coming from next door.
- *Stimulated an unprecedented surge in technological innovation.* New features and enhanced billing options are made possible by substantial investments in new technology. Carriers such as MCI have invested billions of dollars in creating state-of-the-art digital networks. Over the last five years, MCI has invested virtually all of its cash flow into its network infrastructure. MCI will spend $3 billion again this year to upgrade its network and transmission technology to hasten the widespread availability of Internet access, broadcast quality videophones, electronic data interchange, long distance medical imaging, multimedia education and a single-number personal communications service that will use the same pocket-sized telephone anywhere in the world.

MCI's network utilizes the world's most advanced technology to provide a communications infrastructure with over 36,000 route miles and nearly 5 billion capacity circuit miles, including 500,000 miles of fiber optic strands. MCI's network is 100 percent SONET (Synchronous Optical Network, a high-capacity network enabling the transmission of multiple signals—voice, fax, video, data—over a single line) capable and operates at 2.5 gigabits. This allows us to carry over 32,000 simultaneous voice conversations.

New fiber optic technologies will soon allow MCI to reach transmission speeds of 10 gigabits and eventually 40 gigabits—enough for nearly 500,000 simultaneous "Internet" conversations over a single fiber pair. MCI's network is engineered to provide many alternative pathways for routing telecommunications traffic. In the event of a fiber cut, we can respond and restore the network rapidly. Our objective is to have a network that is self-healing within milliseconds.

MCI's technological investments are also helping the cause of addressing mankind's next challenges. Two weeks ago, MCI and the National Science Foundation announced the launch of a new high-speed network to use advanced information technologies that enable massive amounts of voice, data and video to be combined and transmitted at speeds nearly four times faster than current technology. Initially, the network service will tie together the Pittsburgh and San Diego Supercomputing Centers; the Cornell Theory Center; the National Center for Supercomputer Applications in Urbana, Illinois; and the National Center for Atmospheric Research in Colorado.

Some of the possible applications for high performance computing and the high-speed network service offered by MCI include building more energy-efficient cars; improving weather predictions and environmental modeling; and designing better drugs to fight disease. The existence of a national high-speed broadband backbone for experiments in networking between supercomputing centers will enable researchers to develop technologies such as high-density video conferencing from personal computers, remote telemedicine and two-way communications between citizens and their government.

In contrast to the effect of competition on long-haul infrastructure development, the local exchange carriers (LECS) have not increased network investment as a result of relaxed regulation. A study prepared by William Page Montgomery, "Promises Versus Reality: Telecommunications Infrastructure, LEC Investment and Regulatory Reform" concluded that "no particular form of regulatory relief has produced positive benefits in the form of LEC spending on the telecommunications infrastructure." If Congress wants local infrastructures with capabilities to rival those of the long distance networks, then give the Bell Companies what they need most—the "incentive" of competition.

The benefits of long distance competition can be replicated in industry sectors now dominated by monopolies if legislation follows the appropriate "blueprint."

"BLUEPRINT" FOR PRO-COMPETITION LEGISLATION

If legislation is to accomplish for consumers and for all sectors of the industry what divestiture did for long distance competition, it must remove entry barriers that today thwart the achievement of effective local exchange competition. These barriers deny consumers the lower prices, innovative services and information infrastructure enhancements that competitive forces have provided to long distance telephone consumers. True local number portability; dialing parity; unbundling of local service elements; interconnection requirements; nondiscriminatory, cost-based access; and unrestricted resale availability are among the important features that will, over time, break down the RBOCs' bottleneck monopoly and spur competition in the local exchange.

Legislation should provide for reasonable and achievable conditions for RBOC entry into the competitive long distance marketplace. Legislation can promote competition in all telecommunications markets and protect consumers by:

- Requiring the Federal Communications Commission (FCC), with an appropriate role for the states, to find that the entry barriers to local exchange competition have been removed, to prescribe and ensure full implementation of rules for interconnection, cost-based nondiscriminatory access and true number portability, among other things.
- Providing the appropriate sequencing for RBOC entry into the long distance marketplace. Actual competition in the local exchange *must* occur *first*. Only then should the RBOCs be permitted to seek entry into the long distance market.
- Eliminating the RBOC long distance access charge entitlement program. Today, long distance companies subsidize the local exchange monopolies by paying 45 cents of every revenue dollar back to them for access to their network. For MCI,

that amounts to well over $5 billion a year. The charges are priced way above cost and artificially raise the price of long distance calls. Congress should require cost-based access. To begin this process, the universal service funding system should be reformed. The current system of funding universal service through internal local telephone company monopoly subsidies is incompatible with the development of local competition.

- Giving the DOJ an appropriate role and requiring the RBOCs to satisfy a test based on market facts that ensures that there is no substantial possibility that the RBOCs can impede competition before the DOJ can approve their entry into the long distance market.

Effective telecommunications legislation must establish important post-entry consumer safeguards to guard against anti-competitive abuses. For example, opportunities for cross-subsidization must be reduced by requiring that the RBOCs provide long distance services through a separate subsidiary.

DOJ-AMERITECH AGREEMENT

Mr. Chairman, Congress has an historic opportunity to pass legislation that will complete the transition from a monopoly telephone system to an open and competitive multimedia marketplace. To assist you in that effort, I commend the recent Justice Department-Ameritech agreement to your attention. That agreement itself is an historic event. For the first time, DOJ, a Bell Company and AT&T have reached agreement on a plan for opening up the local telephone market and, if that succeeds, then allowing Ameritech to provide long distance service. This agreement is very important to the telecommunications reform debate for several reasons:

- Ameritech has agreed to open its local network and further agreed that actual local competition must exist before entering the long distance market. This is entirely consistent with the intent of H.R. 1555. Under the terms of the agreement, Ameritech would stay out of long distance until DOJ determined that actual local competition exists.
- It includes a competition-based test designed to make certain Ameritech cannot block competition in the future—requiring the Justice Department to make sure there is no substantial possibility that Ameritech could use its position in local exchange telecommunications to impede competition.
- It includes continued oversight by the Justice Department. The order gives the DOJ ongoing power to order Ameritech to discontinue conduct that impedes competition in the long distance market. It also allows the Justice Department to order Ameritech to cease offering long distance services if it finds that Ameritech is blocking competition.
- It requires separate subsidiaries. Under the agreement, Ameritech must keep its long distance operations in a separate subsidiary, with its own officers and personnel, its own financial and accounting records, and its own facilities. This requirement is absolutely critical if we are to have any chance of policing and preventing RBOC cross-subsidization of their long distance operations with local ratepayer revenues. I urge this committee to include such a requirement in H.R. 1555.

PRE-DIVESTITURE BELL SYSTEM ABUSES HARMED THE PUBLIC

MCI pioneered competition in long distance. MCI knows from experience the benefits of competition in the marketplace—as well as the anti-competitive harm that can occur when a monopoly leverages its power. Competition makes a big difference. As we look to the future, it is critical for Congress to reflect on and draw from the lessons of the past.

Prior to divestiture in 1984, the Bell System had a virtual monopoly in almost all segments of telecommunications in the United States—local telephone service, long distance service and equipment manufacturing. Competitors were forced to file antitrust cases because regulators were unable to prevent the unfair and anti-competitive exercise of market power. The DOJ initiated its second formal investigation of the Bell System in 1974 and sued on behalf of the U.S. government later that year. The DOJ charged that the Bell System violated federal antitrust laws by conspiring to monopolize three major markets: long distance, customer premises equipment, and network switching and transmission equipment. Among the anti-competitive abuses suffered by MCI and identified by DOJ in its lawsuit were predatory pricing and denial of equal access to essential local exchange facilities:

- Customers of the competitors were burdened with inconvenient, multi-digit dialing arrangements and lower quality services. The Bell System did nothing to further the provision of equal access (1-plus calling with presubscription) for

years after MCI requested it. Equal access was not implemented until it was required under the terms of the consent decree.

- The Bell System negotiated in bad faith over new forms of interconnection. They persisted in slow-rolling MCI on interconnection agreements. During the intercomection fights of the mid-1970's, *several Bell companies went so far as to rip out MCI's lines.* To get the lines restored, we had to go to court.
- The Bell telephone companies and Bell Labs delayed releasing technical information long distance carriers needed to develop new services.

These kinds of illegal, anticompetitive behavior impeded MCIs bid to compete in the long distance market for many years. And consumers were denied the lower prices, innovation and better quality that competition has since delivered.

Mr. Chairman, these examples of Bell System harm are not merely of historical interest. The risks they highlight continue to exist today. As long as the Bell Companies maintain a stranglehold over local telephone services, they have the same ability and incentive to engage in this kind of anticompetitive conduct. Regulatory "safeguards" have never been adequate to prevent it; nor will they ever be. As Assistant Attorney General Anne Bingaman recently testified before the Senate:

> Until the success of the Departments suit, regulation and litigation had not been effective in breaking through that local bottleneck. The Bell System proved itself adept at devising new ways to use the bottleneck to hurt competition in other markets more quickly than the courts and regulatory agencies could order solutions. Among other things, the Bell System used its monopoly profits to hire legions of lawyers to make sure that any proceeding that challenged any aspect of the monopoly was bogged down in endless proceedings.

The framework of the 1982 consent decree is based on the Justice Department's basic theory of the antitrust case: the bottleneck monopoly had to be separated from potentially competitive services in order to allow competition to develop. The RBOCs were prohibited from engaging in long distance, equipment manufacturing and information services because only a structural separation between monopoly and competitive markets could prevent anti-competitive abuses. Decades of experience had proven that regulatory oversight of Bell System behavior was insufficient to prevent those abuses.

The same sort of anti-competitive abuse will happen all over again if the Bell Companies are allowed into adjacent markets, such as long distance, with their local monopolies intact. Few people today remember the plain old rotary dial telephone, but it defined the limits of customer choice for decades. Few people today remember Bell System abuse of over a decade ago, but it existed. We should not allow a generational gap to blind us to the lessons of the past. MCI learned these lessons the hard way—from experience.

BELL COMPANY THREAT TO COMPETITION REMAINS

The economic incentive to leverage control over the local monopoly to impede competition in related markets is substantial. Unless excluded from these markets, the Bell Companies will have both the incentive and the ability to provide their competitors with inferior connections and set discriminatory rates for bottleneck local telephone services as well as to cross-subsidize by allocating the costs of providing the competitive services to monopoly ratepayers.

The very same Bell monopolies that fought against competition—who opposed competitive private line service in the 1960s... who fought direct dial long distance competition in the 1970s... and who denied MCI interconnection... now argue that the telecommunications marketplace has substantially changed. Now the RBOCs argue that they should be allowed to enter the long distance marketplace. The changes that have occurred since divestiture have been in competitive markets: long distance, manufacturing and information services. Local telephone service is still a monopoly and all of the Bell Companies continue to abuse their monopoly power.

Exhibit 4 describes recent anticompetitive activities by all seven of the RBOCs. These abuses run the gamut from discrimination in interconnection of potential local competitors, to predatory pricing, to deceptive marketing practices. In several instances, the RBOCs were found to have violated clear and specific rules—they simply broke the law.

In recent testimony before the Senate Judiciary Committee, an executive testifying on behalf of a company that is trying to compete with the RBOCs said that they have experienced "systematic and widespread pricing and marketing practices that pose a direct threat to the possibility of any new entrant establishing a viable market position in competition with the Bell Operating Companies." He then went on to elaborate:

> The most basic tactic that the Bell Operating Companies have sought to use against competitors is the price squeeze. Because, as I explained earlier, intercomection is an absolute necessity, the Bell Operating Companies can control the revenues (and, accordingly, the market opportunity) of their competitors by establishing the price of interconnection. When the FCC first ordered the larger telephone companies to permit competitors to collocate in their central offices in 1992, they responded with rates that were in many cases nearly as high as the prices of the services that they provided to customers for whom we wanted to compete. In several cases the charges for construction of a 10-by-10 foot wire-mesh enclosure for our equipment inside the phone company's central office were in excess of $100,000, which is more than the cost of constructing a typical single-family home in many metropolitan areas in the U.S. (Testimony of Royce J. Holland, MFS Communications, May 3, 1995.)

Today, MCI and the entire competitive long distance industry are still dependent upon the Bell monopolies. All long distance companies need to interconnect with the local telephone company's network in order to complete our customers' calls. As discussed below, we pay nearly half of our revenues to local telephone companies for access to their networks. The local telephone monopolies are "gatekeepers" between MCI and its customers.

Imagine, Mr. Chairman, if Continental Airlines had to compete against American Airlines in Houston but American also owned Houston Intercontinental airport and the roads going to the airport, and controlled all the landing slots. Further, imagine that American had a preexisting customer relationship with all of Continental's customers. With a competitor controlling facilities Continental needs access to and acting as a "gatekeeper" between it and its customers, how long would it be before Continental was grounded?

LOCAL COMPETITION IS A BELL COMPANY MYTH

In any given geographic area, only one company provides the connectivity that allows us to communicate with one another through the telephone. Anyone who wants telephone service—local *or* long distance—must rely on the local telephone company to provide that connectivity. The monopoly market for local services is a $90 billion market. Today, the Bell Companies retain a monopoly on three kinds of local telephone service: local exchange (calling friends and family across town), exchange access (connecting you to your long distance phone company for long distance calls), and intraLATA toll calls ("short-haul" long distance calls).

The easiest way to prove there is no competition is to observe that there is no place in the country today where a consumer has a meaningful choice of carriers for local exchange service. When consumers move into a new home, they can buy a telephone at a store or bring their old one with them. They can order long distance service from any of a number of interexchange carriers. Mr. Chairman, the *New York Times* recently reported that nearly 25 million customers switched long distance companies last year. However, if they want to be able to use the phone to call their office or neighbors, or to make a long distance call, they must order service from the single local telephone company serving their area. There is no effective competition for local telephone service as long as consumers have no choice but to order that telephone service from the incumbent local telephone company.

The Bell Companies claim that they have been facing significant competition for exchange access traffic. This statement ignores the fact that long distance companies pay nearly half of every revenue dollar for access, and approximately 99.4 percent of those dollars go to the local telephone monopolies. As an industry, long distance company payments to local monopolies last year exceeded $20 billion. MCI's access payments to local telephone monopolies approached $6 billion. Compared to the billions of dollars paid to the Bell Companies, MCI paid only $25 million—*less than four tenths of one percent*—to competitive access providers (CAPs).

CAPs hold less than one-half of one percent of the exchange access market—that's the Bell Companies' idea of competition? The Bells' claim is further belied by continuing growth in their access traffic volumes. In the last three years, local telephone company access traffic has grown by approximately seven percent a year. Interestingly, in two states where the presence of CAPs would likely erode local telephone company access business—Illinois and New York—the growth in access has also been significant. In both Illinois and New York, interstate access traffic carried by Ameritech and NYNEX grew by more than seven percent in 1994.

Nevertheless, the Bell Companies argue that competition in the local telephone market is already here, taking away customers and driving down prices. Do not be misled—the Bell Companies are not describing actual local telephone competition.

Instead, they are describing the *potential* for competition for *some* of the physical elements of the local exchange in some areas. This was the conclusion of a 1993 study entitled *The Enduring Local Bottleneck* by Economics and Technology Inc. and Hatfield Associates:

> Expansion of alternative access provider services, FCC mandated interconnection requirements, the growing use of wireless services, even multibillion dollar alliances between traditional telecommunications carriers and potential future alternative local service providers, have all contributed to a *perception* that local competition has arrived. While these developments may have increased the prospects for competition, their actual *economic impact* on the traditional local exchange monopolies is, at the present time, far more smoke than fire. Furthermore, the enormous investments required to build alternative local networks across the country, the time it will take to win customers away from the incumbents, and the power of the dominant local exchange carriers to thwart competitive entry ensure that effective competition will not occur overnight.

Very limited competition for parts of the local exchange in a few geographic areas does not translate to effective competition for local telephone service. *The Enduring Local Bottleneck* points out the limits of competition in local markets today and the resources available to the RBOCs to maintain their bottleneck control, including:

- Wireless services, principally cellular services, are not substitutes for local service. The costs, capacity constraints, quality and reliability of wireless services relative to basic local service preclude direct substitution. More than ninety-five percent of all cellular calls today are carried by the local telephone network. Consider, too, that the Bell Companies are the dominant players in the cellular market today, controlling nearly two-thirds of the cellular spectrum.
- No cable system offers local telephone service. These systems require significant capital investments to provide two-way telephony. In view of the magnitude of investments required, it will be some time before any significant number of consumers would have a competitive alternative available from cable operators, even under the most favorable scenario.

Even if current technologies were able to duplicate the local exchange function, competition could not exist in most states today. Most states prohibit competition by law or regulation.

Mr. Chairman, US WEST—the company that's selectively selling off rural exchanges—and other Bell Companies argue that monopolies exist in areas that no one else will serve. That's because they've seen to it that it's illegal. In most states, including Virginia, Texas, South Carolina, Florida, Ohio, Colorado, Nebraska, Louisiana, Hawaii, Kentucky, West Virginia, Alaska, Mississippi, Tennessee, New Mexico and Rhode Island, potential competitors cannot legally provide local exchange service. In Washington and Pennsylvania, state statutes allow for competition, but the state regulators have yet to authorize service. In only 13 states do regulators allow any level of competition for basic local services.

In the few states that are trying to open local markets, the RBOCs are doing everything they can to thwart competition and they are succeeding. A March 20, 1995, *Wall Street Journal* article entitled "Not Welcome Here" examined competition in the local market. It found that, "In the states already open to competition, Baby Bells routinely deny or slow access to their networks, price their services below cost, and invoke arcane statutes to protect their turf. Once rivals are up and running, the local Bell can force customers to dial complex access codes or give up their phone numbers when they sign with a competitor."

The tiny pockets of emerging competition, which the Bell Companies prefer to show you through a magnifying glass to overstate their importance, do not today provide consumers with choices for local telephone service.

BELLS FIGHT TO MAINTAIN $15 BILLION INTRALATA TOLL MONOPOLY

Mr. Chairman, clearly there is no real competition in either the local exchange or exchange access markets. Nor does it exist in the intraLATA toll ("short-haul" long distance) market. The Bell Companies allege that emerging competition in that market justifies permitting them to offer interLATA long distance services. The Bell Companies would have you believe that all entry barriers in the intraLATA market have been or are about to be eliminated and that the market has been free from Bell Company anticompetitive abuses.

Unfortunately, that simply isn't true. Exhibit 5 summarizes the current status of intraLATA competition and demonstrates the extent to which the Bells will go to ward off competition. It also provides numerous examples of Bell Company abuses

which have significantly limited the growth of competition in the "short-haul" market.

First, while some degree of intraLATA competition exists in 44 states, nowhere does intraLATA "equal access" exist. By equal access, I mean "1+" dialing parity and the ability of consumers to presubscribe to their intraLATA carrier of choice. Without equal access, customers must dial a special five-digit access code to reach a long distance carrier. Most consumers either don't know this is possible, don't know the access codes, or don't want to be bothered. Only with intraLATA equal access can consumers benefit from fair and open competition. Ten states have *ordered* intraLATA toll dialing parity, but let me repeat: *today there is no RBOC territory in America where intraLATA equal access exists.* Thus, the local telephone companies still control virtually 100 percent of the intraLATA direct dial market.

Second, the RBOCs have opposed intraLATA competition in every state that has tried to open that market to competition. The most notorious contemporary example of RBOC interference with "basic" intraLATA authority is Pacific Bell's improper conduct before the California Public Utility Commission (PUC). After fighting competition for years, Pacific Bell finally relented and seemed prepared to let California move forward. The PUC issued an order in November 1993 to allow basic intraLATA authority for long distance companies starting January 1, 1994. Then, in a truly outrageous act, one of Pacific Bell's senior regulatory officials engaged in a series of inappropriate "ex parte" contacts with PUC staff members on sensitive subjects such as Pacific Bell contracting authority, local network unbundling and imputation of access charges. This executive's impropriety led to a PUC conclusion that the entire intraLATA competition order was "tainted," and it was rescinded late last year. Although a new order was recently issued, Pacific Bell's actions in this one incident successfully delayed intraLATA competition for an additional year.

In California, intraLATA competition was finally authorized effective January 1, 1995. Despite that ruling, Pacific Bell refused to re-program its Centrex services to allow business and government customers to use the services of long distance companies. Pacific Bell's resistance to competition forces consumers to dial five-digit codes to access alternative carriers. MCI filed a complaint in February against Pacific Bell charging it with anticompetitive and unlawful behavior by denying California business and government Centrex customers the right to select their "short-haul" toll call provider. Four months later, an Administrative Law Judge ruled against Pacific Bell and cited it for illegal and anticompetitive practices. The ruling requires Pacific Bell to allow Centrex customers to make "short-haul" toll calls without having to dial cumbersome and unnecessary access codes.

Beyond outright opposition to basic authority in some states and "equal access" everywhere, the RBOCs are fighting intraLATA competition in other insidious ways—consider the following two examples:

- *Large expansions of "local calling areas."* The RBOCs preclude competition for toll calls by reclassifying them as local calls which only they can provide. Despite the surface "pro-consumer" appeal of expanded local calling plans, consumer groups often oppose them because, in reality, they are anti-competitive and are subsidized by other captive ratepayers. By designating an area a "local calling area," and by pricing such services below cost, competition is artificially precluded—even for providers that would be more efficient than the incumbent RBOCs—and consumers are denied the benefits of competition.
- *Failure to impute access* charges. Failing to impute access charges into their intraLATA toll rates, while their would-be competitors must nevertheless pay them, is another way the RBOCs have engaged in "intraLATA foul play." In South Carolina, for example, Southern Bell Company charged intraLATA toll rates below 10 cents a minute, while it assessed long distance companies access charges above 12 cents a minute. In other words, the Bell Companies charged long distance companies a higher "wholesale" price than their own "retail" price.

There are many other examples where the RBOCs have proposed various ingenious ways to fight intraLATA equal access and perpetuate its monopoly over potentially competitive intraLATA services. The bottom line: there is no substantial direct dial intraLATA competition anywhere today, and there will not be unless legislators and regulators actively curtail these Bell abuses.

Consumers are the big losers as a result of the Bells' anti-competitive behavior. The *Wall Street Journal* on March 24, 1995 reported, "By using a rival to the local Baby Bell, customers in some cases could save almost 30 percent on the cost of in-state toll calls..." For instance, the article cited sample rates for five minute direct-dial daytime calls between two cities in California. A call from Los Angeles to Long Beach, a distance of 19 miles, would cost 39 cents if carried by Pacific Bell and only

32 cents if carried by MCI. A call from Cloverdale to Oakland, a distance of 81 miles, costs 69 cents if carried by Pacific Bell and only 54 cents on MCI.

LOCAL COMPETITION DOES NOT THREATEN UNIVERSAL SERVICE

The RBOCs say that competition will erode their revenue, jeopardize the universal service subsidy, and ultimately drive consumer prices up. In fact, effective local competition is the best way to provide universal service into the 21st Century—in rural as well as urban areas. Since competition will force providers to be more efficient and reduce costs, it will foster the universal availability of telecommunications services at affordable rates.

Local telephone monopolies claim that the universal service subsidy now flowing to residential local service is $20 billion and that universal service can only be maintained if their revenue stream remains intact.

In reality, the cost of providing universal service is much less. MCI commissioned a study conducted by Hatfield and Associates that determined the actual cost of the nationwide annual universal service subsidy is approximately $3.7 billion dollars. The local telephone companies have become accustomed to using the billions of excess revenues they derive by substantially overcharging long distance carriers and consumers for local access to pad their profits and cover the losses of a myriad of unrelated new ventures.

Today, by virtue of their internal subsidy, the local telephone companies possess a huge advantage over any potential competitor vying for the same customers. As long as this subsidy exists, the benefits that can be realized from effective competition—greater choice and lower prices—will continue to elude local customers. Not surprisingly, those who have profited most from the universal service funding mechanism in the past—the local telephone monopolies—would like to see the system continue. MCI strongly supports the creation of a competitively-neutral universal service fund to which all service providers contribute, and from which any local carrier serving high-cost areas can be reimbursed for the costs of providing local telephone service. Fundamentally it should be up to consumers—not incumbent monopolies—to decide which local company receives the subsidy.

In short, the current universal service funding mechanism is being abused by the local telephone companies. The claim that the needed subsidy is $20 billion—a largely over-inflated number and a by-product of the local telephone company "shell game" of internal revenue shifting—really reflects the cost of their inefficient monopoly operations. By "de-linking" the notion of local telephone company revenue requirements from the funding of the universal service subsidy, public policy makers will ensure equal access to, and fair distribution of an appropriate universal service subsidy.

"SEQUENCING" BELL ENTRY: LOCAL COMPETITION FIRST

Mr. Chairman, given the decades of Bell anticompetitive behavior prior to divestiture and their continuing pattern of abusive practices, affirmative legislative and regulatory actions are needed to foster local exchange competition. The proper legislative framework and safeguards are as critical to managing the transition from a government-sanctioned monopoly to effective local competition as divestiture and equal access were to ensuring a competitive long distance market. Successfully making the transition to full, fair and open competition in all markets requires that local competition occur first.

In other words, proper "sequencing" is critical. Monopolies and free markets don't mix. After local market-opening measures are fully implemented and after effective local competition develops—then and only then should the Bells be allowed into long distance. Private sector commentators have examined the telecommunications marketplace as it stands today and reached the same conclusion about the need to retain the prohibition on entry by the Bell Companies into the long distance industry until they cease to be monopolies—that is, until real local competition is evident. Robert H. Bork, a noted antitrust expert who formerly served on the U.S. Court of Appeals for the District of Columbia Circuit, recently stated:

> After examining the issue and the arguments advanced by the Bell Companies and their supporters, I conclude, as I have before, that these restrictions [line-of-business restrictions against entering long distance and manufacturing] are still supported by antitrust law and economic theory and should be retained. The Bell Companies' argument is that the decree's line-of-business restrictions are relics of the 1970s, the industry has changed dramatically, and the restrictions are the product of outmoded thinking. To the contrary, the basic facts of the industry that required the decree in the first place, basically the monopolies of local service held by the Bell Compa-

> nies, have not changed at all. The antitrust and economic reasoning that led to line-of-business restrictions remain completely valid. (*The Ban on Bell Company Entry into Long-Distance and Manufacturing: Why it Should Be Retained Until the Local Exchange Becomes Competitive*, February 1995, pp. 1-2)

Similarly, economist and former Director of the Office of Management and Budget Director Jim Miller, a champion of deregulation, reviewed the issue recently and concluded:

> If the MFJ's line of business restrictions against RBOC entry into long-distance markets were to be removed prior to the establishment of competition in local markets, the RBOCs would be able to exploit their regulated-monopoly positions, leading to higher prices for local telephone services, predatory behavior in long-distance markets, and discrimination against rivals in access to the local exchange—causing a significant misallocation of the nation's telecommunications resources. (*Deregulation of Telephone Markets: RBOC Entry Into Long-Distance Service*, March 28, 1995, p. 1)

It is clear what must occur—the Bell Companies must cease to be monopolies before they expand into the long distance and other competitive markets.

"SIMULTANEOUS ENTRY"—DON'T BE FOOLED BY THE BELLS' RHETORIC

The RBOCs advocate "simultaneous entry"—allowing them into long distance at the same time that they are required to open local markets. At first blush, this may sound reasonable and fair. The truth, however, doesn't lend itself to the quick Bell Company rhetoric.

The Bell Companies control 99 percent of their local markets. It is going to take some time for long distance or any other companies to effectively compete in the local exchange. Any new entrant will have to finance and build alternative facilities, as well as successfully negotiate complex interconnection, resale, and equal access arrangements with the Bell Company. On the other hand, the RBOCs could begin offering long distance service within their regional territories immediately. A Bell Atlantic official recently told the *Wall Street Journal*, "We have the facilities to provide long-distance service in our region as we speak." The Bell companies would also likely take advantage of a tremendously competitive long distance resale market to provide customers long distance services outside their regions. More than five hundred companies already resell long distance service purchased at deep discounts from MCI and three other long distance companies with nationwide networks.

As soon as they can, the Bell Companies will aggressively market "one-stop shopping" of local, wireless and long distance services to their existing customer base—virtually every home and business in the country. Given their existing local monopoly and wireless duopoly, the RBOCs will be the only ones able to do so. In other words, a "simultaneous entry" approach is really a "Bell-first" approach that confers an overwhelming marketplace advantage to the Bell monopolies, an outcome that is neither reasonable nor fair.

Monopoly status has conferred significant financial advantages on the RBOCs as well. In analysis completed by MCI in February, 1995 ("RBOC Cash Flow and Deregulation: A Level Playing Field?), the RBOCs' unreasonably high cash flow levels, produced by monopoly pricing and excessive access charges paid by long distance companies, is clear. MCIs analysis was compiled from data on file at the FCC and from other public sources of information, and was verified by Price Waterhouse LLP. Among this paper's key findings are:

- The RBOCs' operating cash flow margin (46 percent) is the highest in American industry, exceeding those of oil companies (37 percent), electric utuities (34 percent) and drug companies (27 percent). Contrast the RBOC margins with those of competitive long distance companies (19 percent). See Exhibit 6.
- RBOC operating cash flow margins have been consistently 46 percent or higher since the Bell System break-up in 1984.
- Access charges paid by long distance companies give the RBOCs a 71 percent margin and account for 45 percent of the excessive RBOC operating cash flows.
- The huge margins in access charges allow the RBOCs to self-fund their investment activities. Unlike companies in competitive markets, they have rarely sought funding from capital markets.

Without legislative changes which de-monopolize local markets before allowing RBOC entry into other markets and which reduce access charges to cost, the RBOCs can effectively prevent meaningful local competition, as they have to date, while also cross-subsidizing their entry into long distance. They have the ability to do this because they have operated as government-sanctioned monopolies and their profits have never been disciplined by the competitive market. Unless the right sequencing

and incentives are provided, the Bell Companies will leverage their marketplace and financial advantages unfairly to keep their local monopoly intact and extend it into the long distance market.

COMPETITIVE MARKETS EXPAND OPPORTUNITIES AND JOBS

A 1994 study conducted by former Secretary of Labor, Ray Marshall, concluded that by ensuring that local telecommunications markets are fully competitive, Congress could help to create 478,000 jobs and increase the Gross Domestic Product by $37 billion in the next ten years.

Marshall cautioned Congress that "the proposals to allow RBOCs to enter competitive industries before local telecommunications markets are fully competitive would harm competition; reduce the growth of output, employment and technological innovation; potentially cripple the NII (National Information Infrastructure); and raise prices to consumers."

In refuting studies done by the RBOCs, Marshall pointed out that, "studies that purport to show that removing the MFJ restraints immediately would raise output and employment are based on the unrealistic assumption that monopolists would increase efficiency by entering long distance markets that these analysts assume are not already highly competitive. This is contrary to all credible evidence and logic."

In conclusion, the paper found that if the RBOCs were to be allowed into long distance with their local monopolies intact, it would result in the loss of 322,000 jobs and a $24.4 billion drop in the Gross Domestic Product.

MCI VIEWS ON H.R. 1555, "THE COMMUNICATIONS ACT OF 1995"

H.R. 1555 properly recognizes the need to aggressively open local telephone monopoly markets to competition. The legislation also seems to require the presence of actual facilities-based competition in the local market before the RBOCs are allowed into the long distance market. However, MCI strongly urges the committee to revise some of H.R. 1555's provisions and clarify others.

- *Actual competition test.* H.R. 1555 appears to require that actual facilities-based local exchange competition must exist before the RBOCs are allowed into the long distance market. However, the legislation raises questions about what geographic area actual competition needs to be present in before an RBOC meets the actual competition test for entry. For example, if one competitor is offered interconnection and agrees and serves a limited geographic area (Houston), does that mean the RBOC is then allowed to provide long distance service throughout the entire state? The RBOCs should be allowed to provide long distance service only in those areas where real facilities-based competition for comparable services exists.
- *Department of Justice review.* H.R. 1555 does not provide for any role for the Department of Justice (DOJ) in reviewing RBOC applications for entry into the long distance marketplace. The DOJ is the principle guardian of competition economy-wide. It has effectively enforced the antitrust laws in the telecommunications industry on a nonpartisan basis and is uniquely capable of judging the effects of monopoly power in this market. Telecommunications reform legislation must require DOJ approval of RBOC entry into long distance based on a determination that there is no substantial possibility that the RBOC can use its local market power to impede long distance competition.
- *Limited Review.* The agency that determines whether the conditions are right for RBOC entry cannot look beyond literal compliance with the checklist and the presence of some local competition. The agency should have some flexibility to require that additional conditions necessary to protect competition are in place. For example, the bill should require the FCC to make a finding that entry is in the public interest.
- *Interconnection and pricing.* H.R. 1555 has no strong cost-based pricing standard; instead interconnection pricing is required to be "just and reasonable." A "just and reasonable" standard will allow the RBOCs to avoid pricing interconnection at cost, which could seriously jeopardize the economic viability of local competitors. It is also unclear whether or not interconnection is required at any technically feasible point on the RBOCs network.
- *Number portability.* H.R. 1555 does not seem to require true number portability, i.e., portability based on a database architecture similar to what is used for 800 service. The RBOCs are required to provide number portability only "to the extent technically feasible or economically reasonable." The RBOCs will certainly try to use this giant loophole to delay provision of true number portability—as they have in several states that have implemented interconnection provisions.

In place of true number portability, the RBOCs have offered "interim solutions" that keep the RBOCs between new local rivals and their customers and are unworkable and anti-competitive.

- *Resale.* H.R. 1555 has no requirement that the RBOCs provide resale at wholesale prices. Costs normally associated with retail activities, such as sales and marketing expenses, should not be passed on to potential competitors. Competition developed in the long distance industry in large part because resale at wholesale rates was available. A provision requiring a commercially-viable, cost-based wholesale local product is essential.
- *Unbundling.* H.R. 1555 allows local telephone monopolies to impose the "costs of unbundling" on all customers, including the incumbent monopoly. This is an invitation to excessive overcharging. There is no evidence that any such costs exist because today's telecommunications networks have natural interface points. Moreover, to the extent that there are costs associated with unbundling and making the market more competitive, they should be imposed on all providers. Otherwise, local competition will never develop.
- *Building access.* H.R. 1555 does not contain a provision requiring nondiscriminatory access to multi-unit buildings. Landlords often view competitors as a source of revenue rather than a utility because customers are already being served by the incumbent telephone company. New local entrants are charged high space rental fees—compared to free access for the incumbent monopolies—placing new entrants at a significant disadvantage.
- *Universal service.* H.R. 1555 provides no requirement that universal service funds be distributed on a competitively-neutral basis. If competitors are wining to serve high-cost rural areas, then they should have access to the universal service support. Without equitable funding opportunities, competition will be slow to develop, especially in rural America. Universal service funds are also not required to be explicit, which could keep in place huge long-distance access charge subsidies.
- *Incidental interLATA relief.* H.R. 1555 provides the RBOCs with broad "incidental" interLATA relief. The legislation should provide that the relief granted be narrowly construed in order to avoid confusion, and that the authority cannot be used to impede competition or otherwise harm consumers.
- *"Affiliate" loophole.* H.R. 1555 only prohibits RBOCs—and not their "affiliates" or other subsidiaries—from providing long distance service. This loophole would apparently permit the RBOCs to enter the long distance marketplace immediately through major investments in other companies.
- *Post-entry safeguards.* For unexplained reasons, H.R. 1555 requires an RBOC to establish a separate subsidiary for electronic publishing, manufacturing and alarm monitoring, but imposes no such requirement for long distance. Separate subsidiaries have proven to be a useful and important complement to other safeguards that prohibit the cross-subsidization of affiliates in competitive businesses. An RBOC long distance affiliate must be structurally, operationally and physically separate from the local business. Each must have its own facilities and personnel, and maintain its own books and records. Separate subsidiaries reduce the risk of discrimination because they make it easier to determine what services and information the local affiliate is providing the long distance affiliate, and how much the long distance affiliate pays for them. By eliminating shared costs, and by making sales between the entities more visible, separate subsidiaries make it harder for the local company to subsidize the activities of the long distance company. Separate subsidiary requirements also promote enforceable imputation rules, which require long distance affiliates to set prices that cover all their costs. Separate subsidiaries are not a panacea, but would help consumers, competitors, and government agencies determine if the RBOCs are complying with equal access and nondiscrimination safeguards, and to obtain more complete relief if the RBOCs violate these protections.
- Private Enforcement. Among the safeguards applicable after the RBOCs begin to provide long distance should be a strong provision permitting companies injured by violations of nondiscrimination and separate subsidiary rules to be made whole. Victims of anticompetitive abuses should be able to recover damages in federal court, both to compensate them and to deter additional violations.

THE JUSTICE DEPARTMENT'S CRITICAL ROLE IN PROTECTING COMPETITION

Effective competition in all telecommunications markets will benefit consumers by challenging carriers to provide better services at lower prices. Congress has made the Department of Justice the principle guardian of competition economy-wide. For decades, DOJ's efforts have complemented and reinforced the work of federal and

state regulators to promote and protect competition—not competitors—in all segments of our economy.

As the courts have uniformly recognized, Congress intended telecommunications carriers to be subject to the antitrust laws. There is no inherent conflict between the antitrust laws and telecommunications regulation. DOJ has played an extraordinarily important and constructive role in promoting competition in telecommunications markets. While the Bell System was able to stymie the FCC's efforts to introduce competition in the 1970s, DOJ was able to get the Bell System to take the steps that have opened up long distance and manufacturing markets to unprecedented competition. As noted earlier, that competition has produced dramatically lower prices, explosive technological innovation and vastly expanded choice for consumers. Competition has benefitted residential consumers, large and small businesses, and both rural and urban America.

Through decades of experience, DOJ has developed substantial expertise in telecommunications markets. DOJ has effectively promoted telecommunications industry competition on a non-partisan basis. DOJs investigation of the Bell System began during the Nixon Administration, the case was pursued during the Ford and Carter Administrations, and divestiture occurred during the Reagan Administration. Since then, DOJ has reviewed over 350 RBOC waiver requests and over 250 have been granted. Through this combination of experiences, DOJ has gained special insight into ways of effectively promoting telecommunications competition.

Consistent with the preference of the antitrust laws for competition over regulation, DOJ has taken the lead in searching for ways to promote competition without intrusive regulation. In telecommunications markets—as in other markets—antitrust oversight has reduced the need for regulation, and caused what regulation remained to be simpler and more streamlined.

THE "VIII(C)" TEST IS THE APPROPRIATE STANDARD

Section VIII(C) of the consent decree provides that the decree's line-of-business restrictions on the RBOCs shall be removed (or waived) upon a showing by the petitioning RBOC that there is no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter.

Although the RBOCs are now dismissing the VIII(C) test as overregulatory and too burdensome, their past statements reflect a much different position. As the RBOCs told the D.C. Circuit a few years ago:

> The elements of Section VIII(C) together prescribe *a classic antitrust standard*: a line of business restriction shall be removed when there is no reasonable likelihood that a Regional Company could obtain market power through misuse of its local exchange monopoly. Consistent with antitrust precedent, that standard requires a final assessment of the scope, structure and dynamics of the market, the probable conduct of the Regional Company in that market, and the probability that the Regional Company could achieve market power. (Joint Brief for the Regional Telephone Company Appellants, at 56, in United States v. Western Electric Co. (filed D.C. Cir. April 17, 1989) (Case Nos. 87-5388 and consolidated cases).)

The RBOCs have also reaffirmed that VIII(C) is the right test on several occasions in communications to Congress:

- William Weiss, then Ameritechs Chairman and CEO, in October 20, 1993 letter (Exhibit 7) on behalf of all seven RBOCs to Senator John C. Danforth, wrote:

  An entry test based on antitrust principles, must focus on conditions in the market that one is seeking to enter. The Modified Final Judgment (MFJ) provides just such a test. Recognizing that excluding a competitor from a market harms consumers, the MFJ provides that the line of business restrictions, including the long distance prohibition, shall be removed when there is "no substantial possibility that a (regional company) could use its monopoly power to impede competition in the market it seeks to enter."
- In a March 8, 1994 letter (Exhibit 8) to Senator Ernest Hollings and again in his May 12, 1994 testimony before the Senate Commerce Committee, James G. Cullen, the President of Bell Atlantic agreed that the standard from section VIII(C) of the AT&T consent decree is "the correct test for whether a Bell company should be allowed to provide interstate long distance services."
- In a March 16, 1994 letter (Exhibit 9) to Senator Honings, Sam Ginn, then Chairman and CEO of Pacific Telesis, stated: "The VIII(C) test—ability to impede competition in the market we're entering, the long distance market—is the appropriate test."

The VIII(C) test asks the right question—whether the RBOCs can leverage their local bottleneck power to impede competition in the long distance or manufacturing

92-967 O - 95 - 6

market. That is why leading antitrust scholars, including William Baxter (who headed DOJ's Antitrust Division in the Reagan Administration when the consent decree was entered), former Judge Robert Bork and Professor Phillip Areeda (author of the leading treatise on antitrust law) support the VIII(C) "no substantial possibility" test. Professor Baxter, in an April 26, 1995 letter to Chairman Bliley, wrote of the appropriateness of the VIII(C) test:

> [I]t is intended to protect against a clearly visible, unusually damaging risk of monopolistic pricing and technological stagnation. At a minimum, such a showing could be made only after the BOC's local exchange facilities have been opened to competition—not theoretical or potential competition, but real competition that gives consumers a genuine choice among competing local service providers. Unlike the retrospective Sherman Act test used by the courts to determine whether an antitrust violation has occurred, this competitive entry test is forward looking and prophylactic. Thus, the test will prevent antitrust violations from occurring and will preserve and protect existing competition in the long distance market.

Turn the question around: are the RBOCs seriously arguing that they should be permitted to get into long distance even if their entry would create a significant possibility that they will reverse the trend of the last decade and harm long distance competition? To ask the question is to answer it. VIII(C) is a reasonable, commonsense test. Any weaker test would permit the kind of competitive abuse that the antitrust laws consistently prohibit—and that MCI believes this committee wants to prevent.

LIMITATIONS OF FOREIGN OWNERSHIP OF COMMON CARRIERS

Mr. Chairman, you also asked us to comment on legislation introduced by Representative Michael Oxley that would eliminate foreign ownership restrictions of U.S. common carriers. MCI supports, in principle, the goal of revising Section 310(b) of the Communications Act which limits the percentage ownership foreigners can invest in U.S. communications common carriers. This provision undermines the ability of U.S. companies to raise scarce capital and it is used by U.S. trading partners to justify existing barriers to competition in foreign markets.

In revising the restrictions, however, Congress should adopt policies that reward foreign countries for opening their telecommunications markets by reciprocally opening the U.S. market to foreign investment and competition. The subcommittee can accomplish this goal by eliminating the existing foreign ownership limitations on a reciprocal basis. If a foreign market provides comparable market access opportunities to U.S. companies as the U.S. affords others, then investors from that country should not be subject to Section 310(b).

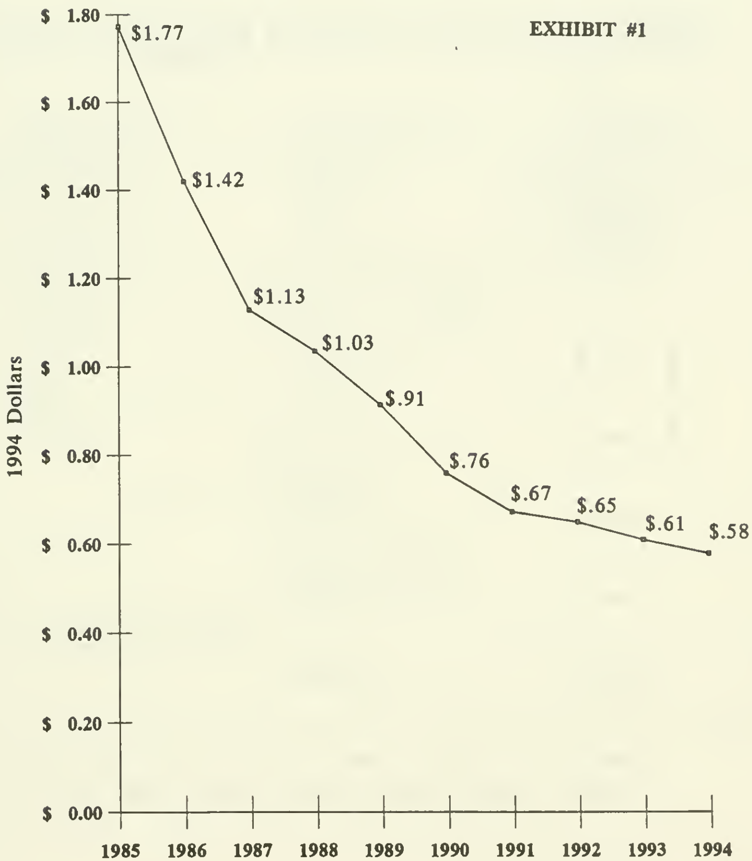
CONCLUSION

Policymakers are once again at a crossroads. Beginning with the DOJ's antitrust lawsuit against the Bell System in 1974, the federal government chose competition over monopoly. It led to the 1984 divestiture and the opening of former monopoly markets to competition. The result has been an astonishing transformation in the way we work, communicate and live in this country. In long distance, that transformation brought with it significant consumer benefits—much lower prices, unprecedented technological innovation, higher quality and numerous service choices.

Twenty-one years later, policymakers again must decide. MCI urges this committee, in considering H.R. 1555, to choose competition over monopoly. Can the substantial risk to competition and to the extraordinary consumer benefits caused by prematurely unleashing today's telephone monopolists into the long distance market be justified? Telecommunications reform legislation must open local markets and ensure that effective local competition has developed before allowing the RBOCs into adjacent competitive markets. Monopolies and free markets don't mix.

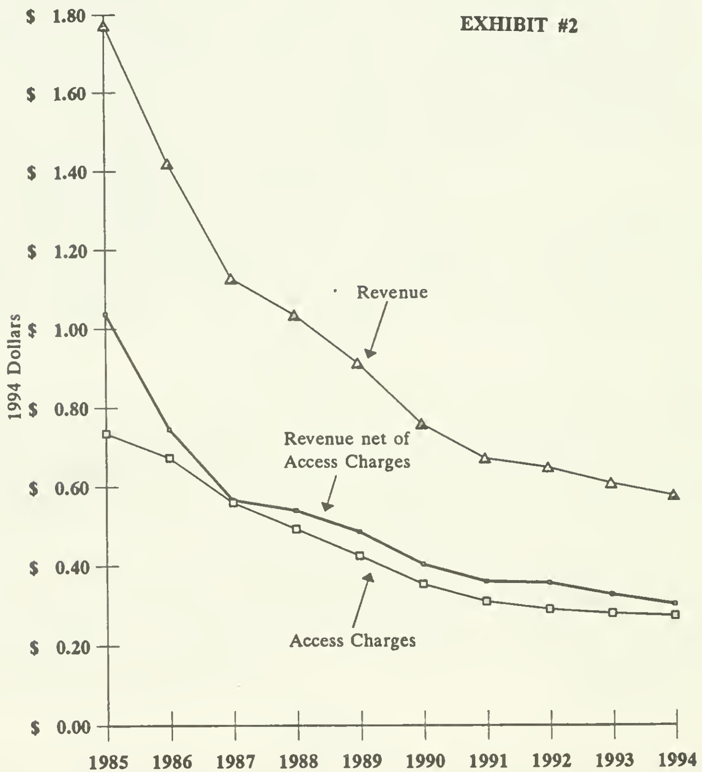
Premature Bell Company entry into long distance will benefit seven huge monopolies—to the detriment of consumers and competitors. Only when the RBOC bottleneck is broken—and the Department of Justice determines, based on a review of market facts, that there is no substantial possibility that they can impede long distance competition—will America's consumers be benefitted by RBOC entry into the long distance market.

The Cost of an Average Long Distance Call



Source: Robert E. Hall, Long Distance: Public Benefits From Increased Competition, 1995 Update.

Revenue and Access Charges for an Average Long Distance Call for the Three Largest Carriers



Source: Robert E. Hall, Long Distance: Public Benefits From Increased Competition, 1995 Update.

EXHIBIT #3

MCI'S MAJOR PRODUCTS & SERVICES

CONSUMER MARKETS

- Friends & Family
- Friends & Family II
- New Friends & Family
- Friends & Family Paging
- 1-900-GET-INFO
- Friends around the World Anytime
- Premium Calling Plans
  - MCI Prime Time
  - MCI EasyRate
  - MCI Anytime
- Best Friends
- 1-800-Collect
- Personal 800 and Personal 800 Follow Me
- MCI Card
- Phone Cash
- MCI VideoPhone

BUSINESS MARKETS

- NetworkMCI Business
  - InternetMCI
  - MarketPlace MCI
  - EmailMCI
  - FaxMCI
  - ConferenetMCI
- MCI 800 Service and International 800
- HyperStream Data Products
- MCI Global Communications Service
- Direct Dispatch
- Enhanced Customer Application Service
  - MCI Perspective
  - 800 Traffic View
  - Multimanager
- Enhanced Voice Services
- Forum Conference Calling Service
- MCI Preferred
- MCI Vision
- Friends of the Firm
- Proof Postive
- CampusMCI
  - Campus Connection Card
  - CampusMCI Prepaid Card
  - MCI Masters

INTERNATIONAL

- International Direct Dial
- International Private Lines
- MCI Global Messaging Service
  MCI Mail
- MCI Mail Global Access
- MCI Fax Service
- MCI Telex Services

EXHIBIT #4

RECENT BELL COMPANY ANTICOMPETITIVE ABUSES

- **AMERITECH**

  - In 1995, the Illinois Commerce Commission (ICC) ruled in favor of Metropolitan Fiber Systems (MFS) that Ameritech proposed illegal discriminatory requirements for interconnection to Ameritech's local telephone network.

  - In 1994, the ICC ruled in favor of MCI, which had filed a complaint accusing Ameritech of violating imputation rules prescribed by Illinois statute. Ameritech did not charge itself the same access fees paid by its competitors, MCI and LDDS.

    By illegally underpricing its competitors, Ameritech was engaging in an exclusionary tactic that made it less desirable for customers to switch to more efficient competitors.

- **BELL ATLANTIC**

  - District Cablevision of Washington, DC, charged C&P Telephone Company with exercising discriminatory control over its fiber optics capacity. In 1990, District Cablevision was refused permission to install fiber in C&P's fiber optic ducts because the monopoly said "such fiber would give other companies, including District Cablevision, the ability to compete with C&P, particularly in the area of telephone users' access to long distance carriers."

  - Bell of Pennsylvania paid over $40 million in refunds in 1990 to settle charges that it used deceptive marketing techniques in selling optional services such as call waiting, call forwarding, and touch tone dialing. The Public Utilities Commission noted that the company "had committed more than 3,500 violations of residential service rules.

- **BELL SOUTH**

  - In October 1992, Southern Bell entered into an agreement with the State of Florida to settle grand jury charges that customers paid $15.2 million for calls they never made and services they never received.

- In 1991, four Florida agencies investigated allegations that Southern Bell employees falsified customer repair records to avoid paying refunds to customers. Employees of the company testified that they routinely falsified maintenance records at the direction of company management to meet Florida Public Service Commission quality control standards. Florida's Public Counsel said that the falsification of records appears to have been widespread for years.

- In South Carolina, BellSouth in collusion with fellow local exchange carriers, charged itself a lower terminating access fee than long distance carriers. On the record, it said it was charging itself the same rate. After MCI and other long distance carriers filed a complaint, BellSouth agreed to give them the same deal.

- In 1991, the Georgia Public Service Commission found that Southern Bell had undermined its competition in the voice messaging service market. Southern Bell had favored its own service by setting up technical barriers to block competitors until Southern Bell was prepared to roll out its own service.

- **PACIFIC BELL**

  - Currently, Pacific Bell is pursuing a policy of refusing its customers' requests to program long distance company access codes (10xxx, MCI:10222) into their leased Centrex office phone systems controlled by Pacific Bell. This practice prevents competition for intraLATA or "short haul" toll calling.

  - In 1993, the California Public Utilities Commission (CPUC) rescinded its intraLATA competition order following an internal investigation revealing that a Pacific Bell employee was improperly involved editing the proposed Commission decision. The CPUC investigation found that Pacific Bell had re-written many important sections of the order, including those on Centrex, imputation and contracts in a manner adverse to the interests of competitors.

- **SBC COMMUNICATIONS (formerly Southwestern Bell)**

  - In 1990, a U.S. District Court jury in Amarillo, Texas, ruled that Southwestern Bell had engaged in anti-competitive practices, and awarded over $16.6 million in damages to Great Western Directories. The jury ruled that Southwestern Bell had used its monopoly power to control the directory

advertising market. Southwestern Bell charged directory publishers higher prices for the use of its listing of telephone users than it charged its subsidiaries.

- In 1993, a state court in Galveston, Texas, awarded Metrolink Telecom $5.7 million in antitrust damages in a lawsuit against Southwestern Bell. Southwestern Bell tried to shut down a special service set up by Metrolink Telecom that would connect Houston to Galveston. The Metrolink service used leased lines form Southwestern Bell and allowed business customers in Houston to make calls between Houston and Galveston.

  According to Metrolink, Southwestern Bell engaged in anticompetitive practices by refusing to list Metrolink numbers in its directories and to assign it any new numbers. In addition, Southwestern Bell wanted to impose on Metrolink monthly charges that were higher than those is charged its own customers.

- In 1989, the Texas Public Utility commission (TPUC) ordered Southwestern Bell to refund $87 million and freeze basic rates for four years because it was earning more than its prescribed rate of return. The TPUC staff had recommended a $400 million reduction in rates.

- **US WEST**

  - In 1991, US WEST was fined $10 million after admitting to four major violations of the antitrust decree governing the breakup of the old Bell system. This was the largest fine ever levied by the Department of Justice's Antitrust Division against one defendant. The violations included discrimination in providing the General Services Administration (GSA) with exchange access and other servcies; violation of the decree's manufacturing restriction; and violation of the information servcies restriction.

  - In 1988, the Washington Utilities and Transportation Commisison (WUTC) cited US WEST for withholding access to local telephone customer marketing information from its intraLATA long distance competitors. A WUTC law judge ordered US WEST to release this information.

  - In 1995, US WEST was fined a record $4 million for being "woefully unprepared to handle...new customers wanting basic and advanced telephone services in 1994," according to the Rocky Mountain News.

EXHIBIT #5

BELL COMPANY ABUSES IN THE INTRALATA TOLL MARKET

This paper summarizes the current status of intraLATA competition in the states and provides examples of Regional Bell Operation Company (RBOC) abuses which have significantly limited the growth of such competition since it was enabled by the MFJ in 1984.

RBOC OPPOSITION TO INTRALATA COMPETITION

Attachment A describes the status of state intraLATA competition today. Please note the difference between "basic" or "access code" competition and "equal access." Forty-seven states now allow basic (10XXX, 800, 950, access) competition While basic/access code dialing provides some level of competition in these states, using such codes is confusing to consumers and has resulted in minuscule market share gains by the interexchange carriers in the intraLATA toll market. In Southwestern Bell Corporation's 1991 Annual Report, for example, the frustration associated with access code dialing was described as follows:

> Another new service -- Operator Call Completion -- turned a frequent customer frustration into a $14 million product in 1991. "We handled 68 million calls a year from customers who have forgotten their long-distance carriers' access codes."

Southwestern Bell continues to deny intraLATA equal access to interexchange carrier (IXC) customers even though it openly advertises the inferior nature of the intraLATA calling its forces on its dependent IXC competitors. In November of last year, Southwestern Bell ran the following newspaper ads in Texas:

> Making a toll call with an AT&T or MCI access code is a lot like getting lost while on vacation: you have to stop and figure out where you are, you find yourself going out of your way for No Good Reason, and the whole deal ends up costing more than you expected.

Only with intraLATA equal access can consumers fully benefit from intraLATA competition. For these purposes, "equal access" means 1+ and 0+ dialing parity and the ability of customers to presubscribe to the intraLATA carrier of their choice. *Today there is no RBOC territory in America where intraLATA equal access exists.* Thus, the RBOCs and local exchange companies (LECs) still control virtually 100 percent of the intraLATA direct dial market.

- *California* -- The most notorious contemporary example of RBOC interference with "basic" intraLATA authority is Pac Bell's improper conduct at the State Public Utility Commission (PUC). After resisting IXC entry for years, Pac Bell finally relented in 1993 and seemed prepared to allow California to move toward "1980's competition." The PUC issued an order

in November 1993 to allow "basic" intraLATA authority for IXCs on January 1, 1994. Then, in a truly outrageous act, one of Pac Bell's senior regulatory officials engaged in a series of improper "ex parte" contacts with PUC staff members on sensitive subjects such as Pac Bell contracting authority, local network unbundling and imputation of access charges. Because this official clearly behaved improperly as to these issues, the PUC concluded that the entire intraLATA competition order was "tainted" and rescinded it late last year. Although a new order was recently issued, PacBell's improper actions in this one incident delayed intraLATA competition for an additional year.

IntraLATA competition was finally authorized effective January 1, 1995 in California. Despite that ruling, Pac Bell refused to re-program its Centrex services to allow business and government customers to use the services of other interexchange carriers. Pac Bell's refusal forced consumers to dial five digit access codes to access carriers other than Pac Bell. MCI filed a complaint against Pac Bell charging them with anticompetitive and unlawful behavior by denying California business and government Centrex customers the right to select their short haul toll call provider. Four months later, the Administrative Law Judge ruled against Pac Bell and cited them for illegal and anticompetitive practices. The ruling requires Pac Bell to allow Centrex customers to make short haul toll calls without having to dial cumbersome and unnecessary access codes.

- *Kentucky* -- In its order on May 6, 1991, the State PUC found that intraLATA toll competition was in the public interest and that it "...should extend to equal access on a presubscribed basis...with the implementation to proceed apace." It wasn't until December 1, 1994, that GTE asked its switch vendor to develop the software required for intraLATA equal access.

- *Michigan* -- The PSC has ordered intraLATA equal access effective January 1, 1996, despite heavy resistance from Ameritech, including an unfounded claim (rejected by the PSC) that 100,000 jobs could be lost if intraLATA equal access is implemented as scheduled. Michigan Bell has appealed the commission order in an attempt to block implementation.

- *Minnesota* -- The PUC ordered intraLATA equal access in November 1987; thereafter, US West mounted a lengthy and continuing legal challenge to the PUC's Order. Although the Commission recently confirmed its prior order and has ordered implementation no later than January of 1997, US West has appealed the order in yet another attempt to block implementation.

- *North Dakota* -- The PSC ordered intraLATA equal access deployed statewide by the end of 1994, but US West mounted a *massive* lobbying campaign and overturned the PSC's decision in the legislature. A major part of their argument was that 200 operator jobs would be eliminated in the State as a result of intraLATA equal access. Ironically, despite their win in the legislature, US West eliminated 250 such jobs anyway.

- *Virginia* -- One of only two states that does not allow any form of intraLATA competition.

Access changes imposed on potential competitors are higher in Virginia than any other Bell Atlantic State and Bell Atlantic continues to fight the introduction of competition or competitive safeguards.

RBOC "COMPETITION KILLER" APPROACHES

The more insidious ways the RBOCs are fighting intraLATA competition -- beyond outright opposition to "basic" authority in some states and "equal access" everywhere -- are through:

- Great expansions of "local calling areas";
- Failure to impute access charges;
- Refusal to reprogram Centrex systems; and
- 7-digit dialing proposals.

All of these approaches are intraLATA "competition killers."

Expanding Local Calling Areas

Examples of "the incredible shrinking intraLATA toll market," brought on by RBOC efforts to remonopolize intraLATA toll traffic -- purporting to make it "local" -- include:

- *Kansas/Missouri* -- Southwestern Bell is proposing "Local Plus" in these states. Local Plus provides 7 digit dialing, and unlimited LATA-wide calling for only $30 per month for residential customers and $60 per month for business customers.

- *Illinois/Wisconsin/Indiana* -- Ameritech has turned the entire Chicago LATA (60 miles from Wisconsin to Indiana) into one big measured "extended area service (EAS)" area.

- *Louisiana* -- South Central Bell has introduced Local Optional Service, which eliminates intraLATA toll competition and replaces it with local service in a 40 mile radius. South Central Bell has also priced several of its WATS Saver options far below cost, thereby eliminating any opportunity to compete for that traffic.

- *Mississippi* -- South Central Bell has introduced Extended Area Calling, which eliminates intraLATA toll competition and replaces it with local service in a 55 mile radius. South Central Bell does not impute costs for local service which allows them to price their service below the costs they charge their would-be competitors.

- *New Mexico* -- US West has expanded the Albuquerque local calling area to 80 miles east/west and 60 miles north/south.

- *Texas* -- Southwestern Bell has turned the entire Brownsville LATA into an "unlimited calling area," where residents pay just $25 a month and businesses $50 a month, for unlimited LATA-wide calling, while would-be competitors must still pay per-minute access charges and charge higher retail rates.

- *Vermont* -- New England Tel proposed to expand the local calling area in Vermont to include half the state, although the plan was rejected.

Despite the surface "pro-consumer" appeal of such expanded local calling plans, consumer groups often oppose them because they are anti-competitive and are subsidized by other captive ratepayers. By designating an area a "local calling area," and by pricing such services below cost, competition is artificially precluded -- even for providers that would be more efficient than the incumbent RBOCs -- and consumers are denied the benefits of competition.

Failure to Impute Access Charges

Failing to impute access charges into their intraLATA toll rates, while their would-be competitors must nevertheless pay them, is another way the RBOCs have engaged in "intraLATA foul play." Here are some of the more egregious recent examples:

- *South Carolina* -- Southern Bell proposed an "Area Plus Calling Plan" in South Carolina that provided local measured service throughout most of each LATA. The rates were below 10 cents a minute, while intraLATA access charges are above 12 cents a minute. Southern Bell admits the plan loses $11.5M a year, but is paying for it with what would otherwise be excess earnings returned to ratepayers.

- *South Carolina* -- Also, Southern Bell and the independent local telephone companies (LECs) entered into a secret deal by which the LECs could offer plans similar to Southern Bell's Area Plus plan, while paying access charges to Southern Bell and each other at greatly reduced levels compared to those charged to their IXC "competitors." Southern Bell intentionally misled regulators and the public in discovery in the Area Plus case, having said the independent local telephone companies would pay the same tariffed rates for access as IXCs. The IXCs complained to the South Carolina PSC, which has now ordered that the

IXCs be treated the same as Southern Bell.

- *Maryland* -- Bell Atlantic proposed a "Centrex Extend" service which is priced at 9 to 11 cents *per message* (not per minute). Under the Maryland imputation test agreed to by Bell Atlantic, the lowest relevant access charges are 4.5 cents *per minute*; hence the typical "five minute call" should have 22.5 cents of imputed access. The IXCs won this issue after a lengthy legal battle.

Refusal to Re-program Centrex Services

Business and government telecommunications users frequently purchase Centrex services from the RBOCs. With Centrex service, business and/or government agencies can have their own dialing systems and even abbreviated dialing plans. One of the features that Centrex provides is the automatic dialing of access codes necessary to utilize alternative carriers. RBOCs have refused to re-program their Centrex services to dial IXC access codes even though the capability exists. As discussed above, the California Administrative Law Judge found that such actions are illegal and anticompetitive. Nevertheless, refusal to re-program Centrex has forced IXCs to expend thousands of dollars to litigate the issue, during which time consumers are denied the benefits of fair competition.

7-Digit Dialing Plans

Further examples of RBOC abuse which have been opposed by consumer groups and rejected by state regulators involve turning "1+" intraLATA toll calls into "7-digit" toll calls, thus confusing consumers and widening the dialing disparity faced by potential competitors (which already must use "10XXX"). Such LEC plans were rejected as anti-consumer and anti-competitive by several PUCs in the last few years, including: Massachusetts, Vermont, Connecticut, Maine, Rhode Island and West Virginia. Nevertheless, Southwestern Bell has recently proposed 7-digit dialing in Kansas.

There are many other examples where RBOCs around the country have proposed various ingenious ways to fight intraLATA equal access and "remonopolize" potentially competitive intraLATA services. Bottom line: there is no substantial direct dial intraLATA competition anywhere today, and there will not be unless Bell abuses are curbed by regulators.

The local access bottleneck is still intact and is still being used by the RBOCs to thwart competition in adjacent markets. If the RBOCs were allowed into interLATA services while retaining that bottleneck control, the problems would simply get worse for consumers and competitors.

FCC INTERSTATE INTRALATA

The Federal Communications Commission in CC Docket No. 92-237, In the Matter of Administration of the North American Numbering Plan, has recognized that the Bell Companies and other local exchange carriers have been stripping off intraLATA interstate calls. The FCC believes that this practice may well reduce competition and defeat customer expectations that all of their interstate toll traffic would be carried by their presubscribed interexchange carrier.

Also, since there is a lack of competition for these calls, the FCC recognizes that callers are paying rates far in excess of those the caller would be able to receive from their presubscribed interexchange carrier. The FCC believes that the most harmed callers are the residential ones that do not have all the choices that business customers may have available. Therefore, the FCC is considering requiring the BOCs and all other LECs to cease their practice of stripping off interstate intraLATA calls to allow consumers to benefit from lower charges through increased competition.

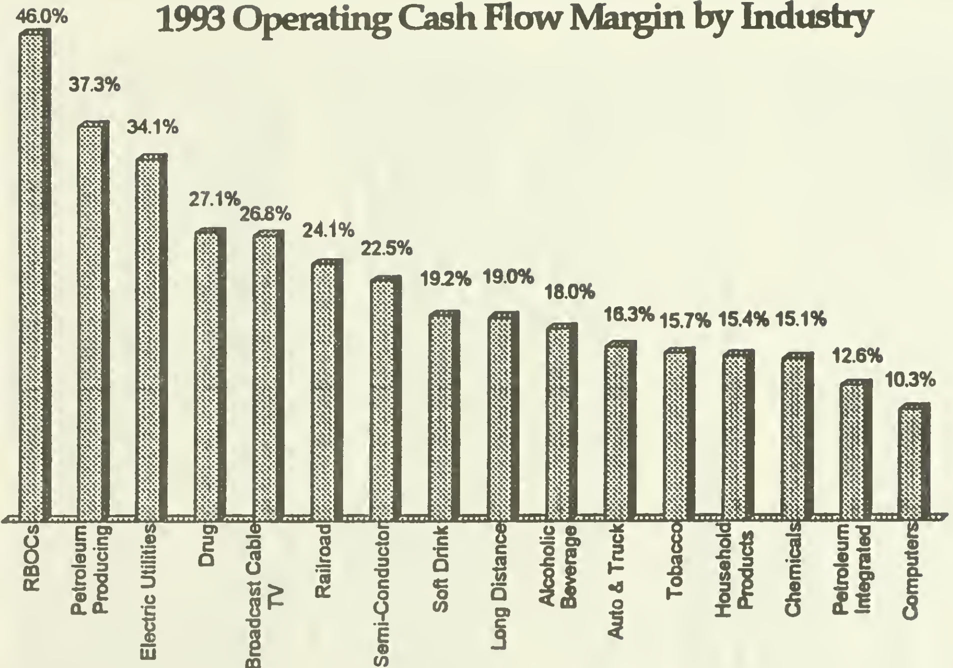
CONCLUSION

The pro-consumer, pro-competition AT&T consent decree set forth guidelines to prevent monopoly abuses from recurring in the telecommunications industry and required equal access in the interLATA toll market. It is undeniable that consumers have benefitted significantly from the resulting competition. In the intraLATA market, however, equal access was not mandated, in part because of the states' rights over such traffic. The Court overseeing the consent decree did, however, expect the development of competition in the intraLATA market:

> [T]he lack of competition in this [intraLATA] market would constitute an intolerable development. The opening up of competition lies at the heart of this lawsuit and of the decree entered at its conclusion, and the significant amount of the traffic that is both intrastate and intra-LATA should not be reserved to the monopoly carrier. (United States v. Western Elec. Co., 569 F. Supp. 990, 1005 (D.D.C. 1983)

Despite the decree's intentions, the RBOCs have continued to abuse their monopoly power and to prevent the development of full competition in the intraLATA market. Now, more than ten years since divestiture, intraLATA equal access still does not exist in any RBOC territory. Moreover, even in the absence of intraLATA equal access, the RBOCs continue to shrink the intraLATA direct dial market by expanding local calling areas, pricing services below the costs they impose on potential competitors and deploying anti-competitive and anti-consumer dialing patterns. Such abuses are clear proof of the RBOC's continuing monopoly power in the intraLATA direct dial market.

EXHIBIT #6



Notes:

1). Sources: Regional Bell Companies - FCC Preliminary Statistics of Communication Common Carriers for year ended December 31, 1993 ; Long Distance - Company Annual Reports; Electric Utilities - Disclosure, Inc.; all other industries are from The Value Line Investment Survey - 1994 editions.

2). The Long Distance industry composite is comprised of MCI, LDDS, ALC, LCI, AT&T and Sprint long distance services.

30 South Wacker Drive
Chicago, IL 60606
Office 312/750-5101

EXHIBIT #7

William L. Weiss
Chairman and
Chief Executive Officer

October 20, 1993

The Honorable John C. Danforth
Ranking Minority Member
United States Senate
Committee on Commerce, Science and Transportation
508 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Danforth:

On behalf of the seven regional companies, I am responding to the request you put to me and Bob Allen at the hearing on September 8 to develop a definition of local exchange competition. I hope the following information is helpful to you and the Subcommittee as you continue your deliberations on S.1086.

In developing a definition of local exchange competition, we must first determine the purposes for which such a standard might be used. Tests for competition have been developed, as in the cable reregulation legislation, to determine the appropriate level of regulation, of the prices of a telecommunications provider. For example, Illinois law provides the following standard of effective competition which, when met, relieves a provider of a service of certain regulatory pricing burdens:

> "Competitive Telecommunications Service" means a telecommunications service, its functional equivalent or a substitute service, which, for some identifiable class or group of customers in an exchange, group of exchanges, or some other clearly defined geographical area, is reasonably available from more than one provider. 220 ILCS 5/13-209.

This type of test is not appropriate as a test for entry into a market. An entry test, based on antitrust principles, must focus on conditions in the market that one is seeking to enter. The Modified Final Judgment (MFJ) provides just such a test. Recognizing that excluding a competitor from a market harms consumers, the MFJ provides that the line of business restrictions, including the long distance prohibition, shall be removed when there is "no substantial possibility that a [regional company] could use its monopoly power to impede competition in the

The Honorable John C. Danforth
October 20, 1993
Page Two

market it seeks to enter." This standard does not require the elimination of the local exchange monopoly. Indeed, it assumes the continuation of substantial market power, if not a *de jure* monopoly. Instead, relief is mandated if there is no substantial possibility that any existing monopoly power in the local exchange will impede competition in the market the local exchange company seeks to enter. The Court of Appeals has interpreted "impeding competition" to mean the ability to increase price or restrict output. This means, for example, that there must be a significant threat that the regional companies will dominate the long distance market.

The regional companies believe that existing conditions in today's telecommunications marketplace satisfy the test for entry set out in the MFJ. Regardless whether the Subcommittee agrees with that proposition, there can be no doubt that the unbundling requirements of S. 1086 justify the elimination of the long distance ban. It is Ameritech's position that the unbundling requirements of S. 1086 reduce barriers to entry and eliminate any remaining argument that the regional companies could act anti-competitively in the long distance business.

Predatory pricing by the regional companies in the long distance market is not feasible due to the scale economics of long distance carriers such as AT&T, MCI, and Sprint, and the fact that the regional companies would start with zero market share. Such a pricing strategy would fail because the long distance carriers could withstand any losses from matching below cost prices and could not be driven from the market. Access discrimination would be impossible to implement due to the current equal access regulations in place and the unbundling provisions of S.1086 bill which would make any attempted discrimination much easier to detect. Accordingly, the seven regional companies urge the Subcommittee to mandate long distance relief in S. 1086.

For this Subcommittee to establish a new test for long distance entry based on market metrics raises several concerns. First, local exchange competition will occur at different times for different groups of customers in different geographic areas. This has already been the experience in the development of long distance competition. To permit entry by the regional companies only to those customer groups and geographic areas for which competition exists - whether defined as the existence of a substitute service or some specified level of market share - will result in piecemeal entry that will not be in the best interests of consumers. This approach will increase customer confusion as to what carriers provide such services a at given point in time, and could cost consumers millions of dollars in

The Honorable John C. Danforth
October 20, 1993
Page Three

foregone savings that would result from full regional company entry. Even worse, delaying entry until some overall metrics is satisfied will delay entry in the most contestable arena far beyond any reasonable time. Ironically, a metrics test has the effect of placing the public policy decision of competitive entry into the hands of the incumbent providers who can control the entry of competitors into their own businesses by their decision as to whether or not, and on what scale, they choose to enter the local exchange business. These effects conflict with the main objective S. 1086 - to facilitate the development of universal access to an advanced telecommunications infrastructure.

In addition, continued or piecemeal exclusion of the regional companies from the long distance market would have a serious impact on the types and quality of services offered to consumers. For example, Ameritech has developed the Wisconsin Health Information Network (WHIN), linking doctors, hospitals, and insurance carriers in a network that reduces the cost of health care services while increasing the responsiveness of the industry to the health care needs of Wisconsin. As the current debate over health care attests, this type of service is critical to our nation's ability to provide quality health care services to all Americans. Other of the regional companies are offering or are planning to offer similar services. Due to the long distance restriction, the regions are unable to serve smaller, less populated areas because of the high cost of replicating a network for each area. As a consequence, the benefits derived from WHIN will be provided only to people in the larger cities of Wisconsin, such as Madison and Milwaukee, while people in less populated areas - those in the greatest need of improved health care services - are excluded. Removal of the long distance restriction would allow the regions to serve less populated areas using facilities based in larger cities, thus extending the full benefits of the network to all consumers and reducing the costs to everyone.

In conclusion, we urge the Subcommittee to recognize that opening all markets to all competitors offers the best hope of developing the nation's telecommunications infrastructure for the benefit of all citizens and therefore, to amend S. 1086 to eliminate the long distance ban of the divestiture decree.

Sincerely,

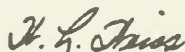


EXHIBIT #8

Bell Atlantic

Bell Atlantic Corporation
One Bell Atlantic Plaza
1310 North Court House Road
Arlington, Virginia 22201
703 974-3624

James G. Cullen
President

94 MAR -9 AM 11:45

March 8, 1994

The Honorable Ernest F. Hollings
United States Senate
125 Russell Senate Office Building
Washington, D. C. 20510-4002

Dear Mr. Chairman:

Thank you for the opportunity to appear before the Commerce Committee last week to discuss S. 1822. This letter is a follow up to suggest changes to your bill in three areas we discussed: the entry test, electronic publishing, and information services.

I. Entry Test

As I stated at the hearing, I agree with you that the Section VIII(C) standard is the correct test for whether a Bell company should be allowed to provide interstate long distance services. Under this test, the restrictions imposed on a Bell company "shall be removed upon a showing by the petitioning BOC that there is no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter."

If you use the VIII(C) standard, the additional entry tests, set out from page 79, line 10 to page 81, line 2 in the bill are unnecessary. This is the core of our long distance disagreement. The additional tests will result in long distance carriers controlling which long distance markets we can enter and therefore will effectively give them the power to bar our entry for at least a decade.

RHCs believe that under existing regulations and market conditions we can qualify for some interLATA authority under this test. The FCC has developed equal access procedures, which permit consumers to choose a carrier for their long distance calls. These procedures are administered by the Bell companies, as well as by hundreds of other local telephone companies that are not bound by the decree's interLATA restriction.

These procedures work. Consumers freely select the providers of long distance service and change providers in response to more attractive competitive offers. These are the same procedures that work in areas served by United, Sprint, Rochester, Southern New England and all the other exchange carriers that are also in the long distance business.

I would also urge Congress to return to the States the authority over intrastate communications that the MFJ took from them in 1984. State regulatory agencies should determine whether the Bell companies are allowed to provide intrastate interLATA services, just as they have control over the other telecommunications services offered by those companies. The attached Amendment 1 to S. 1822 incorporates these changes.

The long distance provisions cannot be considered in isolation. By that I mean the thrust of S. 1822 is to accelerate opening up the local telephone exchange markets to more competition, making it easier for competitors to gain more market share, particularly in our business markets, as soon as possible. Indeed, your bill contains many of the provisions from S. 1086 which was a bill to open up the local exchange. However, S. 1822 provides an important mechanism to insure that universal service is addressed before local loop competition can take place. This is a significant improvement.

Since S. 1822 creates new opportunities in the local exchange business for our competitors, I think it essential that the bill also create new and comparable competitive opportunities for the RHCs within the same timeframe. While the bill provides cable relief it is not immediate. Indeed, it is at least two years away. The information services "relief," we have already won in the courts without the restrictions the bill imposes. The one area where we receive immediate relief is in manufacturing. That is significant, but it does not offset opening up the local loop unless it is coupled with a realistic opportunity of getting into the long distance business. The additional tests in your bill that go beyond VIII(C) will preclude us from having that new, competitive opportunity. In addition, we will be saddled with a separate subsidiary requirement imposed only upon the BOCs.

As I also indicated last week, the Bell companies need immediate authority to provide interLATA services that are incidental to other permitted businesses. Amendment 2 attached to this letter would provide us with this authority.

II. Electronic Publishing

At the last hearing, I committed to providing you with the electronic publishing provisions agreed to by the Bell companies and the newspaper publishers, which both we and they believe strike the appropriate balance. This language, which has been incorporated into H.R. 3626, is also enclosed, Attachment 3.

III. Information Services

At that same hearing, you asked how I would improve Subtitle C dealing with information services. First, I would delete the requirement that a telephone company make gateway services available concurrently to all its subscribers. This requirement will only delay the introduction of new services and slow investment in the infrastructure. Second, the obligation to provide gateways to all information providers on nondiscriminatory terms is an obligation that should be borne by the Bell telephone companies — indeed, by *all* telephone companies — but not by telephone company affiliates that provide unregulated services. Therefore, the RHCs propose that the bill, at page 76 line 17, read:

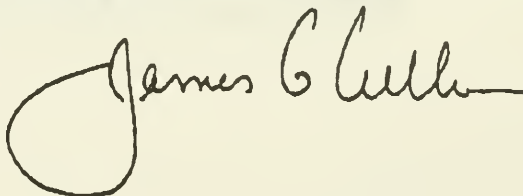
> "Unless expressly provided elsewhere in this Act, any common carrier that offers gateway service shall make such service available to its customers under nondiscriminatory rates, terms, and conditions, and shall offer gateway service functions to all providers of information services on nondiscriminatory rates, terms, and conditions."

IV. Other Suggestions

There are other ways in which S. 1822 can be improved. One of the most important is that telephone company entry into cable/video programming should not be further delayed. As a result of a recent court ruling, Bell Atlantic can provide cable service in its Region today. We believe that the best way to bring down the price consumers pay for cable service is through injecting immediate competition. Therefore, I urge you to delete the requirements imposed at page 87 lines 4-8 of the bill that would postpone this much needed competition.

The bill would mandate the implementation of number portability without regard to the costs or consumer benefits. It would impose highly restrictive "CPNI" rules, far more stringent than those developed by the Commission, that would make it extremely difficult for us to talk to our customers. Finally, the bill would also impose the requirement that all our services could be re-sold, including those services that are subsidized and provided below cost.

I look forward to exploring these and other matters with you in the upcoming March 10th hearing.



Attachments

Chairman and
Chief Executive Officer

130 Kearny Street
San Francisco California 94108
(415) 394 3000

PACIFIC TELESIS
Group

94 MAR 17 PM 3:18

EXHIBIT #9

March 16, 1994

The Honorable Ernest F. Hollings
United States Senate
SR-125 Russell Senate Office Building
Washington, D.C. 20510-4002

Dear Senator Hollings:

I wanted to write you personally about your telecommunications reform bill, S. 1822. I commend you for undertaking the extraordinary challenge of readying the 60-year old Communications Act for the 21st century.

But I also believe that the bill should be amended in certain key respects, both to ensure a truly level competitive playing field and to benefit consumers.

First, the entry test for in-state long distance must be changed. The VIII(c) test -- ability to impede competition in the market we're entering, the long distance market -- is the appropriate test. A test based on local competition just won't work. My problem with S. 1822 is that there must be a showing of exchange and access competition comparable in geographic range and price to BOC service, over facilities not owned by a BOC, with a significant number of subscribers. So if you're AT&T or MCI in California, you simply never serve the outlying areas (which they don't want to serve anyway), and we can never enter the long distance market!

Second, authority over intrastate long distance must be restored to the states. State personnel are in the best position to determine and evaluate the applicable facts, and what will benefit the consumers of their state. In addition, empowerment of the states with respect to intrastate long distance would reduce the load on the FCC and DOJ, minimizing the risk that these agencies would be overburdened by applications for relief. Finally, giving the states authority over intrastate long distance services would restore the jurisdictional balance that existed prior to the 1984 breakup of the old Bell system.

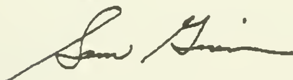
My last major concern is the separate subsidiary requirement for long distance. We can live with a separate subsidiary for manufacturing (with close collaboration permitted) because manufacturing, design and development are not "customer-facing." We will live with a separate subsidiary for electronic publishing until it sunsets in the year 2000, as the price of our agreement with the newspaper publishers -- even though it doesn't make sense from a customer's perspective. But Fritz, we cannot live with a separate subsidiary for long distance. It just doesn't make sense from a technical or customer perspective. And frankly, it's not a business we would enter under those circumstances.

A lot of customer confusion exists today because Pacific Bell can carry a call more than 250 miles, (within a LATA boundary) but they have to use another company for an 11-mile call (across a LATA boundary). Imagine what will happen when we tell them they have to call a different subsidiary of Pacific Bell for that 11-mile call! Or to call two different sales representatives to place orders for local and long distance service, even though they are both provided by Pacific Bell. And, that requirement treats the BOCs differently than other long distance carriers. Let me call your attention to Sprint's current ad, in which Candice Bergen tells customers that "Sprint is the only global company that offers everything. Local, long distance and cellular."

One last thought has to do with our $16 billion commitment to bring the Information Superhighway to all Californians. As you can appreciate, we will be unable to provide the maximum value for our customers unless we get the type of relief I have discussed in this letter.

Fritz, I hope you'll amend S. 1822 to take care of the items I have mentioned. In the end it will benefit consumers and ensure fair competition -- which is what the rewrite is all about. I'll give you a call in a few days to discuss this.

Sincerely,



Mr. FIELDS. Thank you very much, Mr. Harris.
Mr. Boaldin, president of Elkhart Telephone Company.

STATEMENT OF ROBERT BOALDIN

Mr. BOALDIN. Thank you, Mr. Chairman.

I'm president of Elkhart Telephone Company in Southwest Kansas. We serve approximately 1,500 access lines. I'm to represent the small companies' interest today. I'm also first vice chairman of USTA and incoming chairman of USTA. That represents virtually all the telephone companies in the country, including Bell, GTE, Sprint, and about 1,000 small and midsized companies. But my concerns today are for the small companies. And I have five concerns. And then I would like to talk about them.

Universal service must be preserved and supported and how do we pay for USF. Small and real providers' unique circumstances must be recognized as they were in the last year's bill. Exempt small carriers from interconnection requirements. Regulations should be minimized, particularly in competitive markets. Markets should regulate, not government. Where regulation exists there should be parity among competitors, deregulatory parity.

Mr. BOALDIN. Telephone companies must have equal business opportunities as their competitors.

Now, I would like to tell you what kind of companies I am here to represent. I am here to represent the companies that Ma Bell and AT&T years ago didn't want to serve. They weren't profitable. They are the companies that the farmers and ranchers went out and strung their own wires and built their own switchers and come into a switchboard in somebody's house and ask them if they could get service. Those are the companies I am here to represent. Mom and pop run the switchboard, they did the construction. I happened to have even been in on some of that. So that is the companies that I want to talk about today.

My company has grown from when I was working on a magneto system and stringing open wire and climbing poles to today we have fiberoptics and digital switch and we have interactive video in our schools. And we don't know what the future is going to hold for the residential customer. That is the part I want to talk about.

They have talked about local service here a lot today but I want to zero in on the residential customer. It is easy to come into a community like ours and take our better customers because there are not too many of them. And we are worried at what is going to happen to the universal service in a competitive arena. Because whenever they come in and take our best customers, they are the ones that have been helping subsidize the system. The toll and the access is what is subsidized so that we can have USF and our customers can still be on the network out there. And without that, we can't stay there. And if you take away that customer, somebody comes along and takes that big customer away, they not only took that service away from us and took away that toll and access that was helping us take care of rest of our customers, they take that customer's local service away that is higher than our farmer and rancher, our person next to the office.

In the local area, we subsidize those people the same way. If they are across from the CO, it costs less to serve them than it does a

rancher out in the country. We subsidize that through the bigger companies. You take that away and you have compounded our problem.

Where can we recover that cost so we can furnish state-of-the-art services? There are only two places that I can see, and that would be either through a USF or through local rates.

Now, every one of you sitting in this room are subsidized on your local service, whether you like to think about it or not. Local service, you are paying only maybe an average of 50 percent what it costs the company to deliver that to your home. If you are in a rural area, it is higher than that. We have several small rural companies that are very concerned about another part of this bill and that is that they have been deregulated for local service on the State side for many years.

This bill would re-regulate those companies. They are very disturbed and don't understand that. The bill promotes deregulation and this chart over here will show you on the one side the competitors, no regulation. On this side it shows you the regulation of the local exchange carrier that would be in place.

About the carrier of last resort, we believe there should be only one carrier of last resort and that should be a facility-based carrier and they should be fully funded. It could be MCI down here, it could be a cable system, whoever bids for that and gets it, as long as they are facility-based. They should be fully supported through universal service and the other companies should be relieved of that responsibility.

Smaller rural companies last year were exempt from the interconnection rules in the Senate and House bill.

Mr. FIELDS. Could I ask you to summarize, please.

Mr. BOALDIN. I would like for you to consider for the small companies the five points I made earlier: relief from interconnection, also universal service funding, deregulatory parity, and market share.

And I thank you, Mr. Chairman.

[The prepared statement of Robert Boaldin follows:]

PREPARED STATEMENT OF BOB BOALDIN, PRESIDENT, ELKHART TELEPHONE

My name is Bob Boaldin. I am president of Elkhart Telephone in Elkhart, Kansas. We serve about 1,500 customers in the Western part of the state. I am also the first vice-chairman, and incoming chairman, of the United States Telephone Association (USTA). USTA is the trade association representing virtually every local telephone company in the country, including the Bell Companies, GTE, Sprint, and over 1,000 small and mid-sized telephone companies.

While I can speak to a number of issues in the pending legislation from the position taken by the Association as a whole, given that there are companies here from the large and mid-sized groupings, I will focus particularly on the interests of small and rural telephone companies.

USTA broadly supports the effort to pass comprehensive telecommunications reform legislation. However that support is conditioned on five general principles. I would like to briefly outline these principles and use them to put our specific comments about H.R. 1555 in context. These organizing principles are:

1. Universal Telephone Service Must Be Preserved And Supported.
2. Smaller And Rural Providers Unique Circumstances Must Be Recognized As They Were in Last Year's Bill.
3. Regulation Should Be Minimized, Particularly In Competitive Markets.
4. Where Regulation Exists, There Should Be Parity Among Competitors.
5. Telephone Companies Must Have Equal Business Opportunities As Their Competitors. This includes interLATA relief for the Bells under appropriate safeguards.

Universal Telephone Service Must Be Preserved And Supported

There has been a good deal of rhetoric about a new enhanced definition of universal service. Certainly we would all like to see the day when everyone truly has access to the entire information world at the push of a button. But that is not what I am concerned with at the moment. I am concerned with how the tradition of basic universal residential telephone service will be supported in the new competitive telecommunications world.

The critical issue that must be addressed, and is not addressed in the bill as drafted, is "How do we pay for universal service?"

Historically, universal telephone service has been paid for by designating a local telephone company as a natural monopoly, or public utility. Rates and profits are controlled to assure that residential rates are affordable and the utility earns enough through these regulated rates to be attractive to the financial markets so that investment will promote the building and maintenance of the network.

Residential rates are currently supported by business and toll rates. Let me be clear about what I am saying. Virtually ALL residential rates are currently subsidized. In fact, the average consumer pays about half the cost of receiving telephone service in their home. The subsidy is equal to the rate paid by customers, so every member of the subcommittee, and I dare say every person in this room, is receiving what amounts to a hidden subsidy on their local telephone service every month that is equal to the amount they pay for service each month. This subsidy is funded by toll and access rates paid primarily by the business community. The percentage subsidy is far larger in rural areas.

The annual amount of this support is approximately $20 billion. Only a small fraction, less than 5%, of this money, comes through the current universal service fund. The other $19 billion a year is shifted from access and toll services to residential support within the local telephone company.

This situation is particularly acute for small rural telephone companies. For us, we may be supporting affordable rates for our farmers, ranchers and residents through money we raise from only one or two higher volume customers such as the local grain elevator and military base.

Technology, regulation, and now this legislation will eliminate this utility economic model and replace it with a competitive model. This is generally a wise and appropriate policy. And USTA generally supports it. However, assuming that some competitors are successful in winning away some of the highly profitable business customers, where is the money, the $20 billion a year, to come from to support universal service?

USTA believes that there are only two places this can come from. Either the universal service mechanism suggested in the bill turns into a $20 billion a year fund, a prospect that I personally find dubious, or some of the money must come from increases in existing rates.

Unfortunately, the bill as drafted forecloses the possibility that any of this money can come from residential rates for years after enactment. H.R. 1555 contains language that essentially calls for a freeze on residential telephone rates until a period four years after the date of enactment of the statute.

Why rates need to be frozen as we move to a competitive environment is perplexing. It is particularly perplexing from the perspective of several hundred small companies and cooperatives who have been deregulated on the state level for their setting of local rates. Many states have recognized that the community based nature of small companies and the customer ownership of cooperatively organized companies have proven to be sufficient checks on local rates. One of the major goals of this bill is to do away with unnecessary regulation. Yet this section reregulates companies that have been operating without rate regulation for years.

However, even larger companies are being squeezed by the bill as drafted. On the one hand they would have to open up their network to competitors immediately, placing the bulk of our revenues under attack. But the state can still mandate the telephone company to continue to provide service and residential rates on the same terms and conditions as if we were still a monopoly. Moreover, the bill allows the state to increase the definition of universal service, but makes no provisions for how telephone companies are to recover the costs for providing this increased level of service.

This core problem of how to support universal service cannot be finessed by the sort of general language in the bill. However, the solution need be neither particularly regulatory nor non-competitive. We would advocate amendments that would establish the following system.

There should be no more than one carrier which is mandated to provide basic telephone service to all the residents in an area through its own facilities. This carrier

of last resort could be a traditional telephone company, a cable company, an electric utility, a mobile provider, or a consortium of all of these competitors. USTA members recognize that others may wish to compete for this designation, but we want to either win the designation and carry it out, or lose the designation and be relieved of our responsibilities.

Whomever the carrier of last resort is should be fully compensated for providing basic telephone service through rates, and/or the new universal service fired. Rate subsidies should be eliminated where possible and only the carrier that provides facilities to the home should be eligible for universal service funding.

Smaller and Rural Companies Special Circumstances Must Be Recognized

As I said, USTA represents over a thousand local companies. However, most Americans, and even the press, seem to think that their phone service is provided by a Bell company. Indeed, about 95% of the customers in the country are served by one of the Bells or one of the two or three major independents. So, where did the other 1,000 telephone companies come from and who do they serve?

The answer is that, for the most part, these companies grew up because AT&T, the old universal monopoly Ma Bell, didn't want to serve these markets because they were generally remote and unprofitable. In fact, several hundred of these USTA members are not even companies in the conventional sense. They are telephone cooperatives. Cooperatives became necessary because in some markets even a traditional Telephone Company couldn't really make a go of it. Although they serve about 5% of the customers, they cover many times that in geographic area.

Telecommunications policy makers have traditionally recognized the necessity of dealing with these rural markets separately almost without exception. The 1984 Cable Act prohibited telephone companies from entering the video business, except in rural areas. The Budget Reconciliation Act that instituted spectrum auctions recognized rural telephone companies separately. And last year's House and Senate bills, as well as this year's Senate bill all exempted, or provided mandatory waivers, for rural telephone companies from the interconnection provisions that were designed with the Baby Bells in mind.

It is important to remember that if the bill is passed in its current form I will have to design my network and purchase equipment on the assumption that I may be required to interconnect with some future carrier. Even if no carrier ever comes to me and asks for interconnection, I have to expend significant amounts of money just to be ready. My rate payers are also disadvantaged by this since they must ultimately bear the cost of these unnecessary system upgrades. Placing these burdensome requirements on companies such as mine which has 1,500 customers is unnecessary, inefficient and not in the public interest.

It has been argued by some that the language in H.R. 1555 is an attempt to improve on last year's bill by broadening the universe of those eligible to seek a waiver from these requirements. However, asking the rural carriers to go through a costly and time consuming regulatory proceeding in order to seek waiver of rules that were not intended for them in the first place would seem inconsistent with the deregulatory intent of the bill.

If the Committee, properly, seeks to allow those mid-sized telephone companies who might have just missed the cutoff in last year's bill, to seek a waiver from the state, there is a simple solution. USTA supports applying the language in the bill to local exchange companies with less than 2% of the gross access lines in the country. This would exempt the small carriers, as you did last year, but allow the state to waive or modify the rules if they saw fit.

The undeniable fact is that rural telephone companies do not have the economies of scale that larger companies have. The bill passed by the House last year clearly recognized these differences. This year's bill is uncomfortably vague on this issue. We would ask that the language accepted unanimously by the Committee last year be included in this year's bill.

It is important to note that H.R. 1555 does currently exempt classes of carriers from the interconnection requirements. So, although rural telephone companies do have a unique status, we are not seeking a unique exemption. For example Sec. 251 of H.R. 1555 exempts LEC's owned by governments in U.S. territories from interconnection. In addition, H.R. 1555 exempts all mobile carriers including those owned by AT&T, and the Bells, from the interconnection standards.

The prospect that a Bell or AT&T subsidiary can come into a rural market and receive preferential treatment from a small rural telephone company, without providing reciprocal access to their network, has no economic or competitive justification and would be substantially disadvantageous to the local residents who rely on their company or co-op for basic service.

Regulation Should Be Minimized, Particularly In Competitive Markets

The market, not the government, should regulate prices for competitive services. Where monopolies continue, price regulation should be implemented unless the provider opts for more onerous traditional rate-of-return regulation. This protects consumers without creating a disincentive for efficiency.

H.R. 1555 takes the broadly progressive step of eliminating monopoly style rate-of-return regulation. It should also eliminate the regulatory underbrush associated with current limited price regulation, so that profit regulation and productivity offsets are eliminated for petitioning carriers along with the general rate of return model. However this should be done based on a petition of the regulated company so that smaller companies are not thrust suddenly into a new regulatory regime for which they are neither prepared nor suited. The very size of a small company, along with their unique patterns of investment, create in many cases, unacceptable financial risk under price regulation.

Where Regulation Exists There Should Be Parity

Competitors should be regulated based on what they do, not their corporate family tree. Regulation of telephone companies providing service must not be more onerous than the regulations of competitors providing that same service.

While H.R. 1555 unquestionably takes steps to move toward a more competitive environment, it does not substantially deregulate the telephone industry, even when we are providing competitive service.

For illustration I have prepared the accompanying charts which demonstrate graphically that local telephone companies maintain substantial regulation under this legislation that is not applied to our competitors. Moreover, the bill substantially increases the regulation that local telephone companies would have to suffer in the new competitive arena, which also does not apply to our competitors.

Again, for clarity's sake, let me emphasis that USTA is not asking for regulatory parity—that is regulating all competitors equally heavily—although that would be preferable and fairer than the bill as drafted. Our request is that the committee seek deregulatory parity. That is, rather than saddle us and our competitors, free us both. But, whichever course the Committee chooses, regulatory or deregulatory, there should be parity among competitors.

Telephone Companies Must Have Equal Business Opportunities As Their Competitors

A. Cable

Telephone companies serving rural areas have always been exempt from the cross-ownership provisions of the Cable Act and over 250 of these companies have provided this service. Yet there has never been a single documented case of a telephone company being found guilty of cross-subsidy. H.R. 1555 should extend this rural exemption, and may indeed do so. However there are several inconsistencies concerning this section that are dealt with in the technical comments section at the end of my testimony.

More generically, on January 27, 1995, USTA won a class action law-suit which declared that the cable/telco cross-ownership ban in the 1984 Cable Act is unconstitutional for all telephone companies.

Cable companies have no similar ban and indeed many major cable companies have merged into a joint effort through Teleport Inc. to compete in the most lucrative areas of the local telephony business.

Delays in allowing telephone companies from exercising these rights, such as the 15 month delay contained in H.R. 1555, should be eliminated or applied to companies affiliated with the cable industry also.

B. Long Distance

While the long distance industry continually complains about the RBOC's entry into long distance, it is the small local telephone companies that should be most threatened. RBOC's could conceivably use their ability to expand beyond their regions to poach on the territory of small local telephone companies and could be considered the greatest threat to small telcos viability.

Yet, the USTA Board, which is dominated by small and mid-sized companies, voted in September of 1993 to endorse long distance entry for the regions, subject to specific safeguards which have been agreed to by the Bell Operating Companies. USTA continues to advocate this position because it is in the best interests of small telephone companies, the nations telecommunications network, and our nation's consumers that the Bells be allowed to enter the long distance market.

LEC's have long recognized the inter-related nature of their business. The value of each LEC's network will be reduced if the network capabilities of other LEC's are inadequate relative to the needs of the marketplace. Large companies serving urban areas understand the value that small companies add to the network by serving rural areas. This is part of the universal service concept. This is similarly true for small LEC's if the networks of the large LEC's—with whom they interconnect—are not state-of-the-art.

InterLATA relief for the RBOC's with safeguards will benefit independent LEC's by making infrastructure sharing more valuable, allowing database and other advanced services to be provided sooner and more efficiently, and enhancing the LEC industry's ability to meet the needs of its customers.

Independent LEC's are concerned about two basic issues that could result from RBOC entry into the interLATA market. They are: (1) maintaining nationwide geographic averaging of toll rates; and (2) the fact that added competition for access revenues of large customers in a small LEC's service area will threaten the LEC's overall ability to provide universal service at reasonable prices. If this nation intends to maintain and enhance universal service, LEC's must retain the critical economic mass this requires. That is why the policy adopted by the USTA Board in support of RBOC entry into the interLATA market is conditioned on the safeguards that address these two concerns. The safeguards, considered in the context of the policy framework for a transition to a fully competitive marketplace, will maintain the viability of all exchange carriers. This policy will benefit independent LEC's and is a dramatic step forward for industry unity.

The following safeguards are intended to support statutory or other change to accommodate unique LEC market circumstances.

1. The basic MTS toll rates of interexchange carriers must continue to remain geographically averaged at reasonable levels whether or not the RBOC's obtain interLATA relief, so that customers in rural and high cost areas are not disadvantaged.

2. When an RBOC offers interexchange service in a state where the RBOC and an independent LEC provide local exchange telephone service, the independent LEC can choose among the following options:

a. agree to enter into a "marketing and sales" agreement with the RBOC, at mutually agreeable terms and conditions under which an independent LEC could offer RBOC IX services to customers located in the serving area of such independent LEC; or

b. have the RBOC make available to customers located in the serving area of such independent LEC, the same toll calling plans that are offered to other RBOC customers in the same state, using the exchange access services of such independent LEC; or

c. the independent LEC will provide the interexchange services to customers located in the independent LEC's serving area, but an RBOC can negotiate a statewide, national, or international large private network bid to a location of a major customer in an independent LEC serving area.

Finally, on the issue of RBOC entry into manufacturing, the USTA has negotiated a series of agreements with the Regions which should be reflected in the legislation.

USTA Deregulatory Proposal v. H.R. 1555

USTA Deregulatory Proposal	H.R. 1555 Provisions
214 Repeal	
Repeal Section 214.	No provision
Repeal 214 for video.	No provision
Exemption for Smaller Carriers	
Exempt smaller LECs from interconnection, access and unbundling requirements.	No provision
Annual Regulatory Review	
Joint Board to review all FCC and State regulation annually. FCC to repeal those no longer necessary.	No provision — FCC may forbear from its Title II requirements — no mechanism for State relief.
Elimination of Regulation	
After barriers to entry are lifted, eliminate based upon petition of carrier—	
Rate regulation.	H.R. 1555 eliminates rate regulation when there is competition.
Imputation of earnings.	No provision
Regulation of terms and conditions of service offering.	No provision
CPNI	
FCC and States should be prohibited from imposing CPNI requirements.	FCC given extensive CPNI authority.
Pole Attachments	
Preferential pole attachment rates for cable, operators should be eliminated.	Preferential pole attachments rates for cable extended.
Multimedia Service Providers	
There should be modified and streamlined regulations of multimedia network providers.	No provision

Regulation of Local Exchange Carriers Compared to New Entrant Providing Comparable Services Under Communications Act

A. LEC* Regulatory Requirements	New Entrant Regulatory Requirements
Reports	
Quarterly reports detailing revenues, expenses, plant in service, depreciation and investment errors - report must be allocated in a regulated/non-regulated basis.	No comparable requirement
Reports on inside wiring service.	No comparable requirement
Annual reports on revenues, investments and expenses broken down by Part 32 accounts.	No comparable requirement
214 Approvals	
FCC must approve extension of lines	No comparable requirement
FCC must approve construction of new line.	No comparable requirement
Tariffs	
Must file copies of contacts with other carriers with the FCC within 30 days of execution.	No comparable requirement
New tariff offering or changes with existing tariff offering must be supported by explanation and data.	Tariffs filing relaxed — 14 days notice before going into effect
Cost Allocation	
Costs must be allocated between regulated and non-regulated activities and LECs must use attributable cost methodology.	No comparable requirement
LEC must file a cost allocation manual with the FCC.	No comparable requirement
Cost allocation manuals must be updated quarterly.	No comparable requirement
Cost allocation manual must be annually audited by an independent auditor that provides a positive opinion on the data contained therein.	No comparable requirement
Interstate Access	
LEC must provide expanded interstate access collocation.	No comparable requirement
Jurisdictional Apportionment	
LEC subject to additional Jurisdictional Apportionment procedures.	No comparable requirement
Accounting	
LEC subject to a Uniform System of Accounts requiring more extensive accounting requirements.	Limited accounting requirements.

* LECs classified as Dominant, Tier I or Class A

Mr. FIELDS. Well, thank you, too, and your statement certainly will be included in its entirety in the record.

Our next witness is Mr. Wayne Perry, vice chairman, McCaw Cellular.

STATEMENT OF WAYNE PERRY

Mr. PERRY. Thank you, Mr. Chairman.

I assume that you have heard that this is important legislation by 3:30 and I will add that. This legislation meets many of the needs of the wireless industry, an industry that is probably the most entrepreneurial and growth-oriented industry in the United States, an industry that is really poised to bring that same form of entrepreneurial zeal to the local markets and characterize the same form of robust competition and we have you to thank and this subcommittee for that.

A great deal of work was done in allowing us to have additional spectrum through your pioneering legislation that allowed spectrum to be auctioned off that will allow us to participate and compete, and we thank you for that and it is something that you will be very proud of, what the wireless industry will do.

It is an industry. I know we as a company started out about in 1973 with a small cable system. We didn't have our first cellular system up until about 1984, 1985. Just a year later we had 15,000 subscribers. Today we are probably the largest wireless company in the world. We are certainly the largest wireless company in the United States. We have over 12,000 employees and 4 million customers, and we have recently paid the Federal Government $1.7 billion for those additional licenses that we were allowed to bid on.

We are part of an industry that has $14 billion a year in revenue. That is adding 14,000 jobs a year and that is investing $5 billion in capital. All the time we have dropped prices 40 percent since 1987, just the model I think you should be after when you are looking for any national telecommunications policy: lower prices, new jobs, and entrepreneurial zeal. But competition is the necessity. This is the way to do it.

I think the model that has been started by this bill is the right one, but it is not going to exist unless we get strong rules and tough enforcement. We know. We have taken on the Bell companies in head-to-head or trench-to-trench, frankly, warfare with them in every market. And it is not fun. They are tough and they are at the same time the people we rely on to complete virtually all of our calls, 99 percent of them. So it is very, very difficult. We need strong rules to prevent the anticompetitive activities of the Bell system.

Since the birth of cellular, the Bell companies have tried to use their monopoly to disadvantage their cellular competitors and they have used several themes. First, in the interconnection area, they have always priced it above true cost. We have had to litigate disputes with the Bell companies in many, many States, all the time, always—never with—their own cellular affiliates wouldn't litigate with us. They would also silently whisper, "Go get them. Win for us but we can't attack our own parent."

Second, they refuse to compensate us for terminating calls on our network even though there is a Federal order 87-390 requiring them to do so.

Recently you heard today from Royce Holland about how Metropolitan Fiber signed a forward-looking interconnection agreement with NYNEX where they would be paid for terminating calls. Well, we read that press release, too, and we decided we would ask NYNEX if we could have the same provision that would allow us to terminate, that they would pay us to terminate their calls. NYNEX told us that we weren't as socially important as Metropolitan Fiber and we were a payer, not a player.

I think that is the danger of relying on just one competitor to establish actual competition. If you are the first guy that is there that the Bell system needs as a press release, you get a pretty good deal. If you follow on, it is pretty tough.

The third thing that the Bell companies have consistently done is reneged on interconnection agreements, usually right after we have negotiated a long time. One of the things they have done is they have relied on the technically infeasible claim. We have heard that to deny us type two interconnection and a whole series of things similar to what Larry mentioned that MCI used to go through. We still have it.

Finally, the Bell companies have often refused to negotiate in good faith on interconnection agreements. They said do it, take it or leave it.

And the legislation fixes a lot of this. And there are just a few areas that I think it could be used or fixed in the wireless area to make it even better. First, interconnection should be cost based and should be provided through a separate subsidiary.

Mr. FIELDS. Mr. Perry, could we ask you to summarize, please.

Mr. PERRY. Second, I think the rights of way should be applied to wireless carriers, that we should make sure that the universal service fund is not an RBOC fund, but those who provide universal service.

Finally, we think the anti-bundling provisions are accidentally applied to the wireless area, which wasn't intended. We would like that clarified.

Thank you.

[The prepared statement of Wayne Perry follows:]

PREPARED STATEMENT OF WAYNE PERRY, VICE CHAIRMAN OF MCCAW CELLULAR COMMUNICATIONS, INC. AND AT&T WIRELESS SERVICES

Good Morning. I am Wayne Perry, Vice Chairman of McCaw Cellular Communications, Inc. and AT&T Wireless Services. Chairman Fields, members of the Subcommittee, thank you for giving me the opportunity to address you today on H.R. 1555, The Communications Act of 1995. Let me start by congratulating your achievement. The bill, in many respects, meets the needs of the wireless segment of the communications industry. The bill provides a good working template for the next era in communications because it recognizes the importance of competition as an efficient regulator of market conduct. Today, thanks to this Subcommittee's pioneering law authorizing radio spectrum auctions and the Federal Communication Commission's intelligent implementation of that law, the wireless industry is poised to bring the same entrepreneurial energy and explosive growth that have characterized the mobile communications market to local markets. With the changes outlined below, we believe the bill provides a workable paradigm for the wireless industry.

Over the last decade, independent cellular providers have been in the unique position of competing against Bell Operating Company ("BOC") affiliated cellular provid-

92-967 O - 95 - 7

ers in markets dependent on the BOC bottleneck local exchanges to complete calls. If the last ten years have taught the wireless industry anything, however, it is that incumbent monopolists will do anything to hold onto their exclusive franchise. This means that encouraging local competition is not enough; telecommunications policy also must recognize the need to continue to monitor those entities that would leverage their choke hold on essential facilities into other markets. This also means that any legislation that attempts to introduce competition into the local exchange market must be drafted in a way that permits no ambiguity of purpose, no loophole for those that would rather remain in the past, and sufficient guidance for the regulatory agencies to create the least intrusive regulation necessary for effective competition. In reviewing the bill, therefore, I will attempt to identify the areas that are critical to the wireless industry and that may need additional clarification to ensure that the promises of economic growth and consumer benefits are realized.

1. Interconnection—Section 101

A) *Cost-Based.* While we commend proposed Section 242(b) of the bill for ensuring that wireless providers are entitled to unbundled interconnection from the local exchange carrier ("LEC"), in light of our chronic difficulties in getting fair interconnection agreements with many of the BOCs (who are, of course, our wireless competitors in many markets), we are concerned that the bill does not impose a separate subsidiary requirement on the BOCs' LEC functions. Such a requirement is essential to permit monitoring of the BOCs' interconnection agreements. Moreover, while we believe that intercarrier negotiation is the best way to achieve efficient interconnection agreements, it is essential that the bill make clear that the LECs' good faith obligation extends to offering *cost-based* interconnection. Again, our experience has shown that because of the unequal bargaining power between LECs and other telecommunications providers, the LECs have been able to delay interconnection with unreasonable "take it or leave it" offers or other dilatory tactics that have resulted in expensive and time consuming litigation. McCaw has had to litigate interconnection disputes in Florida, Minnesota, North Carolina, South Carolina, Texas, Missouri and Oregon, thus delaying our ability to compete effectively with the LEC-controlled cellular carrier.

B) *Mutual Compensation.* Proposed Section 242(b)(2) of the bill should be clarified to include commercial mobile radio service ("CMRS") providers in the class of entities entitled to equitable mutual compensation for call termination. This clarification is necessary because our recent experience has shown that if there is any ambiguity, the BOCs will attempt to frustrate legislative intent. For example, we were recently told by NYNEX in New York that we were not entitled to the same mutual compensation arrangements that NYNEX had agreed to with a competitive access provider because we were not as "socially important" as a CAP and were therefore a "payer, not a player." Such anticompetitive conduct must be stopped.

C) *Number Portability.* Proposed Section 242(a)(4) of the bill goes a long way to ensure that the LECs provide true number portability, an essential ingredient if local competition is to become a reality. It is also important, however, that number portability include a means by which the new carrier can duplicate the features and functions that the customer is accustomed to receiving. True number portability requires that the switch in carriers be functionally transparent to the end user. We are also concerned that the LECs will use the "to the extent technically feasible and economically reasonable" language in the bill to deny us true number portability. There are no technical issues remaining. Based on our experience, we also fear that contrived economic unreasonableness will be used by the BOCs to frustrate your intent.

D) *FCC Role.* The FCC has historically played a critical role in ensuring that wireless providers can obtain interconnection with LECs on reasonable terms and conditions. We are concerned that the bill may inadvertently remove the FCC from continued oversight of interconnection between wireless providers and LECs.

2. Rights of Way—Section 101

Once a wireless carrier obtains that all important, and now extremely expensive, federal license, it still faces the inescapable question of where to locate its cells. The misuse of rights of way is becoming a barrier to entry in the wireless industry. Increasingly, access to existing poles, conduits and other rights of ways is becoming an important factor in meeting the demand for additional cell sites that will permit wireless services to become true personal communications services. We support the provisions of proposed Section 242 that require LECs to afford access to their poles, ducts, conduits and rights of way to competing providers of telecommunications services. We urge you to clarify that this provision must be implemented in a technologically neutral fashion. All providers—whether wired or wireless—need equal

access to rights of way. Otherwise you allow rights of way owners—rather than the marketplace—to dictate the shape of competition and to pick winners and losers before the game even begins.

While assuring non-discriminatory access to rights of way is essential, it is only one dimension of the complex problem of satisfying the infrastructure needs of the booming wireless industry. The Cellular Telephone Industry Association ("CTIA") has estimated that as of December 1991 there were 6,685 cell sites nationwide. As of June 1994, that number nearly trebled to approximately 15,000. CTIA has reported that cellular carriers may require 15,000 new cell sites over the next 10 years to complete their coverage and meet anticipated demand. CTIA has projected that as many as an additional 100,000 cell sites may be required for the roll-out of personal communications services which could introduce as many as seven new competitors to each marketplace.

The business challenges facing new PCS providers are daunting. These challenges could become overwhelming if the industry becomes snared in a tangle of local regulations that impede the entry, development and deployment of wireless services. This is not, by any means, a hypothetical problem. We believe that some local governments today are frustrating federal and state goals for introducing additional wireless competition and developing a sophisticated telecommunications infrastructure.

There is a growing patchwork of local cell siting restrictions that are impeding the development of the national telecommunications infrastructure. Frequently, such regulations are developed as a political response to the unfounded claims of a few vocal constituents who wrongly assert that the emissions generated by cell sites pose a health risk. For example, one of our proposed cell sites in California was delayed because a local resident complained that cell sites gave her dog headaches. Although there are well-established federal limits for cell site emissions and cellular facilities operate well below these limits, an increasing number of localities have established their own regulations. In several jurisdictions where McCaw operates, including our headquarters location in Seattle, there are not one but three sets of separate, overlapping standards for assessing emissions—federal, county and municipal. Other localities respond to cell sites complaints by proposing flat-out moratoriums or restrictions on construction that prevent further cell-siting. Still other localities try to force all wireless providers to place all facilities in a few designated locations within the community—a policy that ignores the fact that transmitters have to be located where people live, work and travel or the system simply will not work. Local jurisdictions that impose undue costs on the development of PCS and other wireless systems are likely to shortchange their constituents who would be better served by regulators that encourage networks to flourish.

What is the solution? Our approach so far has been to fight these battles cell site by cell site. Our New York market alone has been involved in more than a dozen lawsuits in the last few years challenging unreasonable restrictions on cell siting. But this form of hand-to-hand combat is not a sensible solution. We believe this is a problem that must be addressed at the federal level. We recommend that H.R. 1555 be amended to include language that limits state and local regulations that frustrate the overarching federal interest in developing a wireless telecommunications infrastructure. The bill should include a provision that requires the FCC to establish a national policy governing the siting of wireless facilities. State and local governments, affected industries and public safety agencies should join together to develop this policy. The bill should set forth guidelines for this policy that ensure that state and local regulations are reasonable, non-discriminatory, efficiently administered and limited to the minimum necessary to accomplish the jurisdictions' legitimate purposes.

3. Customer Premises Equipment—Section 203

While we believe that proposed Section 713 was intended to address problems in the cable industry and not intended to apply to CMRS providers, that section, if read literally, could be very troubling for the wireless industry. The section would require the FCC to enact regulations that force anyone who charges customers for "video, voice, or data services" to unbundle that service and customer premises equipment. For McCaw that would mean we would not be able to offer affordable telephones with a service contract. The California Public Utility Commission ("CPUC") enacted a similar regulation awhile back and our experience there is instructive. McCaw, as well as other wireless providers, could not offer the innovative packages of services and equipment in California that we offered in other states. California consumers ended up paying higher prices and getting less sophisticated offerings. In fact, the CPUC has finally abandoned the regulation conceding that packed offerings alleviate the major deterrent to initial wireless subscription. This

is consistent with an FCC finding in 1992 that the cellular CPE market was uniquely competitive and consumers benefitted from the packaging of equipment and service. While such a regulation may make sense when the underlying equipment market is not fully competitive, and set-top converter boxes may be a case in point, such a requirement makes no sense for the wireless industry.

4. Universal Service—Section 101

The wireless industry wants to do its fair share to ensure that universal service remains the touchstone of United States' telecommunications policy. Wireless technology holds the promise of becoming the low-cost medium for some essential telecommunications services in some parts of the country. Therefore, we expect to both contribute to the subsidy and to receive remuneration when we provide such services. Proposed Section 246 of the bill should specifically permit CMRS providers to participate in this important effort on a technologically neutral basis.

5. Equal Access—Section 107

As this Subcommittee is well aware, McCaw is in the process of converting our cellular systems to full-fledged equal access pursuant to an agreement with the Department of Justice made in connection with our merger with AT&T. To be perfectly frank, McCaw, as an independent cellular company, opposed equal access. Today, however, our experience with equal access has shown us that it is something our customers want and, in many cases, need to accomplish their business objectives. I can tell you that we plan to provide equal access on our new PCS networks and aggressively market it. In any event, we believe the bill provides too much latitude for CMRS carriers to deny customers a choice. While the bill would require CMRS providers to permit access code dialing, our experience suggests that most customers will avoid this hassle and use the carrier's default service. The bill also would permit the FCC to waive even this requirement. Although other members of our industry, including CTIA, do not agree that equal access should be required, we at McCaw believe that full-fledged equal access enhances competition and services and is necessary. This issue becomes even more important if a CMRS provider were found to be a substitute for landline local service.

Again I would like to thank this Subcommittee for the opportunity to be part of this historic undertaking. I believe H.R. 1555 is a giant step in ensuring the future of our telecommunications industry and I know that the future will be limitless and wireless.

Mr. FIELDS. Thank you very much.

Mr. Hooks, President of Buford Television.

STATEMENT OF BENNETT W. HOOKS, JR.

Mr. HOOKS. I want to thank Chairman Fields and members of the committee for allowing me to appear before you today.

I have been in the cable television industry for 28 years and I provide cable TV services to small and rural towns of America. I am currently serving on the executive board of the Small Cable Business Association as well as on the board of directors of the Cable Telecommunications Association.

As I start going forward, if I could get all of you to pull a map on the ninth page of your document in front of you, I would like to take some time describing Buford Television and what we have done.

Starting in 1986, Buford Television started providing cable service to rural and small towns. In fact, at the height of our project in 1989 and 1990, we built over 5,000 miles of cable, bringing the advantages of cable television to rural markets for the first time.

Today, when you look at this map, it represents 237 cable systems spread out over nine States serving 130,000 subscribers with only 544 subscribers on average in each system. Some of these systems are as small as 50 subscribers. And many times we—in fact, I don't mind saying I think it was a pretty heroic challenge we have had and we are very proud of what we have done.

As I go forward, I would like to talk about three issues on the bill. I would first like to discuss company size. I think it is done right. I think it makes it clear. It is simple. It is based on just a revenue size. It doesn't restrict me which so many other rules I have seen come out on a particular system if it gets too big, the company is too big. And I need the ability to interconnect small rural systems to get some size to provide the benefits of the superinformation highway system to the rural customers.

The second thing I want to bring up is mergers, acquisitions, and joint ventures. In many cases, and as you look at this map there will be some systems that we are not going to have interconnecting capabilities. With that in mind, I do need some other option if I am competing against a large competitor. And believe me, a 544 subscriber system is not too big or much of a threat.

Finally, one thing that concerns me in the bill is on pole attachments. To date, there has never been any rules and I am not sure in this case that the rules will apply to co-ops or municipally owned telephone and power companies. Pole attachment rates now are running as high as 300 percent higher in rural markets as compared to those rates charged by the typical public utility company. They are now competing in DBS and they are acquiring local cable franchises.

Many of them were exempt from Federal and State income taxes. Many of them have REA funding, which is heavily subsidized by taxpayers. And to top it off, most States prevent me from getting into their business and they can get into mine.

Finally, I try to look at what are my alternatives. Can I put in my own poles, build my own route? Unfortunately, and I don't blame them, local government and public opinion doesn't want another set of poles in their backyard. So if we are not careful and if pole rates continue to escalate in rural markets as they are now, we could be faced with not having the ability to interconnect small rural towns which once again will deprive the rural citizens of services that I think they should enjoy.

Thank you for your time and attention. If I can answer any questions, I would be happy to do so.

[The prepared statement of Bennett W. Hooks, Jr. follows:]

PREPARED STATEMENT OF BENNETT W. HOOKS, JR., PRESIDENT AND PARTNER, BUFORD TELEVISION, INCORPORATED

Thank you Chairman Fields and members of the Subcommittee for the opportunity to appear before you today. It is my particular pleasure since Buford Television is privileged to serve several communities in the Chairman's district, including Splendora, Cypress, Oklahoma, Lakewood, Allendale, Magnolia, and Porter.

I am 28-year veteran of the cable television industry. I began my career in 1967 as an installer, later advancing to service technician, technical supervisor, system manager, and so on. As President of Buford Television of Tyler, Texas, I am an active participant in the affairs of the cable television industry. I am a founding member and on the Executive Committee of the Small Cable Business Association (SCBA), and on the Board of Directors of the Cable Telecommunications Association (CATA).

I want to tell you what companies like Buford Television can do to bring new services—competitive services—to our customers, most of whom live in small towns and rural America. More importantly, I want to tell you what this far-reaching telcommunications legislation can do to make sure that the people and institutions of small town and rural America are not left behind on the Telecommunications Superhighway.

First, let me give you a profile of Buford Television. Our company serves 130,000 customers in nine states: Texas, Arkansas, Louisiana, Missouri, Tennessee, North Carolina, South Carolina, Georgia, and Florida. We have a total of 237 cable systems serving 425 communities, with an average system size of 544 subscribers. We serve primarily areas of low housing density, with an average mile of cable plant passing 27 homes, compared to an industry average of 68.

Starting in 1986 and spurred on by the deregulation of the Cable Act of 1984, Buford Television started an aggressive, and I believe heroic, plan to bring the families in rural and small town America the advantages of cable television. In fact, at the height of our project, we built over 5,000 miles of cable plant in six states, delivering for the first time the advantages of cable TV to these communities. The map that is included in your package shows the locations of those systems.

All of our systems presently offer customers one level of Basic Service. Due to the cost and limitations of the addressable technology required to offer tiers of service, the vast majority of companies operating small systems like Buford's provide only one level of service. In addition, we believe this is consistent with our commitment to our customers: a full service basic package at a fair price, including services like The Disney Channel.

In 1992, Buford realized the need to improve our communications between our four customer service and dispatch offices, which serve a nine-state area. By 1995, we had tested, developed the use of, and fully installed in all 140 of our service vehicles a satellite-delivered two-way communications network that permits live communications between our dispatch office and our service vehicles anywhere in the United States.

I believe this system is the most sophisticated and complete communications system in the entire telecommunications industry. More important, this system benefits our rural customers with the most reliable and efficient response time possible.

Recognizing the "Small Cable Operator"

Now, as we move toward the future, it is critical that national policy recognize the differences between small and medium sized cable operators and the largest cable companies in terms of resources and capitalization to meet our objectives.

This bill defines a "small cable operator" as having 1% of total cable subscribers nationwide, and as not being affiliated with any entity having more than $250 million in gross revenue. The bill exempts these small cable operators from rate regulation, including those of us offering only one level of Basic Service on December 31, 1995.

Why is that important as a matter of wise public policy? Why is this provision important to Buford Television's customers? Because we and our customers are ready to move toward the future, and that means investment. It is an investment that cannot possibly be justified on the basis of 544 subscribers served by our average cable system. Buford Television's plan is to interconnect our many small systems into regional clusters to afford the public in our rural and small town markets the advantages of future services on the Telecommunications Superhighway.

The language of this legislation is of critical importance if we are to realize our goal of providing competitive services that our customers want and will demand in this rapidly evolving Telecommunications Age.

This bill will allow small cable operators the financial ability to offer the multitude of video, data, and voice services that are promised with the Telecommunications Superhighway to rural and small town America.

Look at the map again. Just think about what could happen when those little towns are grouped into much larger clusters and systems, with the financial ability to offer so much more and to really compete in the marketplace. Without this opportunity for small cable operators, rural customers will remain in small single community units, preventing them from receiving the same benefits that the largest telecommunications companies will deliver to the cities and suburbs.

Prohibition on Buyouts

As the exceptions to the prohibition are written, small cable operators can expect reasonable opportunities to sell, merge, or partner with local telephone companies. While Buford Television looks forward to vigorous competition in some service areas, we believe that in rural communities, no restrictions on buyouts, mergers, and joint ventures are necessary and none are justified.

Rural Cable/Telco Parity

We appreciate the bill's unambiguous approach to lowering barriers to entry to all telecommunications providers. In the Senate bill, the states are permitted to raise new barriers to competition for rural telephone companies in the name of protecting universal voice service. This would result in a situation in which the local

cable company is blocked from entering the telephone business, but the phone company can get into the cable business. This creates an obviously unbalanced competitive environment. We trust that you will continue to be diligent about ensuring that all providers in the marketplace enjoy fair treatment in this landmark legislation.

Pole Attachments and Fair Competition

The language in the bill regarding non-discriminatory pole attachment fees is helpful as far as it goes. However, it does not begin to address what I consider to be the biggest threat to the ability of small cable operators serving rural areas to take the steps necessary to meet the objectives I have described to you.

There are two exceptions to those utilities which must comply with current FCC rules on the formula for pole attachment fees. The rules exempt utilities which are organized as cooperatives and those which are owned by States or municipalities. As a result, their pole attachment rates are as much as 300% higher than those charged by public utilities subject to the FCC's current formula!

These utilities, which primarily do business in rural areas, are charging exorbitant and unjustified rates for an item that is a major cost of doing business for a cable operator. Now, many of these utilities are competing through Direct Broadcast Satellite (DBS) and even by obtaining cable franchises.

Many of these utilities are exempt from all state and federal taxes. Many of them have REA funding and Universal Service Funds which are heavily subsidized by the taxpayers. To top it all off, a cable TV operator in rural America is not able to get into the local telephone business. We are held captive to the single set of poles to which we have access. Since there are either restrictions from local government authorities or public protests against putting in another set of poles, we have no choice but to meet the price of these unregulated utilities and use their poles to attach.

The bottom line is that companies like Buford cannot be subject to these practices and expect to compete or expand in the marketplace. And, once again, the rural consumer will suffer because he cannot absorb pole attachment fee increases. Thus, it is one more reason our rural consumers will not enjoy the benefits of a competitive marketplace.

We cannot afford to wait a year after enactment, as the bill provides, for the FCC to act to bring these abusive practices under control. I hope you will consider amending the bill to bring these exempted utilities under the FCC's current rate formula.

Following is information which provides examples of the behavior of some of these utilities. This includes documentation of a particularly anti-competitive situation that is occurring in Davie County, North Carolina, where Buford is now facing an overbuild by a rural cooperative using these tactics.

That concludes my comments. Again, I very much appreciate the opportunity to be here today. I will be very happy to answer any questions that you may have.

[Additional material submitted is retained in subcommittee files.]

Mr. FIELDS. Thank you, Mr. Hooks.

Our last witness today and on this panel will be Mr. Charles Houser, CEO of Corporate Telemanagement Group.

STATEMENT OF CHARLES HOUSER

Mr. HOUSER. Thank you, Mr. Chairman. I hope you have saved the best for last.

My name is Charles Houser. I am the CEO of Corporate Telemanagement Group, a small long-distance company located in Greenville, South Carolina. In 1990, we began offering long distance resell products to be marketed through independent interconnect companies selling and maintaining telephone systems. We serve over 30,000 customers today and have 140 employees.

I am also the current chairman of the board of Telecommunications Resellers Association, or TRA, as it is known. We serve approximately 300 smaller companies involved in the resale of telecommunications services. Most of our members are companies that entered into the business in the last 5 or 6 years as a direct result of forward-looking resale decisions by the FCC, particularly those

that allowed for companies to resale long distance services without having to initially own facilities or equipment.

TRA has dozens of companies in its membership that did not have a single customer or dollar revenue 5 years ago but are substantial businesses today. Without question, resale has become a tremendous success in the telecommunications marketplace and is clearly the heart, soul, and future of real competition in the industry. We all can and should learn from the experience of resale in long distance as we open up the local service to competition.

The first thing to recognize is that resale has now become the fastest growing element of the long distance industry and the dominant means by which new competitors enter the market. Resellers have contributed heavily to the growth of carriers such as Sprint, Wiltel, MCI, LCI, and others. Our membership contains some of the industry's most effective and innovative marketers who have succeeded against huge odds in an industry dominated by large carriers.

Yet, we would not have even had the opportunity to succeed without some limited help of the Federal Government. In fact, the long distance industry is extremely competitive today specifically because of the consent decree and the limited oversight of the FCC and the Justice Department.

H.R. 1555 currently contains no role for the Justice Department in the process of further reregulating the industry and the FCC would not even be allowed a public interest test on Bell applications to enter long distance.

To say we are worried about those aspects would be an understatement. We recognize that many people in the Congress want to remove governmental oversight where possible. That is a policy goal that people like us would support. The problem here is we are transitioning from a monopoly to a competitive marketplace. That means it is going to take some time. There are going to be some problems and there has to be some carefully drafted guidelines and some oversight for a period of time until competition is established.

Our membership is comprised of businessmen and women conservative by nature. However, you would be hard pressed to find support among our members for a greatly diminished role for the government at the outset of the opening of the local markets.

We know how tough it is to compete with an incumbent telephone company. The point is that if it had not been for the government agencies such as the Justice Department and the FCC, a lot of our small companies would never have made it in the long distance industry and definitely it would not be as competitive as it is today.

We strongly urge you to find a way to maintain an appropriate limited governmental oversight including a Justice Department role at least until but not beyond the point in which you are sure the markets have not only met the requirements on paper for being open but have proven to be actually competitive in manner. This is called appropriate not burdensome government.

We have concern over the definition of what constitutes facilities-based competition and obviously technically feasibly and economically reasonable terminology. Please just make certain that it is not

used by the Bell operating companies to dodge their responsibilities under the law for opening up the market.

We are concerned about the statewide role of the Bells' authority to offer long distance when they enter into a single operating agreement somewhere, anywhere in the State. There are huge loopholes in that wording. We would advocate that at least the roll-out occur on a small early geographic basis because on a LATA-by-LATA basis where there is facilities based competition or a clear sign that none will develop, a local resale will be to margins that resellers have to work with.

Five percent margins like those offered by Rochester Telephone are ridiculous and totally inadequate. Based on our experience, it needs to be 35 to 40 percent, and it is totally justified when you consider how many of the costs will now be borne by the reseller from billing to marketing to customer service.

Finally, we would agree with those who advocate that the bill require at least initially that the RBOCs offer their long distance from a separate subsidiary.

Mr. FIELDS. Please summarize.

Mr. HOUSER. Lastly, we have concerns regarding the protection of customer priority network information or CPNI for resellers. In this regard, your bill is excellent. The requirements that all carriers not just protect their confident CPNI are absolutely essential.

Thank you.

[The prepared statement of Charles Houser follows:]

PREPARED STATEMENT OF CHARLES S. HOUSER, CHAIRMAN OF THE BOARD, TELECOMMUNICATIONS RESELLERS ASSOCIATION

Good morning, Mr. Chairman and members of the subcommittee. My name is Charles S. Houser. I am Chairman of the Board of Directors of the Telecommunications Resellers Association, a national trade association of over 300 small and mid-sized resale providers of long distance telecommunications services and their service and product suppliers. I am also Chairman and Chief Executive Officer of Corporate Telemanagement Group, a long distance telecommunications reseller headquartered in Greenville, South Carolina. I deeply appreciate the opportunity to testify before the Subcommittee on H.R. 1555: "The Communications Act of 1995"—legislation that will likely determine the nature and extent of competition in both the local exchange and long distance telecommunications markets for years to come.

I commend Chairman Bliley, Subcommittee Chairman Fields, Senior Member Dingell and the other members of the Subcommittee for your noteworthy efforts to facilitate the growth and development of competitive telecommunications markets, and in particular to speed the emergence of competition in the local exchange market. Competition should be, and ultimately will be, the engine that propels this country down the information superhighway, producing affordable rates, enhancing service quality and generating new and innovative services. I urge you, however, to exercise caution in your efforts to introduce local, and enhance long distance, telecommunications competition in order to avoid unintended adverse results. In particular, I urge you to take care not to unintentionally decimate the ranks of the small and mid-sized resale carriers that have ensured that small and mid-sized commercial, as well as residential, users, have been allowed to share with larger commercial users in the benefits of long distance telecommunications competition.

THE TELECOMMUNICATIONS RESELLERS ASSOCIATION AND THE LONG DISTANCE RESALE INDUSTRY

Allow me to introduce the Telecommunications Resellers Association and the industry it represents. TRA was created to foster and promote the interests of entities engaged in the resale of domestic interexchange and international telecommunications services. Employing the transmission, and often the switching, capabilities of underlying facilities-based network providers, the resale carriers comprising TRA create "virtual networks" to serve generally small and mid-sized commercial, as well

as residential, customers, providing such entities and individuals with access to long distance rates otherwise available only to much larger users. TRA's resale carrier members also offer small and mid-sized commercial customers a wide array of enhanced, value-added products and services, often including a variety of sophisticated billing options, as well as personalized customer support functions, that are generally not provided to low volume users.

TRA's members—which now also include competitive access providers and resellers of commercial mobile services—range from emerging, high-growth companies to well-established, publicly-traded corporations. They represent by far and away the fastest growing sector of the long distance industry. Already populated by more than 1,000 carriers, the long distance resale community currently serves millions of customers, representing tens of billions of minutes of long distance traffic, and generates annual revenues in the billions of dollars. And it is forecast that the market share of the long distance resale industry will double in size by the end of the century. As one financial analyst suggested in a recent Wall Street Journal article on the long distance resale industry (attached hereto), "[w]e don't see anything on the horizon that going to slow this industry down."

Most of TRA's resale carrier members are not yet a decade old. Their emergence and dramatic growth over the past ten years has thus produced new jobs and new opportunities for many of our citizens. And perhaps more critically, by providing cost-effective, high quality telecommunications services to the small business community, TRA's resale carrier members have helped, and are helping, other small and mid-sized companies to grow their businesses and generate new jobs. And TRA's resale carrier members have facilitated the growth and development of second- and third-tier facilities-based long distance providers by providing an extended, indirect marketing arm for their services, thereby further promoting economic growth and development. This record of economic development and job growth stands in sharp contrast to the layoffs of tens of thousands of workers by the Regional Bell Operating Companies ("RBOC's") and the large facilities-based long distance carriers.

The Federal Communications Commission ("FCC") has long recognized the "numerous public benefits" that the resale of telecommunications services generates, chief among which are the downward pressure resale exerts on long distance rates and charges and the enhancements resale produces in the diversity and quality of long distance service offerings. As described by the FCC:

"In the fifteen years since we ordered unlimited resale..., resale has substantially increased competition in the U.S. domestic telecommunications market and has yielded public benefits in terms of increased demand and reduced prices for most telecommunications services, and has virtually eliminated the possibility of price discrimination."

TRA's resale carrier members are eager to bring these same "numerous public benefits" to local service markets through the resale of local exchange and exchange access services.

THE LONG DISTANCE TELECOMMUNICATIONS MARKET

Certainly, the long distance telecommunications market is not perfectly competitive. AT&T still dominates the market, generating roughly 60 percent of interstate long distance telecommunications revenues and AT&T, MCI and Sprint, together, control approximately 85 percent of the market. And as one might expect in light of such concentration, TRA's resale carrier members daily confront use and abuse of market power by the large facilities-based carriers. Nonetheless, the long distance market is reasonably competitive and is becoming increasingly more so.

Since divestiture, AT&T's share of interstate long distance revenues has fallen from 90 percent while MCI's and Sprint's shares have increased from 5 percent and 3 percent, respectively, to a combined 25 percent today. Long distance revenues attributable to other carriers, including the non-facilities-based resale carriers comprising TRA, have more than quintupled over the last 10 years. Accordingly, it is not surprising that 19 million customers changed their long distance provider a total of 27 million times last year alone.

Since divestiture, four carriers have built nation-wide digital fiber networks and eight others have constructed large regional digital networks, compelling AT&T to accelerate its own fiber deployment schedule by 25 years. And long distance carriers other than AT&T, MCI and Sprint now account for over 15 thousand miles of digital fiber transmission network. Between 125 and 150 long distance carriers now own and operate their own switching equipment. The number of carriers purchasing equal access, as well as the number of carriers with presubscribed access lines, now

exceed 400. And the number of carriers assigned carrier identification codes now exceeds 900.

Long distance rates over the past decade have dropped by 31 percent at the same time that the consumer price index ("CPI") has risen by 35 percent resulting in a 53 percent reduction in the price index of a long distance call relative to all goods and services. And it is noteworthy that while long distance rates were plummeting, local telephone rates were rising, causing the CPI for all telephone services to increase by more than 10 percent. As Assistant Secretary of Commerce for Communications and Information Larry Irving reported to this Subcommittee last year:

"Competition has already generated substantial benefits for consumers in a host of communications and information service markets. For example,... the price of interstate long distance service for the average residential user has declined more than fifty percent in real terms since 1984, due to competition and regulatory reform. At the same time, the infrastructure used to provide long distance services has been substantially upgraded."

THE LOCAL EXCHANGE/EXCHANGE ACCESS TELECOMMUNICATIONS MARKET

The local exchange/exchange access telecommunications market is not fully contestable, much less contested, and certainly lacks the competitive forces necessary to discipline the RBOC's near monopoly control of local exchange "bottlenecks." As characterized by Assistant Attorney General Anne K. Bingaman in testimony submitted last year to this Subcommittee:

"Local telephone markets are in greatest need of added competition for they are still monopolized by local companies in the old Bell System... the Bell Operating Companies (BOC's) in most areas of the country still have a lock on local telephone traffic, carrying more than 99 percent of all local calls in their service areas."

The majority of states still bar local exchange competition, insulating by statute or regulation local exchange carriers ("LEC") from competition; indeed, there are precious few cities and towns in the country today in which a consumer has a choice among carriers for local telephone service. Thus, in any given geographic market, one company and one company alone generally provides the connectivity that allows consumers within that market to communicate with one another by telephone. And with respect to exchange access, long distance carriers still rely on franchised LEC's to originate and terminate 99 percent of their traffic.

The limited local exchange/exchange access competition that the RBOC's now face tends to be geographically-confined niche competition, which at most selectively impacts the overall growth of demand for RBOC services. The fiber deployed by competitive access providers ("CAP's") is but a small fraction of the fiber deployed by the RBOC's. CAP revenues constitute less than one percent of the combined access revenues generated by the RBOC's. Indeed, of the roughly $15 billion and $5 billion expended by AT&T and MCI in 1994 for exchange access, approximately 99 percent was paid to LEC's. CAP facilities, where available, are still used principally for redundancy.

Likewise, while cellular radio, personal communications services and other wireless offerings and cable television may provide viable competitive alternatives at some point in the future, that day has not yet arrived and will likely not arrive, if at all, for years to come. Cellular service supplements rather than replaces local telephone service. Not only are the overwhelming majority of cellular calls carried at one time or another by the local exchange network, but the costs of cellular service, particularly cellular airtime charges, are significantly more expensive than local telephone service. As the RBOC's themselves have elsewhere conceded, "[g]iven the vast discrepancy in both price and present levels of penetration, direct competition [between cellular and wired telephone service] is nowhere near imminent." Moreover, it must be borne in mind that the RBOC's and GTE Telephone represent eight of the nine largest cellular operators in the country.

Personal communications service ("PCS") may someday fulfill the vision of its most ardent proponents and render the wireline network superfluous at least in part, but at this juncture any claims regarding the potential competitive impact of PCS on the local exchange "bottleneck" are grossly speculative. PCS is still in its infancy. Only a small percentage of PCS licenses have been awarded. Only a few experimental PCS systems have been built. And PCS service is not yet generally available. PCS system construction and service implementation are likely years away. Moreover, like cellular telephone, many, if not most, PCS applications will rely heavily on the local telephone network and, like cellular telephone, many PCS licenses will be held by RBOC's.

Reliance upon the potential competitive threat of cable television ("CATV") is no less speculative. At present the overwhelming majority of CATV systems lack the

two-way transmission and switching capability necessary to provide competitive telecommunications services. CATV systems served by coaxial cable have limited capacity for two-way transmission and will experience significant signal degradation and service disruptions if used for two-way transmission. While introduction of fiber optics transmission will alleviate these problems to some degree, it will not remedy them completely because coaxial cable is generally used to complete the transmission path to the home even in the more advanced systems. And at present, only 35 percent of CATV systems have been enhanced by fiber. As at least one RBOC has acknowledged, "CATV technolog[y] in particular [is] unlikely to be [a] ubiquitous source of competition right away..."

FUNDAMENTAL PRINCIPALS

The end-product of a decade of pro-competitive initiatives in the long distance telecommunications market, TRA and its resale carrier members adhere strongly to the principal that competition in the provision of telecommunications products and services should be fostered wherever and whenever possible. All things being equal, market forces are, in TRA's view, generally superior to regulation and other forms of governmental intervention in promoting the efficient provision of diverse and affordable telecommunications products and services. Market forces, however, are effective regulators only if all market participants are afforded a full and fair opportunity to compete. If one or more players are possessed of market power sufficient to hinder or otherwise impede the competitive provision of service, governmental intervention is necessary to ensure that competition survives and flourishes.

TRA does not oppose in principal RBOC entry into the interexchange telecommunications market. Indeed, given that most of TRA's resale carrier members are themselves relatively new market entrants, TRA welcomes, and in fact encourages, new market entry by others. Certainly, TRA's resale carrier members do not fear competition; indeed, they compete daily against some of the largest corporations in this country and around the world.

TRA seeks only a full and fair opportunity for its resale carrier members to compete. Unfortunately, given the RBOC's continued monopoly control of local exchange "bottlenecks," that opportunity will likely be denied TRA members if RBOC entry into the long distance telecommunications market is authorized without adequate market and regulatory constraints. As noted above, the RBOC's retain not only the incentive, but the ability, to disadvantage long distance competitors through anticompetitive conduct. And given historical patterns of anticompetitive conduct and abuse of market power by the RBOC's, there is little reason to anticipate that the RBOC's will not attempt to exploit their "bottleneck" position to their competitive advantage if permitted to enter the long distance telecommunications market without adequate regulatory and market constraints. Whether the anticompetitive and market power abuses take the form of discriminatory and inferior access, cross-subsidization, provisioning and other service delays, abuse of confidential and proprietary data or any of a host of other tried and true methods, the impact will be no less severe. And neither federal nor state regulators have the resources to adequately police and safeguard against the activities of organizations as large and complex as the RBOC's.

Due to their relatively small size and lack of entrenched market position, non-facilities-based resale carriers would clearly be the most vulnerable to RBOC anticompetitive abuses. Premature RBOC entry into the long distance telecommunications market could, and likely would, decimate what is now the most vibrant and dynamic element of the market. At a time when America is looking to small and mid-sized businesses to invigorate the economy and create new jobs, it would seem senseless, in TRA's view, to place at risk a rapidly expanding market segment, already populated by more than 1,000 emerging companies.

LEGISLATIVE RECOMMENDATIONS

As noted above, TRA commends the Subcommittee's efforts to promote competitive telecommunications markets and supports key elements of H.R. 1555 which TRA believes will help achieve this end, including elimination of legal, regulatory, technical and practical barriers to local exchange/exchange access competition. TRA submits, however, that in a number of critical respects, the bill does not go far enough to ensure either that meaningful competition emerges in the local exchange/exchange access market or the existent competition survives in the long distance market. In particular, TRA is extremely concerned that unless modified in several significant respects, H.R. 1555 would allow for RBOC entry into the long distance telecommunications market without adequate market or regulatory constraints and that such

premature entry would likely decimate the ranks of the long distance resale community.

In an effort to avoid this unfortunate result while at the same time striving to achieve the Subcommittee's laudable pro-competitive goals, TRA recommends that H.R. 1555 be modified as described below. TRA submits that the changes it proposes here would help to better manage the critical transition to a fully competitive, integrated telecommunications market in which meaningful competitive alternatives and opportunities exist at all market levels.

Resale of Local Services: Given the massive capital investment required to install ubiquitous exchange and exchange access facilities, as well as the lengthy delays—regulatory and construction—attendant to the introduction of facilities-based competition, resale of local exchange and exchange access services constitutes, in TRA's view, the most expeditious and efficient means of introducing competition at the local level. To allow resale to produce the myriad public benefits identified by the FCC, however, facilities-based carriers must be required to make available meaningful opportunities to resell their services. Not only must the RBOC's and other LEC's be prohibited from imposing unreasonable restrictions on the resale of unbundled network elements, as proposed in H.R. 1555, but they must, in TRA's view, be affirmatively required to offer such unbundled network elements to resale carriers at wholesale rates which are low enough to reasonably allow for the development of competitive service offerings. In short, TRA urges the Subcommittee to both impose an affirmative resale requirement and mandate a cost-based differential between retail and wholesale rates. Moreover, TRA urges the Subcommittee to ensure that certain ancillary requirements which are nonetheless critical to a viable resale operation are incorporated into H.R. 1555. For example, LEC's should be required to make readily available the data and services necessary for resale carriers to bill and collect for their services.

Local Exchange/Exchange Access Competition: The RBOC's have always confused competitive potential with the emergence of actual competition significant enough to discipline their market power, equating contestable markets with contested markets and assuming that the presence of any alternative service vehicle translates into meaningful competition. It belabors the obvious to suggest that the removal of legal barriers to entry does not translate automatically into a competitive market. It is no less obvious that the mere presence of some form of limited service alternative does not render a market competitive or justify treating it as such. While H.R. 1555 would require an RBOC to show either that it is providing network access and interconnection to a facilities-based competitor or that no such competitor has requested such network access and interconnection, it does not condition RBOC entry into the long distance market on the presence of meaningful local exchange/exchange access competition; indeed it would authorize an RBOC to provide long distance service within an entire state if a single carrier providing a single local service was operating in a single market. In TRA's view, only market forces can adequately constrain RBOC market power and therefore TRA urges the Subcommittee not to permit the RBOC's to provide long distance telecommunications service until such time as they face meaningful competition in their local markets.

Structural Separation and Joint Marketing: While TRA does not believe that any regulatory scheme, no matter how well conceived and intentioned, would provide adequate protection against RBOC abuse of local exchange monopoly power in the absence of meaningful market constraints, certainly the most effective safeguards are structural in nature. TRA, accordingly, strongly recommends that the RBOC's be required to offer long distance service through structurally separate subsidiaries. The structural separation should be no less comprehensive than that H.R. 1555 would impose in conjunction with the provision of electronic publishing services by the RBOC's. It is also critical that strict affiliate transaction requirements be adopted to ensure that all dealings between the RBOC local exchange carrier and its long distance affiliate operate at arm's length. Likewise, joint marketing by the RBOC local exchange carrier and its long distance affiliate should be restricted. The affiliate transaction and joint marketing restrictions should also be no less comprehensive than those H.R. 1555 would impose in conjunction with RBOC provision of electronic publishing services.

Justice Department Participation: The FCC and the U.S. Department of Justice ("DOJ") possess distinctly different but equally important, expertise in evaluating telecommunications markets and activities. RBOC entry into the long distance telecommunications market will raise a host of issues which fall directly within DOJ's unique purview, including matters of market definition and exercise of market power. Particularly given DOJ's historical role in addressing matters under the AT&T Consent Decree, it makes little sense in TRA's view to exclude DOJ from the decisiomaking process surrounding RBOC entry into the long distance market. The

stakes are simply too high not to avail ourselves of all pertinent governmental expertise and resources in determining whether RBOC market entry will enhance or diminish competition. And lest there be any doubt, TRA firmly believes that the competitive impact of RBOC entry into the long distance telecommunications market should be a critical factor in determining whether such entry is warranted and in the public interest. Any delay that might result from a DOJ role could be easily avoided by mandating simultaneous review by the FCC and DOJ.

Openness and Accessibility Obligations: While it applauds H.R. 1555's inclusion in the list of preconditions for RBOC entry into the long distance market of such matters as equal access/interconnection, unbundling of network elements, number portability, dialing parity, access to conduits and rights of way, and network functionality and accessibility, TRA is concerned that many of these conditions lack adequate teeth and/or detail and could thus be easily avoided. Thus, for example, the obligations to interconnect with a competitor's facilities, unbundle network elements and provide number portability apply only where and when "technically feasible and economically reasonable." In this same vein, "technical reasons" can be cited to avoid physical collocation obligations. Given that each of these matters is a critical precondition to the emergence of local exchange/exchange access competition, TRA submits that each should be an absolute, not a contingent, requirement for RBOC entry into the long distance telecommunications market and that no such entry should be authorized absent a showing of full implementation of each of these matters. Another potential avenue for avoiding competitive obligations is the couching by H.R. 1555 of unbundling requirements in fairly general terms, leaving unclear the required degree of unbundling. In TRA's view, unbundling must include at least loops (including distribution, concentrator and feeder), transport (including common and dedicated), switching (including both central office and tandem), operator services and signaling (including links, signal control points and signalling transfer points).

Dialing Parity: TRA submits that no public interest purpose would be served by delaying the introduction of intraLATA toll dialing parity until RBOC entry into the long distance telecommunications market. Absent the introduction of intraLATA toll dialing parity, current traffic default provisions essentially cede the entire intraLATA toll market to the RBOC's, essentially denying consumers the benefit of price and service competition and serving no one's interest other than that of the RBOC's.

Imputation of Charges: TRA applauds the Subcommittee's inclusion in H.R. 1555 of a requirement that the RBOC's impute access and interconnection charges to themselves. It urges the Subcommittee, however, to make clear that this imputation mandate also requires the imputation of charges for unbundled network elements to the RBOC's local services.

CPNI Safeguards: TRA applauds the Subcommittee's inclusion in H.R. 1555 of strict protections for customer proprietary network information ("CPNI"). TRA urges the Subcommittee, however, to make crystal clear that these safeguards apply to the CPNI of resale carriers and bar the use by any underlying facilities-based carrier (long distance or local exchange) of information derived from or with regard to a resale carrier or its customers to solicit the resale carrier's customers. A resale carrier's customer base is its lifeblood. Significant erosion of a resale carrier's customer base can have a devastating, often fatal, impact on the carrier's business. And while customers are regularly won and lost in a competitive marketplace, fair competition does not include abuse by an underlying facilities-based carrier of confidential and proprietary data obtained from a resale carrier in the performance of its common carrier duties as the resale carrier's network provider. Any time one carrier resells the services of another carrier, confidential and proprietary information must be shared in order to allow for the provision of service to the resale carrier's customers. A resale carrier thus must disclose to its network provider the identity of its customers, as well as its customer contacts and its customer locations. Further, in providing service to the resale carrier, the network provider will have ready access to such critical customer data as traffic volumes, usage patterns and characteristics and service needs. It matters not whether the network provider is a local exchange or long distance carrier or whether the network provider is operating in a monopoly or a competitive environment. A resale carrier must disclose confidential and proprietary information to implement a resale arrangement with any carrier in any market. And it is this disclosure, not the identity of the network provider or the characteristics of the market in which it operates, that exposes the resale carrier to serious injury if the network provider elects to use the resale carrier's confidential and proprietary data to raid its customer base.

CONCLUSION

TRA wishes to express its sincere gratitude to the Subcommittee for granting it this opportunity to express its views on H.R. 1555. Obviously, this bill deals with matters of great consequence to TRA and its resale carrier members. If accompanied by adequate regulatory and market constraints, RBOC entry into the long distance telecommunications market could well enhance competition. Absent such constraints, such entry will likely decimate a vibrant, dynamic marketplace. TRA urges the Committee to ensure through appropriate modification of H.R. 1555, that it is the latter scenario that prevails.

Mr. FIELDS. Thank you very much for your excellent testimony.

The Chair will recognize himself for 5 minutes.

Mr. Perry, let me start off with you because you mentioned something that was also mentioned by Mr. Houser and Mr. Harris and I would invite both of you to jump in after Mr. Perry responds.

Our objective is to have the loop open and to have it done in such a way that it is not gamed one way or the other. And, Mr. Perry, I have heard you speak not only today but on other occasions about impediments that were thrown up and difficulties that you faced as you tried to provide competition in the local loop. Today, you specifically mentioned along with the other witnesses "technically feasible" and the "economically reasonable" language that we have in Section 242. And of course the purpose of putting that language there was not to create a loophole but to make sure that conversely the situation could not be gamed, that some demand was not made of someone that just honestly could not be met.

My question is, if you see that as a loophole, do you have any alternative language or do you have any other suggestions that you would like to present to this committee?

And again, the question is not just to you, Mr. Perry, but also Mr. Houser and Mr. Harris.

Mr. PERRY. One of things that a lot of witnesses mentioned is number portability. The committee report could eliminate the words "technically feasible," the statute could, and economically reasonable and then the committee report could describe what might be within the determined portability with more detail.

It is something that is attainable today. We don't need that loophole, those two qualifiers to that. Number portability is something we can do without—all of us do it already in our businesses. We do it in the wireless world, 800 calls. All 800 calls are number portability immediately. They do it on a data department. We don't need those.

I think that this is the kind of quick correction that we are talking about so the process isn't gamed. I really understand that problem could happen. We are not here, certainly from our perspective, under any circumstances to allow this to be gamed from our side. We have seen it go the other way, like I said, when we aren't socially important.

Mr. FIELDS. Mr. Harris, very quickly.

Mr. HARRIS. Our model envisions a good-faith negotiation with the State sitting there with an ultimate verification that the loop is open and then a certification by the FCC. The FCC ordered the RBOCs to do good-faith negotiation calling for potential compensation for cost-based interconnection. Every time we mentioned that to them they had two words for us: Pound sand.

Mr. FIELDS. Mr. Houser.

Mr. HOUSER. Mr. Chairman, without getting into specifics on the wording because I wouldn't presume to have the right wording for the bill, I think it is important to remember that the Bells have had a history of making business tough for those that compete for their markets. So I think our only point in this whole thing is that it needs to be defined specifically. It needs to be tightened, so that the competition is real as opposed to just making a system technically viable. There is a big difference.

Mr. FIELDS. Let me turn to you and add one additional thing, since my time is about to run out, along the same line, the economic feasibility on resale, I think you mentioned that as a potential loophole.

Mr. HARRIS. I would think in terms instead of using economically reasonable. I think if you use cost based, it becomes economically reasonable.

As far as technically feasible, RBOCs takes the position that it is not. I think the burden should shift to the RBOC to prove it. They told us it is totally infeasible. We have heard time in and out that it is not. I think if you shift the burden there, I think you may solve the problem.

Mr. BROWN. I am not sure I know where to start. I will tell you we have been right from the get go for number portability. And we have filed as part of the customers' first requests for proposal to all of the vendors who supply software to the Ameritech switches. They have got to come up with a solution in reality that provides for number portability.

In the interim, we have a surrogate for that which is essentially number transferring, but to date last I checked last week we have not heard from those vendors and we said give us an answer for all of the 4 million customers that are now slated to be part of the trial.

I will also tell you, I heard some of the rhetoric about accessing our network. It is to the advantage in the case of Ameritech. I can only speak for Ameritech to keep the prices we have for access as low as we possibly can to encourage others to interconnect with our network. It is good business and it makes sense. And we would argue we have among the lowest access prices, usage prices, and residential prices in the Chicago market in the country.

Mr. FIELDS. Thank you, Mr. Brown.

The Chair will recognize the gentleman from Virginia, Mr. Boucher.

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

Mr. Brown, I was taken with your testimony earlier concerning the joint marketing campaign that AT&T apparently has already undertaken in Chicago where it is seeking to sell the combination of its long distance service and a promised soon to be delivered local service as well.

Tell me, if you will, just how big a threat do you think it is for the Bell companies to have that kind of joint marketing effort undertaken by the incumbent long distance companies, offering the combination of long distance and local service at a time when the Bell companies can't respond in kind, when you still do not have the ability to offer long distance service and therefore cannot jointly market the same combination of services yourself.

How concerned are you that your current customers are going to go for this package deal that only the incumbent long distance companies can offer?

Mr. BROWN. Congressman, that is an excellent question. I will tell you that the separate subsidiary is an issue we have accepted and in the trial in Chicago and Grand Rapids we will accept that. We think over time that will prove unnecessary. We are on fully priced regulation. There is no cross-subsidization we have. We are on price regulation. But nonetheless we accept the separate sub.

But the most onerous issue is when you take the most powerful brand in the country, AT&T, and you put them to work with the ads I just showed you and you let them package up their cellular, offering the local telephone offering they intend to have, the long distance offerings they intend to have, and you remain in place with a restriction on Ameritech who is now under way unbundling its network, having reciprocity of compensation, doing all the things in your checklist and we can do nothing to give the customers the one-stop shopping they want. That is the most powerful disadvantage I can see while we sit on the sidelines 21 months and the gate is up and the big players are in. I think it is a recipe for disaster.

Mr. BOUCHER. Does it begin to address your concern if we insert in this legislation a provision that would delay the ability of the incumbent long distance companies to engage in the joint marketing of their services until such time as you have the ability to jointly market, meaning such period of time as you get into interLATA services?

Mr. BROWN. I have think as the subcommittee looks at this legislation, because it is for real in Chicago and Michigan with what is happening, that you should seriously think of ways to make equal the market conditions and opportunities that all of the players have, whether you accelerate us to be equal with AT&T or MCI or Sprint or you delay them to be able to offer the same kinds of conditions and market opportunities that we enjoy or don't enjoy, but I think you have got to, as someone said this morning, you have got to be able to treat the players competitively on a neutral basis or it is difficult.

Mr. BOUCHER. Let me ask you about the implications with respect to dialing parity on universal service. If some States under this bill are free to do so, make the decision to open up on a one-plus dialing basis the intraLATA long distance service and invite in the other long distance companies to offer that service, that being about 20 percent of the total long distance market, at a time when you still cannot offer interLATA long distance service and therefore replace the revenues, what implications would that have for your ability to continue to provide universal service?

Mr. BROWN. Well, it would be immensely serious. Dialing parity is still not the case because there is inequality in the marketplace in terms of what we can offer versus the interLATA carriers and it is sort of an offset. You take that gate down. You take down the gate for joint marketing and you let them go now while we wait 21 months and I can tell you it will be the story of 800 service all over again.

When AT&T was permitted to bundle AT&T service and began offering not only intraLATA 800 but interLATA 800, we lost 77 percent of the marketplace in 48 months. And we are not experts at this but we are not that bad. And that is a big scenario we look at on a grand scale if dialing parity is permitted to be taken away before entry into interLATA.

Mr. OXLEY [presiding]. The gentleman's time has expired.

Mr. Harris, MCI is involved in international operations quite extensively. And as you may know, I introduced legislation that would repeal the foreign ownership restrictions. If indeed we were able to do that, what effect would that have on your ability to compete on a worldwide marketplace and also potentially on your ability to raise capital?

Mr. HARRIS. Congressman Oxley, I think it would have the most incredibly positive effect you could imagine. It would make capital resources available that are not available today. It would make this far more competitive in a global sense. It would encourage foreign investment in U.S. industries; not just long distance carriers, it would spread to other parts of the industry. I think the U.S. economy would benefit. I think MCI would benefit. Sprint would benefit.

The only condition I would propose and I think you have, too, they need to open their markets too. I think if it is tit for tat, it is terrific. We think foreign investment is a smart thing. It would enhance the value of our company dramatically.

As you know, we have an investment today from British Telecom. It is a terrific situation for us. It gave us capital to grow the company, make new investments, get into new businesses. So we are we are an absolute believer. We applaud you for that.

Mr. OXLEY. Are there countries where you have been denied access?

Mr. HARRIS. For all intents and purposes, it is very difficult today in Germany. It is difficult in France. We have a few Latin America countries, but those barriers are coming down country by country and it is becoming a global industry.

Mr. OXLEY. As you know, the Germans just announced recently liberalization of their Deustche Telecom so it does appear, particularly by the order with EU, that it has to occur by January of 1998.

Mr. HARRIS. If we can get the French to do it now, I think we will be in good shape.

Mr. OXLEY. Exactly.

Mr. Brown, Ameritech has been involved or just recently involved, became the first RBOC to purchase an alarm monitoring system. And I am just wondering about how that purchase fits into your overall business plan and what are the synergies there and, indeed, do we expect more of that in the future?

Mr. BROWN. Well, of course the law permitted that but we did this because of the obvious synergies with telephony and being a full portfolio provider for our customers, customers want the convenience of, as somebody called it, one-stop shopping. They want to be able to go to a reputable, reliable, high quality, good value provider and get a whole array of services, whether it is local or long distance or cable and video and security monitoring.

So we thought it made good sense for our customers. It is one more step in our journey towards the smart home. And we purchased a small security monitoring company. We have less than 1 percent of the marketplace. We think it is excellent for customers and we intend to continue to look at that market as a natural synergy with what we do.

Mr. OXLEY. Is it your sense that other RBOCs and other players in the business will be interested in these same synergies or do you suspect that the business interests will differ depending on the region and the business sense of that particular corporation?

Mr. BROWN. Congressman, it is hard for me to say. I certainly would never speak for any of the others. It has been surprising to us that we—it took so long for Ameritech to be the first one to look at that market. So there has been no rush into the security monitoring business and for a long time my colleague companies have had the opportunity to do so.

So they have seen the wisdom of going elsewhere with their investment. We think security monitoring makes good sense for customers.

Mr. OXLEY. Mr. Boaldin, you point out that several hundred small companies and cooperatives have been deregulated for years. Do you believe they should be treated differently from the larger carriers with respect to the proposed rate freeze?

Mr. BOALDIN. Yes, I do.

Mr. OXLEY. Why is that?

Mr. BOALDIN. Well, for one thing, if they lose some of the revenues. I noticed you show that it is lower priced now than it was to build technology. Well, not in our facilities. Our people right now are wanting telemedicine. They are wanting all the modern technologies. These people haven't abused the system all this time. And if you really believe that rates are going to go down you hadn't ought to freeze them for the small companies anyway. They need to keep the state-of-the-art technology out there.

Mr. OXLEY. Thank you. My time has expired.

The gentleman from Michigan, the ranking member.

Mr. DINGELL. Thank you, Mr. Chairman.

Gentlemen, welcome.

Mr. Brown, I have been reading about the current test, the Title VIII(c), which requires the company demonstrate that there is, and I quote now, "There is no substantial possibility that it will use its monopoly power to impede competition in the market it is seeking to enter."

Now, I gather this is a forward-looking test; is that right?

Mr. BROWN. That is correct.

Mr. DINGELL. It is one that examines the effect of the Bell company entry into the market into which it is applying to enter; isn't that correct?

Mr. BROWN. That is true.

Mr. DINGELL. Now, the requirements then of H.R. 1555 have the effect of forcing a Bell company to give up some portion of its own market in return for having access to the new market; is that right?

Mr. BROWN. That is absolutely correct.

Mr. DINGELL. Now, they do not, however, look at the impact on the new market, do they? This test does not.

Mr. BROWN. I think the checklist is, what is the——

Mr. DINGELL. But it really doesn't compel, this test does not compel them to look to see what the impact is on the new market. It is much more a test of what you were giving up then what you are getting into.

Mr. BROWN. That is correct.

Mr. DINGELL. Is that a fair statement?

Mr. BROWN. That is fair.

Mr. DINGELL. Now, I am curious, is this more fair, less fair, or the same as the test now in the case before Judge Greene?

Mr. BROWN. Well——

Mr. DINGELL. It is hard for a Bell company seeking to enter a new market, is it not?

Mr. BROWN. It is a complex issue. I am no lawyer but I will tell you that in our customer's first proposal now embraced by the Department of Justice, there is an VIII(c) test, as you describe, and we have agreed to that and we are absolutely confident at Ameritech that we can meet every single element of that test.

Mr. DINGELL. That is true, but it still doesn't relate to the questions that you must confront as you enter the new market. In other words, the questions relative to competition there, fairness of treatment of all parties, relative economic or competitive advantage to the different parties, does it.

Mr. BROWN. That is correct. The VIII(c) test I would say is certainly is a legalistic test. The checklist in H.R. 1555 is a market-based test. We are confident that we can meet both tests, do well in the marketplace, and I think the important thing is that there be no excessive regulation in whatever this subcommittee does, that we not have delay and that we will be competitive regardless of what standard is deployed.

Mr. DINGELL. Thank you.

Thank you, Mr. Chairman.

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

The gentleman from Colorado.

Mr. SCHAEFER. I thank the Chair.

Mr. Hooks, a couple of questions, if I might. I would like to have you just confirm on this information I have but it seems to me in the year 1994, one sixth of all the cable customers saw their systems sold and at the same time at least one large operator grew by more than 50 percent.

Now, most of this buying is being done by those over the 1 percent line and most of the selling is being done by those under the 1 percent line. According to your organization figures, 48 percent of all small cable companies have at one time put themselves up for sale since reregulation; is that correct?

Mr. HOOKS. Yes, sir.

Mr. SCHAEFER. Okay. I want to ask you two questions. Number one, what will the effect on rural areas be if this concentration in the cable strip continues? And number two, do you think that this concentration and the wave of mergers was intended by Congress when it passed that act in 1992?

Mr. HOOKS. First, let me say our intent is to stay in the marketplace and I definitely believe that an individual cable system that is of small size, whether it is 1,000 or whether it is 2,000 subs, of small size really doesn't have much muscle to compete against a large competitor.

Our approach, and obviously we have invested a lot of money and time into accumulating and building and acquiring small cable systems, our approach is to interconnect them in these rural markets, develop some substance. For instance, if you had a cable system of 500 subscribers and you want to advance it into future technologies, the biggest burden we got is at the head end which is the originating point of all services that we receive. Five hundred subscribers can't bear that cost.

So our attempt is to interconnect. Say if we could interconnect 20 or 30 systems at a time, we could build up enough substance to afford those costs and bring those services to the rural markets.

Does that answer your question?

Mr. SCHAEFER. Yes. Well, we have tried to in 1555 provide the relief for the small cable operators and I guess I would like to ask you if you think that these lines are approximately right, because, for example, one operator in Colorado which provides mainly rural hookups and has about 400,000 subscribers has only one person on staff to deal with all this regulation that has been perpetuated by the FCC.

Will this 1 percent line, less than 1 percent line of subscribers be your benefit for future operation?

Mr. HOOKS. Well, certainly a system that is under 1 percent, that is what you are saying in size, are certainly vulnerable.

Mr. SCHAEFER. Total hookups under 1 percent are immediately deregulated.

Mr. HOOKS. For instance, we have over 300 franchises and if our community elected the regulatory routine of certification and all that, it would put me right out of business. I mean, I couldn't hire enough people to handle 300 systems with 130 subs.

It is critical, the situation in rural markets and the only two avenues we have is to develop some volume and scale, or I am afraid a lot of them will have to exit the business.

Now, I think in some of these cases it will be some time before competition gets to the heart of the rural markets, but it is not real pleasant. But I think your bill, what it does is it gives the operator the flexibility to cluster systems. It identifies the small systems on a revenue basis as small companies.

My only concern is I still don't think it addresses the effects of what the rural cooperative and municipal-owned utility companies can do with this and what they are doing now and if they can prevent us from interconnecting these small systems and continue to compete, which is fine on DBS and acquiring cable franchises. Just jack those rates up on the pole attachments high enough and no one can survive, we can't interconnect, we can't do anything. I guess what we just want is parity if it is all possible with any requestor we have.

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

The gentleman from Pennsylvania.

Mr. KLINK. Thank you, Chairman.

Let me just follow up if I can, Mr. Hooks. You intrigued me with your last several answers. How do the people that you serve now, now if the bill passes as is and you are given this regulatory relief, that we are not going to see their rates escalate needlessly because I can imagine you described some of those areas where you have got 50 customers there is not going to a whole lot of competition to go in there and to compete with you. So——

Mr. HOOKS. I don't know that I totally agree, but please understand when we built this company following the 1984 cable act, there was no regulation. And in fact under the current cost of service analysis, I could charge a $40 basic rate and I don't do that.

The point is from when I started and where I am today, I am restricted on what I can charge in the marketplace. We do typically charge a little higher than what you typically find in the major markets, but I passed 27 homes for every mile of plant that I build. I have got a third to a quarter of the revenue capability for every capital dollar I put in that major system.

Mr. KLINK. Thank you.

Mr. Harris, something I was hoping that I would have time to take up with some of the other panels, and you I think addressed it pretty well in your opening statement, I would just like you to give me your best 60-second answer if you could on this because we are limited on time.

You mentioned about bringing in the Department of Justice and you think that is a good way to go. I can understand why AT&T would disagree with you. But give me again at this point in time when that damage has been done from AT&T's point of view and Sprint and MCI and everyone else has seen great growth occur, why do you still think that the DOJ is best over the FCC?

Mr. HARRIS. Okay. We are dealing with a situation here today where we have had a consent decree that has worked for 10 years. It created a highly competitive long distance business. We are now dealing with a situation where we are going to deregulate a very large business local exchange. It is huge. I mean, seven companies ranging in size from $10 billion to $16 billion a year in revenue.

I think there has to be a transition period when these companies move from a pure monopoly where they have operated as monopolists to where they have to operate in a competitive environment. The best judge we believe to see that that is done properly is the Department of Justice.

I am not saying that this is a lifelong experience and they should be constantly there. But it is a legal question. It is not really—it is not really a rate question or anything else. It is a legal question and we believe that the Justice Department has the expertise. They have been dealing with this consent decree for 10 years. They understand the industry and I think on an expedited basis they could move this thing along rapidly. And rather than be a hindrance to this legislation, I think they could be a tremendous help to it. They could move it along quickly and I think it will have a great deal of success if we do that.

Mr. KLINK. Mr. Brown, I imagine you have a different view on the matter.

Mr. BROWN. Well, when we filed our customers first plan to open up our local network and in return get long distance, the process

by which we had to undertake the waiver of the modified final judgment was through the Department of Justice, that antitrust organization empowered with monitoring the consent decree. So we have reached agreement with DOJ.

I guess relative to legislation, Ameritech is neutral as to whether or not the Department of Justice is the governmental body you empower with supervision or the FCC, but it would be important that it be one of those agencies, not both, and that whichever agency you decide is appropriate for this legislation that their timelines be crisp and the standards of evaluation be very clear.

Mr. HARRIS. I think there is one other point I would like to make. Prior to the consent decree, there were over 80 private antitrust litigations ongoing in the telecommunications industry. Since that consent decree, there have been literally a small handful going. I think that speaks well for the fact that the system is working and it is deregulatory and it is cutting litigation and unclogging our court systems.

Mr. KLINK. Mr. Perry, does McCaw have a position on this at all, the DOJ versus the FCC?

Mr. PERRY. I think Ameritech has accepted the VIII(c) test. DOJ seems to be the people who understand this type of competition analysis and would be the appropriate agency with the short views, so you don't get Mr. Brown's regulatory problem, it is the appropriate agency.

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

The gentleman from California, Mr. Cox.

Mr. COX. Thank you, Mr. Chairman.

I would like to ask Mr. Hooks to go more deeply into detail for us on what I find to be an astonishing attachment to your formal testimony. And that is the situation in Davey County, North Carolina, with a utility that is financed in substantial part by Rural Electric Administration debt that according to your attachment pays an interest rate of between 2 percent on some of it and 5 percent on the high end.

Mr. HOOKS. That is correct, sir.

Mr. COX. And it is in competition with private cable TV. According to the financial statements that you have attached, there is $14.7 million in long term debt outstanding for this utility. They have cash on hand of $14 million indicating that they haven't any interest in paying down that debt because they find the rate which is subsidized by the taxpayer——

Mr. HOOKS. It would appear to me that way, yes.

Mr. COX. [continuing] so attractive.

Are you satisfied that our legislation is doing enough to make sure that this kind of taxpayer subsidy is not putting the thumb on the scale on behalf of one competitor or another? And let me add as you pointed out here that in utility, also pays no income taxes whatsoever whereas obviously private cable operators do.

Mr. HOOKS. That is correct. I guess—I don't know how to compete with that. In other words, they are funded with REA funding. And I understand there are exceptional terms as far as the payback goes as well and I am not familiar with these. But, you know, they can get into my business, I can't get into theirs. They don't

pay State or Federal income tax. It seems that it is going to be awful hard for me to compete on a similar rate with them.

Mr. COX. Would you suggest that on another front Congress take a close look at this when we look at the REA?

Mr. HOOKS. It seems to me they ought to pay back their debt before they compete against the free enterprise system.

Mr. COX. I thank you for that, and I thank you for bringing this to the committee's attention. It is quite a case study in how taxpayer subsidies may be abused in disrupting the competitive environment.

I wonder if I might ask Mr. Boaldin to go back to the subject that briefly you were discussing with Mr. Oxley. You pointed out that several hundred small companies and cooperatives have been deregulated for years. Do you believe they should be treated differently from the larger carriers with respect to the proposed rate freeze?

Mr. BOALDIN. Yes, I do. I think they should for several reasons. If they have a rate freeze and then they have to go in and file tariffs and file with the commission, it costs a lot of money to do that and if they lose some customers to competition and the revenue stream goes down, they don't have any way to get that and I think their expansion into new services would be cut back because they would have the lack of the latitude.

Mr. COX. In your view, is the provision that permits the FCC to audit a provider's records to ensure that the charges for interstate services are just reasonable and nondiscriminatory likewise subject to the same analysis?

Mr. BOALDIN. I really am not qualified to answer that one. I would be happy to get that for you, but I don't feel qualified.

Mr. COX. Would you favor eliminating the cap on fees during the 3-year period, eliminating the cap on prices?

Mr. BOALDIN. Yes, I would. Some of the testimony here today that I heard and from some of the Congressmen was that they thought rates were going to go down anyway.

Mr. COX. So as far as you are concerned, for the protection of smaller and local telephone companies it would be satisfactory if the price control were removed for all companies?

Mr. BOALDIN. Well, I think in our testimony I state that there are some small companies that I would hate to be seen thrown into price regulation without them being ready——

Mr. COX. I did see that in your testimony and if I recall correctly what you suggest is they should be able to go through the waiver process.

Mr. BOALDIN. That is—yes, at their choice.

Mr. COX. But what I am asking is a different question and that is whether or not it would be satisfactory or superior to the present provision from your standpoint if we simply eliminated the cap on prices during the 3-year period?

Mr. BOALDIN. In my opinion, yes.

Mr. COX. Thank you.

Mr. FIELDS [presiding]. The gentleman's time has expired. I thank the gentleman.

The gentleman from Illinois, Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. Chairman, before I ask my questions, I want to preface my question with just a general statement to Mr. Brown.

I certainly want to welcome him before the committee. Mr. Chairman, for the record, I want to thank Mr. Brown and Ameritech in Chicago for being the lead of a campaign that has really resulted in bringing many millions of dollars to the working poor in the city of Chicago.

Ameritech took the lead in helping to organize the Chicago campaign to promote the earned income credit which has had resounding effects and it has certainly brought an additional $71 million into the Chicago economy. They sponsored a number of events throughout the city and they have included in their monthly billing information about the earned income credit and he just think—I personally want to thank you on behalf of the citizens of the city of Chicago for your particular effort in this matter.

I just have one question and that is regarding your purchase of a security monitoring company. There are approximately 13,000 small companies similar to yours across the Nation. And I just want to ask you what do you think is the impact of Ameritech's entering into this particular business, what would be the impact on those other companies? Do you have any idea?

Mr. BROWN. Congressman, first thank you for the compliment for Ameritech. I will pass that on.

Second, with 13,000 or so security and alarm companies in America and us purchasing one small provider and representing less than 1 percent of the marketplace, I think there is absolutely no impact on that relative to the market, but I think there is a very positive impact relative to what customers want us to be for them.

And we are targeting to make available the smart home, security monitoring, and other new technologies that go with that, distance learning, telemedicine as was mentioned, packages up with video and cable and interactive television and video, so it just makes good sense to us because the research we did shows our customers want these capabilities from one provider they trust.

Mr. RUSH. Thank you.

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

Mr. FIELDS. I thank the gentleman.

The gentleman from Massachusetts, the ranking minority member.

Mr. MARKEY. I thank the Chair very much.

Mr. Brown, you are a visionary. Mr. Perry, ditto. You, Mr. Harris, congratulations on your new deal with Rupert Murdoch. I don't know you three gentlemen, so we will begin our relationship.

Let me begin with you, Mr. Hooks, if I could. You are a cable operator and you have 130,000 customers.

Mr. HOOKS. That is correct.

Mr. MARKEY. And the average system size that you run is 544——

Mr. HOOKS. That is correct.

Mr. MARKEY. [continuing] subscribers; is that correct?

Mr. HOOKS. Yes.

Mr. MARKEY. So they are all over the lot in little parcels and no more than 544 customers in any one location, right?

Mr. HOOKS. That is an average, sir, the smallest being 50 and I think our largest approximately 4,000, 4,500 subs.

Mr. MARKEY. Now, do you believe that what makes you small is the fact that you only have 130,000 or that you serve small communities?

Mr. HOOKS. I think it is both.

Mr. MARKEY. It is both.

Now, what if your size, what if you were twice your size, what if you had 260,000 subscribers, would you consider yourself to be small?

Mr. HOOKS. Compared to the gentlemen I am sitting with today, yes.

Mr. MARKEY. On average your subscribers, if you sold your system they are averaging $1,800, $2,000 per subscriber?

Mr. HOOKS. That is incorrect, sir, in rural markets.

Mr. MARKEY. What are yours going for?

Mr. HOOKS. Probably eight times cash flow, $1,200.

Mr. MARKEY. All right. So your system would still be worth well over $100 million on the open market today and you wouldn't debate that. And that is good, you know. Compared to these guys, you are small; compared to anyone who is watching this, you are the biggest guy they ever met in their life, so, you know, they never met a businessman as big as a guy worth $100 million, so it is all relative, right. So if you—if somebody had a company that serves 260,000 subscribers in one community, would you consider that person to be big or small?

Mr. HOOKS. Well, I consider the system big but the company small.

Mr. MARKEY. How about if that person served a community that had 500,000 subscribers and that would give you about—probably a family of four, that would be about 2 million people lived in that community.

Mr. HOOKS. Another way I evaluate it is 1 percent of the industry is very small.

Mr. MARKEY. I appreciate that.

Mr. HOOKS. Until you exceed 600,000, I view that as small.

Mr. MARKEY. Would you view a company that is 500,000 subscribers in one community big or small?

Mr. HOOKS. I answered the system would be big and the company would be small.

Mr. MARKEY. You think the company would still be small.

Mr. HOOKS. Yes.

Mr. MARKEY. Do you think that a company with 500,000 subscribers should be completely and immediately deregulated on passage of the legislation, 500,000?

Mr. HOOKS. Yes, I do, sir.

Mr. MARKEY. You do. Even if there was no competition in that community for——

Mr. HOOKS. I think that particular community is going to have competition if it is that size.

Mr. MARKEY. But they won't have competition until at a minimum after the completion of the rulemakings at the Federal Communications Commission. In other words, if the President signs the bill on September 30 of this year, that community would not have

any cable competition for at least 15 months and that would be the earliest that it would come into town; is that not correct?

Mr. HOOKS. I guess so.

Mr. MARKEY. Yes. Now, what would you do for that community if in fact the telephone company in that region announced that they weren't planning on rolling it out as a competitive product until sometime in 1998? Would you think cable rates would go up in that community?

Mr. HOOKS. Yes. However, I am not sure they would go up any different than any other system.

Mr. MARKEY. Well, any other system that was deregulated you mean.

Mr. HOOKS. In other words, when I built our company I was deregulated, and I get the impression when you say go up, everybody's prices go up. I don't know how to qualify that.

Mr. MARKEY. In answer to a question from Mr. Klink, you said that you would not raise your rates in the towns you serve; is that correct?

Mr. HOOKS. No, I never said that.

Mr. MARKEY. You did not say that. Do you think that there needs to be a bad actor provision that is put on the books in order to protect against bad guys that might be in your industry, assuming that 95 percent of your industry is filled with good people?

Mr. HOOKS. Well, I don't know that I know how to answer that question, sir.

Mr. MARKEY. Well, yes or no would be fine. Do you need protection against people who might egregiously abuse the fact that they had been deregulated and there is no competitor in that community?

Mr. HOOKS. I suppose so.

Mr. MARKEY. You suppose so. Thank you, sir.

Mr. FIELDS. The Chair recognizes the gentleman from Texas, Mr. Hall.

Mr. HALL. I thank the Chair.

Mr. Hooks, you have been beat on a little bit. I will take another step in your direction. I guess I would first say that you represent most of my district and have customers all over my district.

Mr. HOOKS. Yes, sir, and I don't have anywhere near 500,000 subs.

Mr. HALL. You would accept them, would you not, if they were available?

I would say this, that you have kept your customers basically because you have kept the faith with them and I am not seeing any dramatic increase nor do I get a lot of complaints about Buford.

Mr. HOOKS. When we built those, there were no restrictions by the telephone company or anyone else to build these markets. And all our big competitors could have come in there and we elected to do it. Because, as I recall, it dates back forever, you could build communities of 2,500 population and most of these communities have a lot less than that.

Mr. HALL. It is obvious that the small companies like Buford, the major thrust they have is to provide the same service that the people in the larger cities get and I think—I am starting to recognize that it is critical that the national policy be that the Congress rec-

ognize this, the difference in the small and the medium and the largest telephone company or the largest cable companies in terms of the amount of money they have got, their capital, and their ability to grow and I think the chairman and the committee have done a very good job of taking that into consideration, do you not, in this bill?

Mr. HOOKS. Yes, I do, sir.

Mr. HALL. You know, all entries and lot of enterprises that are competing with the Bell companies, we have also hammered around on the Bell people pretty good here, but I found that everybody that is dealing with them, that is buying from them and practically competing with them are not unhappy with them and even without this legislation or in spite of this legislation, they are going to go on because their real sale is services and I think we have had some folks that were to testify here earlier today that brought that out.

So applauding you as a small cable company and being willing to compete with the folks that are at the table and in this room and in the industry, how important is it to you that you interconnect your companies and you might even go on in and tell us something about—co-ops were mentioned by one of the other members. They have spawned some problems for you other than those you have enumerated here, have they not?

Mr. HOOKS. Yes. We identified our two weakest areas in our company were communications to our service vehicles and the small nature of our businesses. And I think in that in our testimony you will see that we have and spent the last 3 years developing a telecommunications network I think that is more sophisticated than what anybody in this room has in communicating to our service trucks. They communicate live, interactive via satellite, two satellite dishes on the top of their cab to our trucks.

The reason we had to do that is we can't have 237 cable offices. It wouldn't work. We have got four regional offices and this allows us real live time with our service personnel. We know how much work they have got, how much more they have to go, where they are, what their ETA is, and the whole bit.

The second weakness that we have recognized in our long-term plan in fact set some time ago was to slowly interconnect and build systems close enough in rural markets to afford the ability to tie those together. And unfortunately, and like where I sit right now, systems that size will have trouble dealing with any expansion of services on what we hear today. Like 100 channels of this or all these other services of information that we hope to bring in the future, I will have difficulty bringing that to the public.

If I can interconnect them, which doesn't seem to be any restriction in this bill, I do have a chance to tie fiber connection between one system on to another to afford the advantages to the rural customers.

Mr. HALL. I thank the Chair and yield back my time.

Mr. FIELDS. I thank the gentleman.

The gentleman from Washington State, Mr. White.

Mr. WHITE. Thank you, Mr. Chairman.

I want to first of all welcome Mr. Perry here to testify today. It is always good to have somebody from the home area come and tes-

tify and we have appreciated hearing your testimony very much and I have a question or two to ask you, but first I want to ask a question of Mr. Hooks since he has been on the hot seat so long I hate to let him off right away.

In response to the gentleman from Massachusetts, you said that you thought maybe there was some protection that was needed against potential bad actors in the industry I think you said and you supposed there was. You didn't seem too enthusiastic about it.

Mr. HOOKS. I wasn't prepared to determine what those should be.

Mr. WHITE. I understand that. My question to you is, does it have to be the government that is the protection that we have against bad actors? Is there some other way that we can protect ourselves against bad actors in any industry without having to rely on the all-wise, all-caring government to provide that service?

Mr. HOOKS. Well, I think the public has been pretty good at that. And I know some people disagree with me, but I think the cable industry has done a remarkable job. I think, yes, rates went crazy. So did programming. Everything went through the roof. But penetration has continually climbed. I just disagree with some of the attitudes about cable television.

I realize I am kind of biased. I have been at it 28 years. I have worked real hard. I have got, like I said, over 300 communities and the majority of them don't elect to apply themselves to the government rules and regulations. We sit down and talk through our problems and on occasion we have them and we work through those and we go—I think we serve our public's needs.

Mr. WHITE. Let me ask you this question. Do you have any competitors on the horizon? Anybody have a satellite dish in your district?

Mr. HOOKS. Sure. There is DBS appearing all over the rural markets. I have expanded on the effects and what I am concerned about on the rural co-ops is not so much that they are going to compete, it is just that I want parity with them. I don't think it is fair that they have got advantages that I don't have.

Mr. WHITE. What kind of penetration do satellites and DBS broadcast have on your markets in general?

Mr. HOOKS. I don't have those numbers. You certainly can drive down the rural markets and see every so often a satellite dish. It is kind of early to tell.

My biggest concern with them, I should say, is more long term. They have a significant advantage over me and that is they can provide near video on demand which takes a minimum of 50 channels. I can't. I have got 35 full right now and I need to be able—I get back to this clustering idea. I cannot expand my network without some capabilities of clustering and that sort of thing.

Mr. WHITE. I appreciate that. Thank you very much.

Mr. Perry, you had some suggestions for us right at the end of your testimony about ways we could improve this bill and I would like to give you the opportunity maybe to explain in a little more detail what those are.

Mr. PERRY. Probably the most significant thing that could help the wireless industry in this country would be to encourage a joint rulemaking whereby we would establish a national policy concern-

ing cell siting. We are currently fighting every city and every city and every municipality on cell siting and if we could get the cities together at the FCC and come up with a joint national policy, it would be great.

We had one cell site in Los Angeles stopped because the woman complained that her dog was given headaches by our cell site. It was tough to take testimony from the dog to figure out what we could do to help. And that is the kind of thing that goes on all the time.

You are counting on wireless to play a great role in the future of telecommunications. You have just sold us very expensive licenses to achieve that and we are happy to roll them out and it is going to be a huge major construction project that will come to a grinding halt if you don't help us with a national policy where you get all the parties together. This isn't a situation where the cities are left out of the process, but they are involved.

Mr. WHITE. So cell siting would be kind of your number one suggestion.

What about helping you compete with the local telephone companies? You had some comments about that. I would note also that you have been reasonably successful so far competing with them, but are there a few things you really think you need to have?

Mr. PERRY. I think we talked about making the number portability, about making sure that the interconnection is cost based, that allowing mutual compensation to making sure that the pole attachments provisions are applicable to the wireless community.

Mr. WHITE. Thank you very much. It was a great pleasure to have you here.

Thank you, Mr. Chairman.

Mr. FIELDS. Any other questions of the panel?

On behalf——

Mr. MARKEY. If I may, I just want to state to Mr. Hooks that my—I was not questioning you and the work that you do. I was trying to get you to make the point that you did about the bad actors and the fact that there are people out there who aren't like you and who don't sit around and try to decide how they are going to help people, but in fact rather how they are going to get away with it. And you know they are out there too, are they not?

Mr. HOOKS. I suppose.

Mr. MARKEY. I suppose. I will take that.

Mr. HOOKS. I will leave that up to the judgment of the committee to determine and it is probably best to determine what is large and small. The numbers that you are talking about are way beyond me.

Mr. MARKEY. You are doing really well though. I congratulate you.

Mr. FIELDS. I know what you are probably thinking is there is a time out where there is convergence and competition and that takes care of the need for the government to regulate. That is probably what you are thinking, wasn't it, Mr. Hooks.

Mr. HOOKS. Yes, sir.

Mr. FIELDS. We are going to gavel this meeting to a close, and this subcommittee will reconvene in the morning at 10 o'clock in this room.

[Whereupon, at 4:41 p.m., the subcommittee was adjourned.]

COMMUNICATIONS LAW REFORM

THURSDAY, MAY 11, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:03 a.m., in room 2123, Rayburn House Office Building, Hon. Jack Fields (chairman), presiding.

Members present: Representatives Fields, Oxley, Schaefer, Stearns, Paxon, Gillmor, Cox, Frisa, White, Coburn, Markey, Bryant, Boucher, Manton, Gordon, Rush, Eshoo, Klink, Bliley and Dingell.

Staff present: Catherine Reid, majority counsel; Michael Regan, majority counsel; and David Leach, minority professional staff member.

Mr. FIELDS. The Subcommittee on Telecommunications and Finance is reconvened, our second day of hearings. We have two witnesses on our first panel, the Honorable Anne Bingaman, the Assistant Attorney General for Antitrust, Department of Justice; and the Honorable Larry Irving, Assistant Secretary of Commerce of the National Telecommunications and Information Administration.

Ms. Bingaman, we'd like for you to go first. You will be recognized for 5 minutes. At the end of the 5 minutes, we would ask that you summarize. Thank you.

STATEMENTS OF HON. ANNE K. BINGAMAN, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF COMMERCE; AND HON. LARRY IRVING, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, DEPARTMENT OF COMMERCE

Ms. BINGAMAN. Thank you, Mr. Chairman. It's a great honor to appear before you today, and I want to begin by acknowledging your long leadership and history in this field. You understand it as well as anyone, I think, and I encourage and appreciate all that you have done to move the country forward in the right direction.

Other members of the committee have similar, deep understanding. This committee has a long history of leadership in this area—and a proud one, and I'm honored to be here today to work with you.

With that said, let me state that we share—the administration shares—this committee's goal of moving the country forward to the next stage in the telecommunications revolution. I think it can genuinely be called that. We are in the midst of an explosion of

competition, innovation and lowering prices for consumers in long distance and in equipment that was driven, Mr. Chairman, I respectfully suggest, by the Department of Justice in the modified final judgment.

Mr. Chairman, you recognize, as does ranking member Markey, that in the early 1970's, we had a single, monopoly service for all telecommunications, and it was the Department of Justice in the Ford Administration, after an investigation throughout the Nixon Administration, that filed in 1974 the historic suit challenging the Bell Company's monopoly over both the local exchange networks, and the adjacent competitive markets of long distance and manufacturing.

The Justice Department filed this suit because of allegations which we had investigated and which we later proved in an 11-month trial, which was settled prior to entry of judgment with the modified final judgment, that the Bell Company had used their control of the local monopoly bottleneck to both cross-subsidize and harm competition in adjacent markets and to discriminate against providers and competitors in an adjacent market such as MCI—refused to hook them up and so forth.

The settlement that was driven in the Reagan Administration was nothing short of brilliant. It was a complete breakup, a split-off of the Bell Company from the competitive ends of the business in manufacturing and long distance.

The Justice Department drove the case, drove the settlement—and did it, I might say, Mr. Chairman, over the dead bodies of most people in the country at the time, other than Harold Greene—Judge Greene—who deserves enormous credit for the courage with which he has pursued this and the wisdom of his judgments.

I say over the dead bodies of most people, because I think—if you remember back in 1982, there was a hue and cry, "What are they doing breaking up the greatest phone system in the world. This is nuts. These lawyers are crazy, antitrust is crazy." Bill Baxter had the courage and the guts and the vision to say, "This is the right thing to do. This is what the country needs. We will split these companies from the local monopoly, apart from the competition."

Mr. Chairman, we have seen it work in spades, beyond anyone's wildest dreams, I dare say. We have seen long distance prices fall almost 70 percent. We have seen tremendous extra capacity in fiber optic cable, coast-to-coast. We have leapfrogged the Japanese, the Europeans, we are ahead of every country in the world because of the modified final judgment and the application of the antitrust laws. That's the fact.

We are where we are today because of antitrust and the Department of Justice, and we need to go the next step. We need the leadership of this committee—absolutely we do. We need a national solution to this, because, in the intervening 12 years since the modified final judgment was entered, the Bell Company has filed numerous waivers, which we have worked with them on, they have gotten into numerous adjacent businesses—270, approximately, waivers have been granted, allowing the Bell Company into other businesses.

I see my time is up, Mr. Chairman. I know you have a lot of witnesses, and I would just say——

Mr. FIELDS. Let me do this, Ms. Bingaman. Your testimony is important. We appreciate the fact you're here. Why don't you continue to proceed.

Ms. BINGAMAN. That's very generous of you, Mr. Chairman. I'll try to do this quickly. I know you have a large panel.

I would simply get to where we are today and where this committee—and why your leadership is so vital in this. In the 12 years since the modified final judgment, the original concept was that the Bell Company would do nothing other than local exchange. Simply that. No real estate, foreign telecomm, no nothing.

As the years went on, we realized that wasn't necessary. Numerous waivers were granted. We have now gotten to a point where we are examining waivers in the core areas of the decree—long distance itself and manufacturing—and we are granting waivers in the core areas of the decree, as witnessed by the Ameritech waiver, which we recommended to Judge Greene just about a month ago with the consent of AT&T and Ameritech.

That goes directly to the heart of the restrictions in the decree, and it adopts the line that this committee took last year, that the Congress took—the House in a vote of 423 to 5—the Senate Commerce Committee took last year; and I think the bill reflects this year, which is a consensus of the Congress that the way to allow the Bell Company into these final two markets is to break up the local monopoly, to dismantle it, to make it open to competition; and that's what we're struggling with.

You, Mr. Chairman, have led this struggle. You understand it; and I absolutely acknowledge and respect that. I believe, Mr. Chairman, we have a difference on this last point, how to get through the last mile, so to speak, legally. We need the leadership of the Congress. We need to act as a Nation to allow the Bell Company into these last two markets.

But we also need to protect competition in those two markets, from the enormous strength and monopoly power of the Bell Company, which remains today in local networks. It is a fact that they have monopoly control of the local bottleneck. That has not changed. There is competition at the fringes. They have enormous cashflow, over $90 billion in revenue from local exchange service. These companies are huge, Mr. Chairman.

The smallest of them is $10 billion a year. The largest is $16 billion-plus and growing. These are big powerful companies with big powerful monopolies, which have served the country by that. No argument. The trick is, how do you let these big monopolies into competitive business safely, so as not to destroy the hard-won gains of the last 20 years, driven by the Department of Justice, antitrust laws and the modified final judgment.

Mr. Chairman, I submit that you do that by opening the local market to competition, first, as your bill does; by unbundling and allowing interconnection, as your bill does; and allow competition in that local market, but let the Department of Justice determine whether competition has, in fact, taken hold, before allowing the Bell Company into long distance.

Mr. Chairman, I have grave concerns that your bill, which has a lot of things right in it, in fact would tilt the scales too far toward the local monopoly and, in effect, allow entry into long distance

upon satisfying a checklist. The problem with that is, we don't know enough about this. We have never unbundled local networks. No one has done it.

This is a first in history. Rochester Telephone tried 3 months ago. There are different reports on how that's going. This is vitally important to every consumer in the country, every business in the country, to our innovation as a country, to our progress. It is vital that we do this right.

Mr. Chairman, I submit that what we need to do is to determine that there is competition, that there is no substantial possibility of impeding competition in these adjacent markets, and that the Department of Justice should continue as it has for 20 years. Because, Mr. Chairman, frankly we have delivered tremendous value for money to the American people, to the American economy; and I could not be more proud to sit here and be the person after only 18 months representing what I think is one of the proudest achievements of American government, which is the revolution that has occurred.

So, I applaud your leadership. I believe that is the principal area it needs to move. I will be very honored to answer any and all questions.

[The prepared statement of Anne K. Bingaman follows:]

PREPARED STATEMENT OF ANNE K. BINGAMAN, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION

It is an honor to testify before this subcommittee concerning legislation to promote greater telecommunications competition. I am grateful to you, Chairman Fields, to Congressman Markey and to this subcommittee for holding this hearing and exercising leadership in this important area. Given my role in enforcing the Nation's antitrust laws, I will focus my remarks on issues relating to competition in the telecommunications business, especially issues arising in connection with the Modification of Final Judgment (MFJ), which governs the actions of the Regional Bell Operating Companies (Bell Companies).

H.R. 1555 takes on one of the fundamental obstacles to greater telecommunications competition by seeking to open to real competition the monopoly over local telephone service that each of the seven Bell Companies and other local telephone monopolists have in their respective regions. The bill also would allow telephone companies to compete against cable companies. We commend you for these efforts. Opening cable and telephone monopolies to competition was also a cornerstone of the legislation passed last year by the House and sponsored by Congressman Markey and Chairman Fields.

We believe that the provisions in H.R. 1555 for unbundling the local network and providing for interconnection among networks are important for making significant progress toward greater local competition. But we have serious concerns about several aspects of the bill. Our serious concerns with deregulating cable monopolies before there is competition to challenge them will be addressed by Mr. Irving. We also are concerned about the absence of a market-based assessment of the effects that Bell Company entry into long distance and manufacturing would have on competition in those markets before such entry is allowed—which I will discuss in more detail in a moment. We look forward to working cooperatively with the members of this subcommittee and with Congress to resolve these concerns and pass comprehensive, pro-competitive telecommunications reform.

Our fundamental vision for the telecommunications future is simple to state, but breathtaking in its implications: Any company will be permitted to provide any service to any customer. We want that day to come as soon as possible, because increased competition in telecommunications will benefit consumers, spur economic growth and innovation, promote private sector investment in an advanced telecommunications infrastructure and create jobs. We would be naive, however, if we expected an uncomplicated transition from the regulated monopolies that characterize many segments of the telecommunications industry to fully competitive markets.

Vice-President Gore put it best at the Federal-State-Local Telecommunications Summit held earlier this year: "Competition is always better than monopoly. But

monopoly power must never be confused with competition. Two enemies of competition are monopoly power and unwise government regulation. We must remember, after all, that the goal we seek is *real* competition. Not the illusion of competition; not the distant prospect of competition."

There is today, we believe, a broad, bipartisan consensus in favor of moving telecommunications policy out of the courts and into the statute books so that Congress, representing the public, can craft the kind of comprehensive framework for competitive telecommunications that the nation deserves.

The key test for any telecommunications reform measure is whether it helps the American people. To meet this test, it must be effective in opening all telecommunications markets to competition, including—first and foremost—currently monopolized markets. And it must ensure that monopolists cannot harm consumers and competition in the transition to competitive—and then deregulated—markets.

If we unleash monopolists rather than achieve real competition, American consumers and businesses will pay higher prices and have less choice. We would have less innovation and lower quality. We could lose our position of international leadership in telecommunications, and American businesses could lose a competitive edge. Real competition enables—and must precede—real deregulation.

In the balance of my testimony, I would like to do the following:

- put the discussion we are having today in a useful framework, by explaining how we got here and, in particular, how the nation has benefitted from the competition in telephone markets that has occurred thus far;
- discuss the significant progress that H.R. 1555 makes toward opening local markets to competition;
- discuss the difficulty of relying solely on a checklist approach to opening the local market; and
- discuss the need for an assessment of actual marketplace facts before allowing the Bell Companies into long distance to ensure that such entry does not unravel a decade of progress in opening the long distance and telecommunications equipment markets to competition.

The History of the Bell System Decree

It is appropriate to begin with some history, because the competition that we have today in long distance and equipment manufacturing is a relatively recent phenomenon, made possible by DOJ's landmark antitrust case against the Bell System. That case, as you know, was a completely nonpartisan undertaking. It began with an investigation that was initiated in 1969 during the Nixon Administration, accelerated with the filing of the case in 1974 in the Ford Administration and was pursued vigorously through the Carter and Reagan Administrations until it was settled in 1982 by my former law professor, William Baxter, President Reagan's Assistant Attorney General for Antitrust. That historic settlement resulted in the entry of the MFJ, which dismantled the Bell System's vertically integrated telephone monopoly.

The seven Bell Companies were created by the MFJ and each has a monopoly over local telephone service in its respective region. The MFJ restricts the Bell Companies from entering the long distance and equipment manufacturing markets. These line-of-business restrictions grew out of the central issue in the case: the ability of the local monopoly to impede competition in those other markets.

Before it was broken up, the Bell System used its control over local telephone service to maintain monopolies in long distance and equipment manufacturing. *See United States v. AT&T*, 552 F. Supp. 131, 162 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 486 U.S. 1001 (1983). Long after competition in long distance service and communications equipment became technologically and economically feasible, the Bell System abused its control of the local bottleneck to frustrate consumer choice and actual competition.

As Judge Harold Greene, who presided over the eleven month trial of the case and who continues to administer the terms of the MFJ, has explained, it was control of local exchange service

> that gave the Bell System its power over the competition. That control enabled the System to foreclose or impede interconnection to its network of lines of its long distance competitors and of equipment produced by its manufacturing rivals. It also made possible the subsidization of one activity with the profits achieved in another.

United States v. Western Elec. Co., 673 F. Supp. 525, 536 (D.D.C. 1987), *aff'd in relevant part,* 900 F.2d 283 (1990). In other words, control of the regulated local monopoly bottleneck gave the Bell System the incentive and the ability to discriminate against competitors in other markets in the terms, price and quality of interconnection with the local network and to shift costs from unregulated markets to the regulated local market, where they were passed on to local ratepayers.

Until the success of the Department's suit, regulation and litigation had not been effective in breaking through that local bottleneck. The Bell System proved itself adept at devising new ways to use the bottleneck to hurt competition in other markets more quickly than the courts and regulatory agencies could order solutions. Among other things, the Bell System used its monopoly profits to hire legions of lawyers to make sure that any proceeding that challenged any aspect of the monopoly was bogged down in endless proceedings. For example, the struggle to allow telephone customers the right to use their own equipment on their own premises, rather than being forced to purchase that equipment from the Bell System, spanned decades—from the beginning of the Hush-a-Phone litigation in the 1940s to the break-up of the Bell System in 1984, which finally resulted in open competition in customer premises equipment. *See, e.g., United States v. AT&T,* 552 F. Supp. at 162-63 (discussing a potion of this struggle—the Bell System's use of "protective connecting arrangements" to discourage the use of competitors' equipment).

The Benefits of Competition After the MFJ

The MFJ addressed the problem of the local monopoly bottleneck and promoted competition in the long distance and equipment manufacturing markets by strictly separating the local monopoly from those markets. Because the local monopolies were barred from competing in the long distance and equipment manufacturing, they had significantly less incentive to impede competition in those markets. Competition in those two markets subsequently exploded. The result has been dramatically lower prices, better quality and more choice for American businesses and consumers.

MCI, Sprint and hundreds of smaller carriers vie with AT&T to provide long distance service to businesses and residences. The New York Times recently reported that in 1994 more than 25 million residential customers changed long-distance carriers—spotlighting the MFJ's incredible success in bringing real choice to consumers. Residential long distance rates have fallen more than 50 percent since the break-up of the Bell System. The United States now has four fiber optic networks spanning the country, another by-product of competition. Incidentally, AT&T lagged behind its competitors in building a fiber optic network—not surprising given that monopolists often are not the most innovative companies. These networks make possible all kinds of new services and enhance others, including the Internet. Similarly, businesses and consumers enjoy lower prices, more choice and better quality in communications equipment, as competition has eroded AT&T's power in that market and forced it to compete for customers.

Because of lower prices and better quality, Americans are communicating with each other, by phone, fax and computer, more than ever before. We are closer to each other and in better touch with each other, for business and pleasure, because of the MFJ and its benefits.

The challenge facing the Nation today is to move forward by expanding competition without losing the hard-won benefits in the markets in which competition has flourished since the entry of the MFJ.

Allowing the Bell Companies into Long Distance

Section VIII(C) of the MFJ provides that any Bell Company may obtain a waiver of the line-of-business restriction as soon as it can show that there is no substantial possibility that it could use its monopoly power to impede competition in the market it seeks to enter. Judge Greene has granted over 250 such waivers. In fact, just last month, Judge Greene approved a waiver request made by all the Bell Companies and supported by the Department that will allow the Bell Companies to provide long distance services to their wireless customers. The core restrictions on the Bell Companies' entry into long distance for landline customers and into equipment manufacturing remain, however.

Comprehensive telecommunications reform should have the goal of removing these restrictions and allowing the Bell Companies to enter those markets, in keeping with our vision of a future in which any company will be permitted to provide any service to any customer. The trick, of course, is to ensure that removing the restrictions does not result in the re-creation of the old Bell System, this time on a regional rather than a national basis, complete with the incentive and the ability to impede competition in the long distance and manufacturing markets. Seven separate monopolies, each controlling one large region of the United States, would be scant improvement for the cause of competition over a single national monopoly.

And there should be no doubt that the Bell Companies' bottleneck still exists. Customers simply have no choice for local service. In fact, in the vast majority of states, it is illegal for would-be competitors to offer a local dialtone. To be sure, some companies have made in-roads in offering alternative means of access to long dis-

tance carriers for certain business customers. And imaginable technological developments may eventually provide a basis for widespread competition in the future. But that competition is not here yet.

Let me stress that concern about the potential for the Bell Companies to use their control over the bottleneck to impede competition in other markets is a bipartisan concern. For example, William Baxter, President Reagan's Assistant Attorney General for Antitrust and the architect of the MFJ, recently warned that Bell Company entry into long distance while the local bottleneck still exists "will greatly diminish competition in [the long distance] market and will harm consumers." He concluded that a Bell Company "should not be permitted to provide long distance services until it has met the MFJ's VIII(C) test by demonstrating that there is *no substantial possibility* that it could use monopoly power in a local exchange market to impede competition in the long distance market it seeks to enter." (Emphasis in original.)

Opening Local Markets to Competition

H.R. 1555 takes on this fundamental obstacle to greater telecommunications competition by seeking to break through the local bottleneck. It aims to open up local telephone markets by requiring the Bell Companies to "unbundle" their networks while preempting existing local and state restrictions on entry by competitors. In the process, Bell Companies and other local telephone monopolies would be compelled to provide interconnection to other firms that want to use the "local loop" to provide local telephone services.

The Administration supports those provisions of H.R. 1555 that seek to open the local loop. We believe that the Bell Companies and other local telephone monopolies should be required to unbundle and fairly price *each* element of their local monopoly service at technologically and economically feasible points. Such disaggregated unbundling, coupled with fair pricing, is a critical precondition for establishing truly effective competition in the local telephone market.

By requiring that the Bell Companies must fully implement unbundling and interconnection before they may originate interLATA telephone calls in region, that number portability be implemented so that customers can change carriers without having to change phone numbers, that intraLATA toll dialing parity must be provided, that actual and effective legal entry barriers must be removed, among other requirements, H.R. 1555 takes important steps to open the local market to competition. H.R. 1555 also makes an important contribution by recognizing the importance of having facilities based competition as a condition to allowing the Bell Companies into long distance.

The bill also would clear the way for cable and telephone companies eventually to compete vigorously against each other in the same markets. We endorse reform that would permit existing cable and telephone companies to offer both video and telephonic services in the same geographic areas. We would welcome even stronger provisions to prohibit telephone and cable television companies from acquiring each other within the same service territory, subject to certain exceptions. It is crucial that public policy promote competition between methods for delivering telecommunications services.

I would add with respect to price regulation in local markets that the Administration believes that the bill should not dictate to the States which form of rate regulation best protects State consumers under the different circumstances and levels of competition that develop in each State. Such mandates could result in higher telephone prices for consumers in some states.

The Problems with Relying on a Checklist

The checklist in H.R. 1555 includes many of the steps for interconnection and unbundling that are widely considered necessary for opening local telephone markets to competition. But it does not address critical pricing issues necessary for competition to emerge. Further, there is no experience on which to judge whether these steps will be *sufficient* to allow the development of local competition. Nor is there a reason to believe that any checklist drawn up in advance can anticipate the myriad implementation issues that effective unbundling and interconnection will entail. The reality is that there is little actual experience in this country—or indeed anywhere in the world—with what can only be described as an exceedingly complicated undertaking. It is a myth that a simple formula can guarantee competition and replace the need for an expert analysis of real marketplace competitive developments.

To begin with, the actual terms and conditions of interconnection and unbundling are critical. For example, if loops are priced too high in relation to the retail price of the bundled local exchange service, it will be uneconomic for even the most efficient competitor to connect Bell Company loops to the competitor's ports to offer

service in competition with the Bell Company. One therefore cannot simply *assume* that competition will occur as a result of unbundling.

Similarly, requiring Bell Companies to agree to interconnect with other carriers, to terminate traffic originating from a competing carrier and destined for a customer on the Bell Company's network, and to send traffic to other carriers when Bell Company subscribers wish to call competitors' subscribers does not by itself resolve a competitor's imperative need to be able to offer its customers the ability to make calls to or receive calls from Bell Company customers. If the Bell Company's prices to terminate calls from subscribers of competing networks to called parties on the Bell Company network are unreasonably high, competition could be seriously hindered.

The importance of such implementation issues is highlighted by H.R. 1555. The bill requires interconnection "on just and reasonable terms and conditions." Likewise, unbundled network elements must be provided "at just, reasonable and nondiscriminatory prices," while resale of network elements cannot be subjected to "unreasonable" restrictions. Such terms are necessarily vague, because there is no way in on earth that legislation could specify in advance exactly what terms should be applied.

But that is precisely my point. The only way to give meaning to such necessarily vague terms is to assess the actual competitive results of the terms and conditions that are adopted. Without such an assessment, a local telephone monopolist could argue that a term is "just and reasonable" or "not unreasonable" even though it does not facilitate the emergence of competition. Moreover, given the presence of numerous such terms with similar qualifications, there is the real danger that an accumulation of such qualified terms may fall short of the goal of facilitating the emergence of competition.

Vagueness also poses the risk of diluting the concept of facilities based competition. Although the bill recognizes the importance of such competition, it says nothing about what type of facilities are contemplated or the magnitude or reach of such competition. "Facilities based competition" could well exist without the vast majority of customers having any real choice of local carrier and without such competition providing any protection to competition in the long distance market.

The shortcomings of relying on a checklist approach are exacerbated by the absence of post-entry safeguards such as requiring a separate subsidiary for the Bell Companies' long distance and manufacturing operations. If Bell Company entry into those markets does occur before the development of meaningful competition in local markets, the absence of such safeguards will impair the ability of regulators to detect and attempt to remedy anticompetitive conduct by the Bell Companies.

In sum, complex implementation issues are inevitable during the attempt to open local markets to competition. At this point, no one knows for certain how soon, or whether, entry into the local market will occur on a significant scale. Every scenario for the emergence of competition assumes continuing dependence upon the incumbent Bell Company, at least for interconnection and in many cases for loops and perhaps other network elements as well. This continuing dependence means that competition will involve complex business relationships and numerous pricing and technical issues, any one of which can prevent competition from emerging. It is thus critical that steps to open the local market be accompanied by incentives for the Bell Company to cooperate in ensuring the effectiveness of such steps. The way to create those incentives is with a requirement that actual marketplace conditions be examined after the implementation of unbundling and interconnection and before a Bell Company is allowed to offer interexchange services.

The Need for a Department of Justice Role

The responsibility for making such an examination should be assigned to the Department of Justice. DOJ is the agency with competition expertise, the agency whose unwavering focus is on the protection and promotion of competition. It has effectively enforced the antitrust laws in the telecommunications industry on a completely nonpartisan basis throughout this century, including, of course, bringing the suit that dismantled the old Bell System.

This focus on competition is fundamentally different than the technical, regulatory focus of the FCC. The two agencies *complement* each other; they are not substitutes. Under H.R. 1555, the FCC has a purely regulatory role, limited to verifying that the steps specified in the bill I have been taken. But such a test does not obviate the need for a market-based analysis by the Department of Justice. As long as we agree that competition must be our guide, the most common-sense approach is to include a direct, decisionmaking role for the competition agency. Adding such a DOJ role, given the limited responsibilities assigned to the FCC under H.R. 1555,

would not result in duplication. The FCC would review compliance with the checklist; DOJ would analyze and assess the development of competition in the market.

DOJ has supplemented its basic expertise in markets and competition with specific experience and expertise in telecommunications. Over the past decade, it has assisted Judge Greene in administering the MFJ—through Republican and Democratic Administrations alike by reviewing over 350 requests for waivers under Section VIII(C), an average of about one every two weeks. Many of the most recent waiver requests have involved complex issues related to the competitive impact of the Bell Companies' provision of long distance services or equipment manufacturing.

In addition to reviewing requests for waivers, the Department has worked diligently with Bell Companies and other industry participants in searching for ways to remove the line-of-business restrictions consistent with protecting competition in markets that the Bell Companies seek to enter. Last month, the Department asked Judge Greene to modify the MFJ to permit a limited trial of interexchange service by Ameritech, one of the Bell Companies, in two LATAs in Ameritech's service area, once Ameritech faces actual local exchange competition and there are substantial opportunities for additional local exchange competition in the trial territory.

The proposal builds on the idea that one possible basis for lifting the line-of-business restriction is the existence of local competition. It already has had an effect in promoting competition, as last week AT&T announced its plans to compete with Ameritech in providing local service in the trial area. The Department's motion was filed along with a stipulation by Ameritech and AT&T that the modification is in the public interest. The proposed modification represents an unprecedented consensus of industry participants, originating from a proposal by a Bell Company and now supported by major long distance competitors, local competitors, state regulators and consumer groups. In the process of reaching that consensus, the Department deepened its already extensive expertise in telecommunications competition and its understanding of the competitive implications of Bell Company entry into long distance.

In short, the Department's experience in working with the MFJ uniquely positions it to assess what is actually happening in the market and whether there is a danger that entry by the Bell Companies could impede competition in other markets.

The only principled basis for concern about a DOJ role is whether it will inject unnecessary delay into the process of deregulation. This concern is utterly misplaced with regard to telecommunications legislation, as any DOJ review can be required to be completed within a specified period after filing of a Bell Company application—as it is by a bill that has been proposed by Congressman Hyde. DOJ would be required to make its determination by a date certain; it is as simple as that. Congress can require it, it did so in the legislation reported by this subcommittee last year and that is what those bills do.

The idea that DOJ review would cause unnecessary delay to Bell Company entry into long distance is a smokescreen that obscures the truth: DOJ review will not slow Bell Company entry into long distance unless such entry would be harmful to competition and thus undesirable for American consumers and businesses. Entry will be permitted as quickly as possible consistent with the appropriate entry test established by Congress.

No consideration of this question is complete, however, unless it also considers the long term savings in time and money of DOJ review. Bell Company entry that occurs without assurances that the entry presents no substantial possibility of impeding competition in long distance will invite the proliferation of complex, expensive antitrust and other suits under federal and state law, suits that will consume resources better spent on competing to offer American businesses and consumers better service and higher quality. Having DOJ apply a marketplace test as a condition to entry will avoid this waste.

Finally, a DOJ decisionmaking role has enjoyed overwhelming, bipartisan support in the past, including just last year in this subcommittee and in the Commerce Committee. The bill reported by this subcommittee last year with a DOJ role passed the House with more than 420 votes, and similar legislation was approved by the Senate Commerce Committee by a vote of 18-2. It is an intelligent, effective approach to putting consideration of competitive facts and analysis at the center of our telecommunications reform efforts. It puts the interests of American consumers and businesses first.

Mr. FIELDS. Okay. Well, we're certainly happy to have you here today. We appreciate the remarkable restraint you have shown in your remarks, both in your length and substance. We appreciate that very much.

We will have questions in a few moments, but we now want to recognize the Honorable Larry Irving, Assistant Secretary of Commerce. As I have done with Ms. Bingaman, we won't restrict you to a particular time limit, but again, ask you to recognize that we've got a long day ahead of us. We would like to hear your remarks.

STATEMENT OF LARRY IRVING

Mr. IRVING. Thank you very much, Mr. Chairman. I want to thank you for this opportunity to testify on behalf of the administration on H.R. 1555, the Communications Act of 1995.

On behalf of the administration, I want to commend you, Chairman Bliley, Congressman Dingell and Congressman Oxley for introducing this bill, and also recognize the work that Congressman Markey did in developing this legislation before us today.

We agree, as Assistant Attorney General Bingaman noted, with your goal. We want to inject more competition into the marketplace—create a more competitive marketplace for Americans. We agree that competition provides consumers with lower prices, higher quality and greater choice.

But we're concerned, Mr. Chairman, with how we reach that goal of increased competition. We support telecommunications reform legislation that will protect competition and consumers. We want to promote real competition.

Now recognizing that this quote is slightly out of context, I'd like to quote former President Reagan when he said, "Trust, but verify." We in the administration trust that consumers will benefit from increased competition; but believe that we must also verify competition before we unleash monopolies.

H.R. 1555 as currently drafted, we think, falls short of this "trust, but verify" test in several key areas. It would lift restrictions on the Bell Operating Company into long distance and other markets, without first allowing the Department of Justice to determine whether real competition develops in local telephone markets.

As Assistant Attorney General Bingaman notes in her testimony, the checklist included in the bill does have most of the steps necessary for interconnection and unbundling that the analysts out there believe are necessary for opening local markets. Unfortunately, however, we don't know whether those steps alone will be sufficient to allow competition to evolve.

A simple checklist may not be sufficient to insure competition will occur, and it certainly cannot replace the market analysis the Department of Justice would bring to the table.

As former Reagan Administration OMB Director, Jim Miller recently stated, "If the business restrictions against the Bell Operating Company to enter into long distance markets, but were removed prior to establishment of competition in local markets, the Bells would be able to exploit their regulation monopoly positions. Without real competition, local and long distance telephone rates would go up, not down."

Bell also fails to meet the "trust, but verify" test with respect to cable. In 1992, this Congress passed cable legislation to correct the competitive imbalances and extraordinary cable rate increases. The

rate increases were the result of premature deregulation in 1984, in the mistaken belief that competition to cable was imminent.

I was a member of the committee staff in 1984. I remember the promise of "two wires on every street." I remember the promise of DBS being imminent. We're still waiting for DBS to capture a huge market share. The 1992 Act was enacted because we believed that we had to protect consumers until real, not potential, competition could develop.

H.R. 1555, however, will, like the 1984 Act, permit cable companies to increase rates before the vast majority of cable operators face any actual competition. The bill's definition of effective competition would deregulate rates charged for all cable programming services, other than the very basic channels, 15 months after this bill is enacted. This regulation could occur whether or not consumers had affordable, alternative service choices.

The bill deregulates cable and the FCC finishes its rules for video dial tone on the expectation that video dial tone will be an option for a large number of consumers. But in fact, the FCC has estimated that if every pending video dial tone application were granted, they would only cover 10 percent of households. But that 10 percent is also actually a high number.

Completion schedules for those video dial tone plans range from 2 to 20 years. According to one applicant's 15-year deployment schedule, less than one-third of the homes passed by that system will be built by 1997, December of 1997.

Further, the bill would deregulate cable systems owned by small operators, immediately; and what we're concerned about is we compound problems for all Americans by also—through the buyout provisions—insuring that wire line competition will not develop in communities of less than 35,000.

This legislation insures that consumers can buy their cable boxes in retail stores, and we commend that, Mr. Chairman. We applaud this provision. But cable operators first would be permitted to increase their rates for such cable converter boxes long before any consumer could buy those boxes in a store. This is nothing but wishful deregulation, in our opinion.

Cable currently has about 60 million subscribers. In 1992, cable competitors served about 5 percent of the market. That situation is exactly the same today. DBS only recently passed the half-million subscriber mark. Video dial tone does not, today, provide commercial service to one single provider. Nevertheless, the administration understands that some regulatory flexibility is appropriate, both in pricing opportunities and for smaller services.

Again, we would retain protection for consumers until they can actually choose an alternative video provider. We also believe it's important to encourage competition wherever it can develop. We would want to choose for competition. In this legislation, there's an assumption that two-wire competition is impossible in communities with less than 35,000 people. We reject that presumption. We think the presumption should be in favor of competition. We believe every community that wants competition should have that competition. In fact, competition may be possible in small towns.

NYNEX has built an advanced video network in Southeastern Massachusetts and Rhode Island. The network would provide serv-

ice to Marblehead, with 20,000 people; and Windthop with 21,000, among other towns of similar size. The fact that NYNEX is willing to invest its money and provide service to small towns shows that competition in small American towns is not only possible, but soon may be a reality, if we permit it.

Let me close by quoting from another Reagan era official, Bill Baxter, my former antitrust professor, and Assistant Attorney General Bingaman's former antitrust professor. I ran into him in Palo Alto last week and he told me for the first time in the 20 years that I've known him that I'm doing good work. So, I'm flattered and pleased with high praise from a former law school professor.

Mr. Baxter in a letter to Chairman Bliley recently stated, "We should not fall into the trap of thinking that just because local competition is imaginable, it is already here. It is not here. It is not even close." I would suggest that this statement is true for both telephone and cable industries.

We want to work with this committee. We look forward to working with the members of the subcommittee and the full committee to insure that telecommunications reform legislation moves close to the day when we have real competition in these markets.

I'd like to—I started off by commending the members of this committee, let me also commend the staff. I know how hard they've worked and how long they've worked to produce this bill. I was privileged to be a member of the staff and worked closely with them on several important pieces of legislation passed by this committee, and I look forward to working with them as we improve this legislation during the process.

Thank you, Mr. Chairman.

[The prepared statement of Larry Irving follows:]

PREPARED STATEMENT OF LARRY IRVING, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, U.S. DEPARTMENT OF COMMERCE

INTRODUCTION

Mr. Chairman and Members of the Committee: Good morning. Thank you for this opportunity to testify before you today on the H.R. 1555, the "Communications Act of 1995."

Congress has the opportunity this year to enact legislation that will open all telecommunications markets to vigorous competition; produce clear, flexible, and limited government regulations to ensure that such competition is robust and fair; and link the introduction of new products and services to producer initiative and consumer demand. Such legislation could accelerate the development of a National Information Infrastructure (NII) for all Americans.

The key test for any telecommunications reform measure is whether it helps the American people. Legislation should provide benefits to consumers, spur economic growth and innovation, promote private sector investment in an advanced telecommunications infrastructure, and create jobs. As your Subcommittee is well aware, only competition—not monopolies—will enable us to achieve these goals. Competition will provide consumers with lower prices, higher quality, and greater choice.

The Administration would support telecommunications reform legislation that protects consumers from monopolistic practices and promotes maximum competition. H.R. 1555 as currently drafted, however, falls short of those goals. Instead, the bill prematurely deregulates cable systems, which still are monopolies in most communities, and would result in significant increases in cable rates for millions of Americans before real competition exists. In addition, the bill lifts restrictions on Bell Operating Company (BOC) entry into long distance and other markets without requiring a Justice Department assessment regarding the competitive impact of such entry.

The Administration supports a consensus process similar to the one followed last year in the House for achieving our mutual goal of telecommunications reform. We will continue to work with your Committee and the full Congress to ensure that telecommunications reform legislation promotes the advancement of a modern telecommunications and information infrastructure in a pro-competitive manner that benefits all Americans.

BENEFITS OF PRO-COMPETITIVE AND PRO-CONSUMER LEGISLATION

An advanced information infrastructure has the potential to improve everyday life for millions of people in this country. Telecommunications and information technologies are changing the way we work, educate our children, receive medical services, and communicate with our family and neighbors.

An example of the benefits of the NII is taking place in your home state of Texas, Mr. Chairman. My agency—the National Telecommunications and Information Administration (NTIA) within the Department of Commerce—is supporting a project there that will help the University of Texas at El Paso and a coalition of educational, health and human services, business, government, and philanthropic agencies develop widespread availability of advanced telecommunications and digital networks in southwest Texas. The goal is to promote the new business and cultural opportunities developing along the border area of Mexico and Southwest Texas due to the North American Free Trade Agreement.

This example is just one of the many public/private partnerships that are springing up to promote affordable access to advanced communications networks across the country. These projects will enable millions of U.S. citizens to have crucial information at their fingertips about educational options, business opportunities, health and medical choices, and similar resources.

The need to ensure affordable access to advanced communications networks for all Americans is what is at stake as the Administration and the Congress work together to reform this Nation's telecommunications policies. The issues that we will be discussing today go to the heart of the reforms that are needed.

The first is the need to achieve real competition in the telecommunications arena. The key to bringing down costs is competition—bringing more players into the market. The more entities there are providing access to communications networks, the lower costs will be as these entities compete for customers. Well crafted legislation that reforms outdated regulatory structures and supports entry of new competitors will enhance competitiveness, stimulate innovation, lead to lower prices for consumers, and spur the creation of good, new jobs.

As this Subcommittee is well aware, Federal action has been a key factor in bringing competition to the telecommunications arena for many years. The Department of Justice's breakup in 1984 of the former AT&T telecommunications monopoly, for example, contributed to the decline in residential long distance rates of more than 50 percent over the past 10 years. Appropriately crafted Federal legislation could foster the same kind of competition today in local telephone and cable markets.

We also need to ensure that our telecommunications policies are fully responsive to the needs of all Americans. As Secretary of Commerce Ron Brown has emphasized, we cannot "become a nation in which the new information age acts as a barrier, rather than a pathway, between Americans"—a nation divided between the information rich and the information poor.

For this reason, the Administration strongly supports the goal of universal service, including access for classrooms, libraries, hospitals, and clinics to the NII, including in rural areas. The Administration also supports efforts to prevent discrimination or "redlining" in the provision of telecommunications and information services, and the inclusion of all groups, including minority businesses, in the telecommunications field.

ADMINISTRATION VIEWS ON H.R. 1555

H.R. 1555 proposes reforms in key areas that the Administration agrees need to be addressed. These include promoting universal service generally as well as access to networks by individuals with disabilities; prompt lifting of the statutory ban on telephone companies providing video programming directly to subscribers (the telco-cable crossownership ban); requiring that telephone companies in most cases establish a video platform to provide video programming; authorizing the Federal Communications Committee (FCC) to prohibit discrimination on the basis of ethnicity, race, or income with respect to video platform service areas; and preempting state barriers to competition in local telephone service.

The Administration has strong reservations, however, about other provisions in H.R. 1555 that fail to ensure the development of real competition or to protect con-

sumers. These include primarily: (1) provisions that deregulate cable rates before cable operators face any actual competition; (2) broad exemptions to the buyout restriction between telephone companies and cable operators; and (3) the absence of a strong role for the Department of Justice (DOJ) in assessing the competitive impact of Bell Operating Company (BOC) entry into the long distance market.

The Assistant Attorney General's testimony addresses the issue of DOJ's role as well as other competitive issues. Therefore, I would like to focus my remarks today on our concerns about cable rates and anti-competitive buyouts. I will also discuss other key concerns relating to the bill's video programming provisions as well as other bills pending before this Subcommittee that would make sweeping changes to current broadcast ownership and foreign ownership rules.

Premature Deregulation of Cable

The bill would amend the Cable Act to declare that a cable system faces "effective competition" when one of the following three conditions are met: 1) a common carrier has been authorized by the FCC to provide video dialtone service in the franchise area; 2) a common carrier has been authorized by the FCC or a franchise authority to provide video programming in the franchise area; or 3) the FCC has prescribed regulations relating to video platforms. Once the effective competition standard is met, cable programming services (commonly known as "expanded basic services") are deregulated as well as associated cable equipment, installations, and connection charges.

This provision would deregulate cable systems before they faced competition from a telephone company or anyone else for that matter. For example, the third prong deregulates cable upon the mere issuance by the FCC of its video platform regulations. This essentially provides for the deregulation of expanded basic rates for all cable systems in a maximum of 15 months from the date of the bill's enactment, since the bill requires the FCC to issue those regulations by that time.

The first two prongs base deregulation merely on whether a telephone company has been authorized to provide video dialtone or video programming, without requiring that the telephone company even begin to construct any facilities or offer any comparable video services to any subscribers. In addition, no consideration is given to the time required for the telephone company to deploy its system. Any delays in actually providing these services to customers would allow the incumbent cable provider to operate in a deregulated environment.

While couched as a redefinition of "effective competition," the plain intent of the new provisions is to deregulate cable programming services, in some cases before any real competition exists. In 15 months after the bill's enactment (or earlier if the regulations come out sooner), all cable operators would be deregulated whether or not they alone provide video programming in their franchise area. The bill thus permits cable monopolies to raise prices for consumers without the protection that would otherwise be provided by true competition.

The 1992 Cable Act already establishes a standard for determining when a competing multichannel video provider should be deemed to provide effective competition to an incumbent cable system. Specifically, to meet the effective competition standard under current law, providers must offer comparable programming to at least 50 percent of the homes in the cable franchise area and be subscribed to by at least 15 percent of households in the franchise area.

Under H.R. 1555, however, monopoly cable providers would be deemed to face effective competition months or possibly years before a telephone company offers any programming to subscribers. Bell Atlantic, for example, was authorized by the FCC to offer video dialtone service on a commercial basis in Dover Township, New Jersey in July 1994, but has not yet begun to offer service. Under the provisions of H.R. 1555, however, a monopoly cable operator offering service in the same area would have been completely deregulated the day the FCC authorized Bell Atlantic to offer video dialtone service—possibly months or years before the telephone company's video dialtone service was up and running.

Moreover, there are no provisions in the bill to account for the possibility that a telephone company—after receiving authorization—might pull out of a particular area or put a hold on going forward for various reasons. In fact, by deregulating all cable systems upon the mere issuance by the FCC of video platform regulations, the bill completely disregards whether any telephone company or any other competitor enters any particular cable market.

The 1992 Cable Act was based on the sound principle that rate regulation will be eliminated in markets where there is effective competition. By inserting inadequate guidelines for effective competition, H.R. 1555 prematurely deregulates monopoly cable systems at the expense of consumers nationwide, potentially leading to dramatic rate increases for millions of consumers.

H.R. 1555 also provides that, upon enactment, small cable operators—defined as those who serve less than 1 percent (i.e., approximately 600,000) of all cable subscribers in the country and whose gross revenues are less than $250 million annually—would have their cable programming service rates deregulated as well as their basic service rates under certain circumstances. While appropriate relief should be crafted for small cable operators, the provisions in H.R. 1555 do not provide adequate protection for consumers.

The Administration agrees that the burdens faced by small cable operators should be minimized. For example, the FCC has adopted provisions over the past year granting rate relief to small cable systems, but based on a more narrow definition than that contained in the bill. If additional legislative relief is necessary, it should take into account the impact of small cable deregulation on consumers in rural and other areas.

Many small cable operators are the sole providers of multichannel video programming in rural areas and are likely to be bought out or enter joint ventures under the rural exception to the anti-buyout provision in H.R. 1555 (discussed later in the testimony). The combination of these two provisions, therefore, will leave consumers in rural areas with no protection either from rate regulation for cable programming services or from competition. Such consumers may thus be subject to immediate "rate shock" upon deregulation. Again, while we support appropriate relief for small cable systems, such relief must be balanced against the obligation to continue to protect consumers as well.

The deregulation of cable operators in the absence of a truly competitive marketplace is difficult to justify in view of the relevant facts. Cable rate regulation pursuant to the Cable Act of 1992 was prompted by extraordinary cable rate increases in the preceding years. According to surveys conducted by the General Accounting Office in 1989, 1990, and 1991, cable price increases were on the average three times the rate of inflation. In the three years after 1986, when widespread cable deregulation went into effect, 80 percent of subscribers for both the basic tier and the most popular tier of service saw their cable bills increase by more than 20 percent.

In contrast, the FCC estimates that as a result of the 1992 Cable Act, consumers have saved $2.8 billion through rate reductions as of December 1994. In addition, the upward trend in cable rates, which had been about three times the rate of inflation prior to the 1992 Cable Act, has now been limited to inflation plus a formula-based percentage profit for the cable operators.

The years following passage of the 1984 Cable Act demonstrated the perils of deregulating on the promise of potential competition rather than the existence of actual competition. We should not repeat that experience.

Although the cable industry claims that it has been severely hindered by excessive rate regulation, the facts suggest otherwise. According to industry analyst Paul Kagan Associates, Inc., multiple system operators' (MSO) stocks continue to outperform the Standard and Poor 500. *Electronic Media*, a major trade publication, noted that cable systems' operating margins generally increased over the past five years. In 1993, 14 new cable channels were launched. In 1994, 25 new channels were launched. Launch plans for 1995 include 63 new channels.

In addition, subscribership numbers demonstrate that cable is still the dominant provider of subscription-based video programming in the United States, and that other providers are far behind. In 1994, the number of subscribers to the top 100 MSOs grew by about 5 percent—almost 3 million additional customers in one year—adding to a base of approximately 60 million subscribers.

In contrast, direct broadcast satellite (DBS) has fewer than 1 million total customers; wireless cable about 600,000 customers; and C band home satellite dishes about 4 million customers. Telephone company provision of video dialtone (VDT) has not even started on a commercial basis.

According to the FCC, even if all the telephone company applications to provide VDT were approved, that would only cover about 10 percent of all households in the United States. Yet it is highly unlikely that even that percentage of households will have access to VDT within 15 months. According to FCC information, completion schedules for VDT facilities range from two to twenty years. For example, the FCC in February, 1995, granted Nynex's section 214 VDT application for Massachusetts, which proposes to ultimately pass 334,000 homes. However, according to the application's 15 year deployment schedule, only 106,500 homes, less than one third, would be passed by the end of year two (1997).

A better way must be found to balance the cable industry's desire for more pricing and service flexibility with the overriding need to protect consumers from excessive rate increases. The Administration has indicated its willingness to work with Congress and industry to minimize the burden of government regulation without sac-

rificing cable subscribers. We will not, however, support deregulation of monopolies before the arrival of actual competition. As long as monopolies continue to exist, consumers must be protected.

Broad Exceptions to the Anti-Buyout Restriction

The Administration commends the Subcommittee for recognizing that limits must be imposed on the ability of a telephone company to buy out a cable company in the telco's local service area. Allowing anti-competitive buyouts between telcos and cable operators would undermine the universally accepted objective of increased competition in both the video service and local telephone markets. Without an anti-buyout rule, one monopoly would merely be substituted for another. The lack of head-to-head competition would result in higher prices and less choice for consumers.

One of the bill's exceptions to the anti-buyout rule, however, applies when, in the aggregate, the area served by the purchased cable system does not exceed 10 percent of the households served by the telco, and the purchased system does not serve a franchise area with more than 35,000 inhabitants, or 50,000 if the system is unaffiliated with a contiguous system. This exception may be too broad.

Based on 1990 Census data, expanding the exception for rural and non- urban areas of 10,000 inhabitants or below to areas (both rural and urban) of up to 25,000 inhabitants, for example, potentially raises the percentage of the population covered by the exception from about 30 percent to approximately 54 percent, or about 140 million people. While the 10 percent limitation in the exception could bring this number down, the exception still could potentially deprive a large segment of the U.S. population of the benefits of competitive telecommunications and video service. In addition, the anti- buyout rule is too narrow in that it focuses only on telco buyouts of cable systems rather than on prohibiting buyouts between or among both entities.

The Administration has consistently recommended that Congress adopt a strong in-region anti-buyout restriction on acquisitions and joint ventures between telephone companies and cable systems, with a limited exception for rural areas—for example, communities with a population under 10,000, since such areas might not be capable of supporting two wire-based competitors. The Administration supports giving the FCC authority to review the need for an anti-buyout provision after five years, taking into consideration the effect on competition, consumer welfare, and infrastructure investment.

Restricting anti-competitive buyouts at the outset will help promote the kind of facilities-based competition between telephone companies and cable operators that the American people deserve—competition that has the potential to deliver substantial benefits to consumers and provide powerful incentives for private sector investment in advanced local infrastructure. Broad exceptions to the anti-buyout rule invites consolidation of power by multimedia monopolies and discourages critical competition in the video services and local telephone markets.

Video Programming Concerns

Concerns regarding concentration of ownership also are increasingly important where control over programming is allowed. Economists have long recognized the competitive problems that arise when a facility owner is allowed to become a content "gatekeeper," creating the potential for increased rates to consumers and discrimination in the choice of programming offered.

H.R. 1555 appears to recognize this problem by requiring telephone companies in most cases to offer video programming through a video platform that provides access to programmers on just, reasonable, and nondiscriminatory terms. The bill would also authorize the FCC to apply the bill's video platform requirements to cable operators that have installed switched, broadband video programming delivery systems, setting the stage for open cable systems as well.

The bill allows an exception to the video platform requirements, however, for "overbuilt" cable systems owned by telephone companies that do not utilize the telco's facilities or services in distributing video programming. Rather than allowing this exception, we think the better approach is to encourage open systems in the provision of video programming services by both telephone companies and cable operators. This would ensure that unaffiliated programmers have ample opportunities to market services directly to subscribers, with the related benefits of lower prices for consumers, more programming choices, and improved customer service.

In addition, under the bill, the requirement that telephone companies establish a separate affiliate to provide video programming sunsets in the year 2000. While the coming of the second millennium is in some respects daunting, in fact it will arrive in less than five years or approximately 235 weeks from now. Many telephone

companies may be getting their video programming affiliates up and running at a time closer to the year 2000 than 1995.

We wholeheartedly agree with the Subcommittee that a separate affiliate requirement is needed for telephone companies providing video programming services. This requirement would decrease the incentive for telco providers to cross-subsidize between the provision of video programming and regulated telecommunications services. Rather than eliminating this important requirement in the year 2000, however, we recommend that the FCC be given the authority to review the provision at that time to determine whether it should be continued, discontinued, or modified. The FCC's determination should be based on public interest considerations, such as whether the requirement helps to ensure detection of cross-subsidies that could unfairly raise rates for consumers.

OTHER PROPOSALS

The concerns I raised above regarding the consolidation of power in the communications industry are compounded by other proposals that could significantly alter the shape of the communications industry. Tremendous changes are already taking place in the communications marketplace. Considering that the telecommunications and information industries represent more than nine percent of this Nation's Gross Domestic Product (GDP), the effect of the additional changes being proposed by other bills pending before the Subcommittee could be dramatic.

Well-crafted legislation is needed to eliminate archaic rules and old structures that hinder competition and innovation. The rush to radically alter the structure of the industry in a flash cut, however, could undermine the equally important goals of encouraging diversity of ownership, preserving localism in our Nation's media industries, and safeguarding against undue concentration of economic power.

Concentration of Ownership in the Mass Media Industry

In the broadcast area alone, for example, another bill—H.R. 1556—would, all at the same time: 1) eliminate the FCC's national ownership limitations on the number of broadcast stations that can be owned by one company; 2) extend national audience reach limits for a commercial television broadcaster from 25 to 35 percent (for FCC determinations made within one year after enactment) or 50 percent thereafter; 3) provide an exception, where the FCC deems it appropriate, for a commercial television broadcaster to have a common ownership interest in VHF and UHF television stations in the same market; and 4) eliminate current cross-ownership restrictions on cable system owners from holding ownership interests in national television networks, a broadcasting station, and any other medium of mass communications, even in instances where these facilities also serve that cable owner's existing franchise area.

These provisions are in addition to those in H.R. 1555 that would extend the term of broadcast licenses while also limiting license review. Allowing all these ownership changes at once could increase the potential for existing communications and media owners to consolidate ownership control and discourage potential competitors from entering the market.

Under H.R. 1556, for example, the FCC would no longer have authority to proscribe the licensing of an unlimited number of radio stations to one broadcaster or to review the ensuing effects on competition or programming diversity that such a prohibition might produce. The bill would also allow a cable operator simultaneously to control two commercial television station networks. In addition, the bill appears to allow a cable operator simultaneously to control a commercial television station within its franchise area or control one television station network and a host of other forms of mass media communications facilities (e.g., direct broadcast service, wireless cable, low power television, SMATV), which might also serve its area of cable service.

Such a high degree of common control over mass media facilities could have devastating effects on competition and media diversity, especially now since the full complement of mass media providers and services has not yet entered the marketplace. The FCC is already gathering extensive data to determine whether certain broadcast and cable ownership provisions should be modified or eliminated. The uncertain impact of the move to digital compression and other technological advances, as well as the strong public policy in support of diversity in media programming, argue for deferring to the FCC's determinations in these matters to ensure that there is adequate opportunity to study the implications of these changes for the industry as a whole.

Changes in Foreign Ownership

Another bill—H.R. 514—would repeal current restrictions on foreign ownership in broadcast, common carrier, and certain aeronautical radio station licenses, without requiring comparable treatment by other countries or review by any Federal agency. While the Administration agrees with the Subcommittee's interest in reexamining Section 310(b)'s foreign ownership restrictions to help foster open telecommunications markets worldwide, we feel strongly that these restrictions should only be lifted for countries that have also opened their telecommunications markets to U.S. companies.

In addition, a determination of whether this goal has been achieved for a particular country must be based on the advice of the appropriate Executive Branch agencies who have broad statutory authority and expertise in matters relating to U.S. national security, foreign relations, the interpretation of international agreements, and trade (as well as direct investment as it relates to international trade policy). The determination also should take into account the Executive Branch's views and decisions with respect to antitrust and telecommunications and information policies. Moreover, the Administration would not move to lift the restriction with respect to broadcasting at this time. The Administration's position is based on the public interest responsibilities conferred on broadcasters, the editorial control and discretion they exercise over the content of broadcast transmissions, and the important role broadcasters play as the backbone of our Nation's emergency alert system, which is intended to alert the public to emergency information.

Holders of radio-based common carrier licenses, in contrast, typically control only the underlying facilities rather than the content of messages transmitted over those facilities. It is therefore not unreasonable to adopt different ownership rules for those distinct categories of licenses. Also, given the prevalence of government-owned broadcast stations in most major markets around the world, the current foreign ownership limitations for broadcast licenses under Section 310(b) are either more liberal or mirror foreign ownership rules in those markets where private ownership of broadcast stations is permitted.

In the FCC's recent Notice of Proposed Rulemaking on foreign entry into the U.S. market, the Commission requested, among other things, comments on whether new market entry rules should also apply to broadcast licenses. Although very few commenters addressed this issue, those who did noted that control of broadcast facilities may present separate security and content concerns than those raised by common carrier licenses.

CONCLUSION

Mr. Chairman, as you know, telecommunications reform legislation is a major undertaking. It is extremely important that we take this opportunity to "get it right," not only for the benefit of our own country, but also for other countries that are watching us as a possible model as they open their own telecommunications markets to greater competition.

While the Administration has serious concerns about H.R. 1555, I remain convinced that if we work together, Congress, the Administration, and many other interested parties can forge telecommunications reform legislation that promotes the objectives to which we are all committed—competition, consumer welfare, investment, and reduced government regulation. Thank you again for the opportunity to testify, and I will be happy to answer any questions.

Mr. FIELDS. Thank you, Mr. Irving. Not trusting myself or the other members of our committee who would exercise the same restraint, time-wise, I'm going to put myself under the 5-minute rule; as I will all the other members.

Ms. Bingaman, let me ask, does H.R. 1555 in any way restrict your ability to pursue antitrust matters?

Ms. BINGAMAN. We are free to file a suit after the eggs are scrambled. That's the problem. These eggs were scrambled once. We unscrambled them in the modified final judgment; and the problem with this bill is, it would leave us only attacking a plate of scrambled eggs 10 years from now after great harm had been done in these adjacent, competitive markets; and that's our problem.

These same companies, the same Bell Companies, were the local arms of the old Bell System, which engaged in the anti-competitive conduct that we put on for 11 months at trial. These people have a history, these companies have a history; and we know a lot about it. We've spent 20 years investigating this.

So, it doesn't prohibit it, but we think it is a major mistake not to learn from that history and apply the VIII(c) test which these companies agreed to, and which they have said on many occasions is a proper antitrust standard. So, that's our problem.

Mr. FIELDS. What I really wanted to be clear of is that the legislation does not restrict your ability to pursue an antitrust matter.

Ms. BINGAMAN. No, but the problem is the Section 2 antitrust standard—we discussed this in another committee a couple of days ago—one of the major standards is, if there's been attempted monopolization, i.e., 50 percent market share in the second market.

The problem is, when the time comes that we can prove that kind of a standard, the eggs will be scrambled and we'll be back in another real problem for the country. So, that's our concern, Mr. Chairman.

Mr. FIELDS. Well, your answer reflects what I said to you in my office: If we knew you were going to be there forever, we might have a different opinion of where this legislation should go, relative to your office.

Let me move to another question. Do you support the language in the Hyde legislation that says that you would have to find clear and convincing evidence that there is a dangerous probably that the Bell Company would monopolize the market it seeks to enter?

Ms. BINGAMAN. No, I testified a couple of days ago before Chairman Hyde's committee that that language is a real problem. It is not strong enough and it would be a rare case where we could meet that standard, in fact, I believe. I don't think the Congress should put in a DOJ role on the belief that simply the presence of the Department of Justice, if the standard is not correct, would solve the problem. You need both things. You need the Department of Justice and you need the appropriate legal standard. That's what we're working with the Committee on the Judiciary on.

Mr. FIELDS. Let me just make one last comment and then I have one question for Mr. Irving.

In your testimony you state that the resale language is vague. As you can imagine, we're getting a lot of comments from a lot of different people about that language. I would appreciate any comments that you have to us. We're asking people to get their comments to us as quickly as possible, preferably before the weekend, so we'll have time to share and talk about the things we're receiving.

Mr. Irving, you testified before the Senate on telecommunications reform legislation. You know, we've had the opportunity to meet with you and different people in the administration.

Please take this in a constructive way. You're a very good friend of this subcommittee, but it appears that all we've heard is criticism of our efforts with respect to cable. We would be very desirous to have a constructive proposal on cable from the administration.

Mr. IRVING. We'll take that as a constructive suggestion. We share the friendship. It's a mutual friendship. I'd certainly like to

be constructive in this process. We do have grave concerns, because our concerns are about consumers. But we will try to work with you and I will talk to my principals about the possibility of working more closely and sharing proposals.

Mr. FIELDS. That really demonstrates our collegiality, doesn't it.

Mr. IRVING. Yes, sir.

Mr. FIELDS. Thank you very much. The chairman's time has expired and I'll recognize the ranking minority member, Mr. Markey of Massachusetts.

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

As you know, there is a companion piece of legislation, which is also before the committee at this time, that has been introduced by Mr. Oxley and by Mr. Stearns. That deals with the foreign ownership rules and also with broadcasting deregulation related issues.

Now, as you know, since 1934, the Communications Act has tried to promote three, primary principles: universal service, diversity and localism. Now in the context of this legislation, we've struggled mightily, and I think we've come up with a very good solution on the question of universal service. How to preserve it and enhance it.

On the questions of localism and diversity, however, I think that the legislation which is pending before us raises very serious questions. Now, mindful of those original three principles in the 1980's and 1990's, we're confronted with two new and additionally powerful forces; and that is, rapid technological change; and fierce global competition. So, any new formula which we construct for the 1990's and the 21st century has to factor in all of those into the equation.

Now, just to give you the perfect form of what is before us right now, the proposal would allow for a newspaper in one community to own two televisions stations, eight or ten radio stations, a cable system, simultaneously. One company.

And, if they wanted to, to sell it all to a foreign company, to someone from another country. So they would have that kind of media power in one concentrated market.

Now, to a certain extent, it would make Citizen Kane look like an underachiever if they could in fact accomplish that kind of media concentration.

What I'd like to do is get your view, Ms. Bingaman and you, Mr. Irving, on how the administration views that issue.

Ms. BINGAMAN. Congressman Markey, let me start first by thanking you for your leadership last year and this year, and for—really over a decade now on these issues. You've been a major, major contributor to the initial telecommunications debate, and I think all Americans recognize that. We certainly appreciate and acknowledge it.

On the specific question——

Mr. MARKEY. All Americans who know what the local exchange means.

Ms. BINGAMAN. That's the phone you pick up and dial grandma. That's what it means. The specific question you raise, I think, is very troubling. As you pose the question, I think most people would sit and say, why would anybody want to do that? Truthfully, I don't know why that is a good idea.

As a policy matter, it seems to me a serious problem. I can tell you that the Antitrust Division has not previously sued in these cases because it's been prohibited by law. If you had the kind of concentration in one geographic market of so much media in one's hands, I think it would raise serious antitrust issues and would be of tremendous concern, as a policy matter, for Americans wanting diversity of programming.

That's not antitrust as such, but——

Mr. MARKEY. Mr. Irving?

Mr. IRVING. It raises both antitrust concerns, but also communications policy concerns.

One of the reasons that we had structural regulations is we haven't had to, as a Nation, go to content regulation. We felt it's better to have a lot of different voices in the community. If you allow that kind of concentration of power, it would have impacts on programming, impacts on advertising, you would give more power to any single entity.

One thing you forgot, Congressman Markey, is that, if you're in a community of under 50,000, not only could you own the newspaper and two television stations—maybe four television stations for 4 years, while we're transitioning to HCTV. Some of those television stations may have more than one channel. It may have 5 or 6 channels by multiplexing, and eight or ten radio stations. You could also own the telephone company in that market.

So, you could have newspaper, cable, telco, four TV stations—two of which would be the equivalent of a VHF—so, three VHF equivalent television stations, and as many radio stations as your pockets would allow. We don't know why this is good public policy. We think this should be abysmal for communities around this country.

Mr. MARKEY. Okay, thank you. Thank you, Mr. Chairman.

Mr. FIELDS. I thank the gentleman.

The vice chairman of the subcommittee, Mr. Oxley of Ohio.

Mr. OXLEY. Thank you, Mr. Chairman. Let me follow up on that.

What specifically, if anything, is the administration proposing, then, in the broadcast area? That we maintain the status quo?

Mr. IRVING. No, there is an ongoing FCC rulemaking, Mr. Oxley. We believe that rulemaking should take a look at all these different issues and make some sense out of them.

But, one of our concerns is, this marketplace is changing so incredibly fast that we don't want the law of unintended consequences to kick in. We've got advanced television. We're going to start trying to transit to that. We've got the fence-in rules, which were just changed/modified by the FCC and by the court. We're seeing significant structural reform.

We don't see that there's a problem today with anybody who wants to be a broadcaster being able to make some changes and to purchase more properties. But to allow people to own two television stations or markets, when many markets only have 5 or 6 television stations, as we transit to HCTV, to allow cable, newspapers and telephone companies to combine; and on top of that, to allow foreign companies to control our media markets, that's something the administration has serious reservations about.

We're not saying, no change. We're saying, let's do measured, structured, rational change that looks at—that takes things in a

logical, sequential fashion; not just making changes without knowing what the end—long-term consequences will be.

Mr. OXLEY. Is this a change from the NTIA policy in the past?

Mr. IRVING. It's not a change since I've been there. I can't speak for my colleague.

Mr. OXLEY. As I understand, a couple of years ago, made similar recommendations to what has been placed in the legislation. So, this is a change in NTIA policy.

Mr. IRVING. I assume that since the administration changed, it may have changed. I would talk to my principals to check.

Mr. OXLEY. What is your worse fears of this foreign ownership that you referred to?

Mr. IRVING. I don't think it's fear, I think it's concern.

Mr. OXLEY. What is your concern, then?

Mr. IRVING. Our concern is that, unlike the common carriers——

Mr. OXLEY. Would you support repeal of 310(b) for common carriers?

Mr. IRVING. We support modification of 310(b) on a reciprocal basis. But more importantly, we think we should have a multilateral framework, that the United States should work with all of its trading partners to open up the common carrier marketplaces. Whether it's France, Germany, Canada, Mexico——

Mr. OXLEY. We already have a multilateral arrangement called the GATT.

Mr. IRVING. But that—we're working—by April of 1996, we hope to conclude a multilateral framework that will allow reciprocity with regard to—would allow a framework where everyone would open up their market.

We think it's different with regard to broadcasting; and candidly, broadcasting isn't on the table for these 1996 discussions. No other nation is going to open up its broadcasting market, and I think for very much the same reasons.

It's how people get their information. There is a content parameter of this. There's also another parameter. The backbone of our emergency broadcasting system is still controlled by broadcasters. If there's a hurricane, if there's a terrorist attack, if there's a war, the way people find out about it is from America's broadcasters. Cable will eventually have that responsibility, but today, any time anything happens in this country, the way people find out about is is from the broadcasters. We want to make sure those broadcasters are in American hands.

It's a spoke and hub situation where you will have one central broadcaster and he or she will then radiate out the signal to other broadcasters around him or her. So, what you have is a situation where if one broadcaster doesn't get that signal out, many communities would be impacted.

Given that situation, given the importance of our national security, given our concern that American people know what's happening, we think it would be a mistake to change now in terms of allowing foreign ownership, particularly if no one is asking for it.

In my meetings with people around the country, around the world, talking about liberalizing our media ownership rules—our telecommunications ownership rules—foreign ownership of broad-

casting doesn't come up. I can assure you in my discussions with my colleagues around the globe, they're also not talking about——

Mr. OXLEY. What about American broadcasters? We've had testimony you were participating in a subcommittee hearing in which we talked about that. We had a broadcaster testify it was important to him to be able to raise the necessary capital to do what he wanted to do. Under your provision, he would not have the access to potential capital, simply because that capital happened to come from another country.

Don't you think that's rather myopic?

Mr. IRVING. No, I think that—we're still—we're not prohibiting any foreign investment. We're not prohibiting any capital flowing from foreign investors. We allow 20 to 25 percent of a company to be owned by foreign nationals or foreign holding companies. We think that's a significant portion of a property.

What we wouldn't do is give majority control of America's broadcasters, who are the backbone of our emergency broadcasting system and control content to almost every American to fall into foreign hands. We do have concerns about that.

Mr. OXLEY. Well, I—Mr. Chairman, this is a rather interesting debate and it really, I think, reflects frankly the inability of the administration to recognize the world has changed so dramatically that the access to communications is as high as its ever been in the history of the world, and yet we're talking about restricting investment. I just find that incredible.

Mr. FIELDS. Thank you.

The Chair now recognizes the gentleman from Pennsylvania, Mr. Klink.

Mr. KLINK. Thank you, Mr. Chairman. I just—you know, we've been talking and listening very intently to both of your testimony.

I just want to start with Assistant Attorney General Bingaman. If you could tell me—as a new member of the committee, I'm struggling with this—as somebody who worked in broadcasting for 24 years and lived in fear—Mr. Hunt back here—lived in fear of the FCC or my broadcaster—what role do you see, specifically; and how would you see it spelled out for DOJ in this bill?

Ms. BINGAMAN. There is no specific role for DOJ in this bill. It leaves us to the remedy the chairman mentioned, which as I characterized it in colloquial terms as unscrambling eggs once they're scrambled and that's our concern.

Mr. KLINK. How would you like to see your role structured? That's my question.

Ms. BINGAMAN. We believe that the bill which passed the Congress last year on a bipartisan basis—423 to five votes—that both the chairman and ranking member Markey sponsored last year is the correct approach to this, which was a parallel role for the FCC and DOJ. FCC to do the regulatory work, which is important, difficult and technical. DOJ to do the market analysis, which is also important, but fundamentally different.

Let me give you an example that has come to mind. Someone mentioned it to me yesterday, in fact. The reason why DOJ's role in telecommunications should be separate from the FCC is important. That's the Nation's experience in cellular.

In 1980, the FCC had a proceeding to try to determine how many cellular licenses should be granted. The Department of Justice filed comments in that proceeding recommending that limited trials be conducted to see how competition worked in cellular, because we believed more competition was better. We wanted to test it and grant as many licenses as possible.

The FCC ignored our recommendation, went with two cellular licenses all over the country—like that, granted them—and the results are, frankly, not good. They are not good for consumers. They're terrific if you're one of the grantees of a cellular license.

Cellular prices today for air time are horrific. There are tremendous profits there. There are monopolies that don't compete on price. I was in Cleveland yesterday and a fellow drove me to the airport—one of these van services that compete with taxis. He got a phone call on his phone, and he had a cellular phone there. He said, "I use this as my office, basically." He said, "The prices are outrageous."

I didn't initiate this conversation. He pays $1,500 a month, $18,000 a year. A guy driving a van in Cleveland, Ohio, because there's no price competition in cellular. What that means is, money from consumers' pockets is going to cellular pockets and it means something else, too, a lot fewer people have access to cellular because the FCC didn't get it right on competition matters.

There's a role for two agencies here. They are terrific at the technical work. We are terrific, frankly, at the market analysis and competition; and that's the role that we need to have. It needs to be separate. It needn't delay things. It can be parallel, but it is vital to the Nation that market analysis and competition be central to this as well as the technical issues.

Mr. KLINK. Mr. Irving, could I hear you comment on that, also?

Mr. IRVING. We agree completely with Assistant Attorney General Bingaman's statement. There's absolutely no room for distinction between her opinion and what I would give you as an answer.

Mr. KLINK. Do you think that—taking a look at this bill, would you have suggestions as to the way this might be able to be accomplished?

Mr. IRVING. I do think we can sit down with this committee. We look forward to working with this committee to come up with some concrete examples of ways to improve the bill.

Assistant Attorney General Bingaman's staff and my staff have started taking cuts at this bill, seeing what can be improved; and I think given some time to come back to this committee—I'd like to reflect before stating on the record—how we think improvements can be made. But we think it can be improved.

Mr. KLINK. I'll state for the record, Chairman Fields and Chairman Bliley have been tremendous to work with on this bill. This has been a—for a new member of this committee, this has truly been a bipartisan bit of work.

To echo what the chairman said earlier, if you can come forward with something constructive, we'd like to see it. Mr. Chairman, I yield back my time.

Mr. FIELDS. I appreciate that very much.

Again, anything you're going to come forward with, I'd just encourage that it be very, very quick.

The Chair now recognizes the gentleman from New York, Mr. Frisa.

Mr. FRISA. Thank you, Mr. Chairman. Good morning. Mr. Irving, it's good to see you again. We appreciate your testimony here today.

I'd like to clarify something that Mr. Oxley went over with you just earlier. Is it correct to say that the administration's position is, satisfaction with the current rate of change in this industry?

Mr. IRVING. No, we feel—well, yes and no. We think that it's important——

Mr. FRISA. Which is it?

Mr. IRVING. We think that there's a lot of change. We think it's important if we can accelerate that change. We think meaningful legislation will help accelerate that change. But it should be the right mix of change, not just wholesale change, complete change. We would like moderate, gradual, rational change.

Mr. FRISA. How do we accomplish that, specifically?

Mr. IRVING. I think that's one of the——

Mr. FRISA. Between where we are now and where this legislation will take us?

Mr. IRVING. I think where we are is, we know that there's an ongoing process at the FCC with regard to the deregulation of some of the structural regulations. We know that we're moving to advanced television and that we're going to have some changes there. We think those things have to happen.

Where we draw the line is, today, as we speak, getting rid of restrictions against cable, newspaper, telco, radio, television, all issue restrictions all at once. That's a lot to digest in the Nation after 60 years of structural regulations to protect the American people, to promote diversity and to promote localism. We would get rid of our commitment. We'd sacrifice localism and diversity on the alter of deregulation and possibly universal service. We don't think that's a good tradeoff.

The American people like localism. They like having local radio stations. Get rid of national limits and what would happen to localism? They like diversity. They like turning the dial on their radio finding a lot of different voices.

If you allow somebody to own eight or ten or 15 radio stations today, and one or two companies to control as many radio stations as they want in this Nation, what would happen to those concepts? We don't know. What we'd like to do is take a rational view before we make those changes that quickly.

Mr. FRISA. So, then, how do you square the constant refrain and the admonition from the administration, from the very top of the administration, that America has to have the courage to change?

Mr. IRVING. I think——

Mr. FRISA. It doesn't seem to square with your testimony here this morning. Because we're asking for specific alternatives, which in your view and the administration's view would improve this legislation. In essence, I'm hearing, you'd rather leave it to the FCC to structure the change and wait and see, and not take advantage of some of the technological opportunities for growth.

Mr. IRVING. We think the technological opportunities for growth are important. We think that injecting competition in cable telco is very, very important.

We support, and we have supported, allowing trading of capital between this Nation and other nations in our common carrier areas. We want U.S. companies to be able to invest overseas. We want other companies to invest from overseas into this country, except in broadcasting. No other nation is going to allow that either.

We have some concerns, however, about allowing huge aggregations of concentration of power in the media, and then allowing those concentrated companies to take their money overseas—have overseas companies control this marketplace. We think that would be a mistake.

Five years ago, 6 years ago, Nick Nicholas, who was then the head of Time Warner stated that by the year 2000 there would be 5 or 6 multinational companies that would control all the communications in the world. If we made all of the changes outlined in the Oxley Bill and the Stearns Bill, we would make Mr. Nicholas' prediction come true today.

Mr. FRISA. So, then, it's clear the administration is fearful of this magnitude of change. But you still haven't come through with any counter proposal to amend this legislation, to do it different, to move further than the FCC and faster than the FCC would move, and to be more comprehensive. But you don't have a specific plan.

I think it's frustrating, I've got to tell you, sir, to hear the constant haranguing about this legislation and fearful of the changes that it would bring without having a counter proposal. I find that frustrating to say the least.

I'd like to move to Assistant Attorney General Bingaman.

Mr. IRVING. Could I answer, just briefly?

Mr. FRISA. Very briefly.

Mr. IRVING. The process by which this legislation was developed was a very open process with regard to the members of this committee. I first saw this legislation a week ago. I'm testifying today.

Specific proposals of specific provisions, if you'd like them, I will work with the administration to provide them to you. But I think it's a little bit unfair to the administration to state that we should have proposals today to reform legislation.

Mr. FRISA. I can't believe the administration has done no thinking about the telecommunications industry.

Mr. IRVING. We've done considerable thinking.

Mr. FRISA. Prior to the release of this bill.

Mr. IRVING. Oh, no. We've done considerable thinking. We just disagree with this particular proposal and are stating it strongly, because of our strong belief that it's wrong.

Mr. FRISA. Thank you, Mr. Chairman.

Mr. FIELDS. I thank the gentleman from New York.

The Chair now recognizes the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, and good morning to both of the people that are here to testify and to enlighten us. Thank you for your testimony.

First to the Assistant Attorney General Bingaman. You stated that deregulation of the upper tier for cable and complete deregula-

tion for small cable companies is wrong headed, because it will stifle competition in the cable market, which is essentially now dominated by two carriers.

Cable companies say that their rates won't go up because local phone companies will soon be offering video dial tone services, and they will have to compete, head-to-head with the RBOC's. What's wrong with the cable companies' argument?

Ms. BINGAMAN. Could I defer to Mr. Irving, who's the cable expert? The bottom line is, we've heard this before. Ten years ago there was going to be cable competition and we deregulated. The result was a fire storm in the American public because of cable rate increases.

Our concern is that competition is not here yet. When it's here, competition will be the answer. But, today, it has not arrived.

With that, Mr. Irving is the cable rate expert here.

Mr. IRVING. I don't know if I can improve on that answer except to say, I sat right behind a member of Congress on that end in 1983 when I listened to the then-head of the National Cable Television Association assure me there would be two wires on every street. That was 12 years ago. I don't know a city in this country that has two wires on every street.

He also said in that testimony—and others have stated—that direct broadcast satellites would be all over this globe. We do have direct broadcast satellite, but I noted something very interesting, we're under 600,000 direct broadcast satellite subscribers today. Sony is going to now start providing dishes, as well as Phillips.

Right now, if you're a consumer in America and you want to get a satellite dish, you have to get $800 up-front cost. Now, I come from Queens, New York. There are a lot of people I grew up with, they don't have $800 to go out there and buy a satellite dish, when the cable guy will come and connect for $35.

Sony and Phillips provide competition. They are saying, not counting installation, their new cost will be $749 and if you want the big packet, the step-up packet, it's $849 and $949. In the absence of any true telco competition—and even if the FCC moves as fast as any regulatory body could move and gets this done in 10 months or 12 months, rather than 15 months, the video dial-tone proceeding—it's going to be years before you actually have deployed programming services for the American people.

The same issue of Broadcasting and Cable TV Facts state that Bell Atlantic, NYNEX and PacTel are going to deploy wireless and wired networks, and they will have 10 million U.S. households by the end of the year 2000. That's the New York market, that's the Washington market, the Baltimore market, the LA market. It's going to take them from now to 1995 to get the 10 million households by the year 2000.

We're not talking about imminent competition, we're talking about competition that's been out there for a while. In the interim, cable subscribers would be left to monopoly forces. We don't think that's right. We think that when cable subscribers actually have choices, they will deregulate.

But, while we're looking at the year 2000, we're looking at $800, $900 satellite dish boxes, why would we leave cable in some of these vacuums we put them in in 1984, when we saw rates go up

three, four times the rate of inflation. We don't understand it. That's why we proposed that provision.

We would be happy—we have said many times, let's change some of the—the comments—some of the words in terms of the small cable systems. We said we're willing to say, when consumers have a choice, get rid of regulation. We believe that. We have an absolute commitment to the President, Vice President, the Secretary, down to mere Assistant Secretaries, get rid of any regulation once consumers have choice. They don't have choice. They won't have choice. Why are we going to leave them to monopoly rates. We don't understand that.

Ms. ESHOO. Thank you. Thank you, Mr. Chairman.

Mr. OXLEY [presiding]. The lady's time has expired.

The gentleman from Oklahoma, Dr. Coburn.

Mr. COBURN. Thank you. I'd like to address this question to Mr. Irving, if I may.

Can you describe for me where the interest is in the Federal Government's managing—regulating the price of something like MTV or other entertainment fares in the cable industry?

Mr. IRVING. It's really not in regulating—the fact that it's MTV, it's the fact that it's a monopoly. It has nothing to do with the content, it's that this country has always protected consumers from any monopoly provider. Whether it was potato chips or Twinkies, if it's a monopoly, and consumers have no choice, the American people deserve protection from monopoly rates. That's what the concern is. It's not that it's utility or MTV, it's that it's a monopoly.

Mr. COBURN. Okay. I understand that. Then let me further Mr. Frisa's question, if I may. Our chairman met with Vice President Gore in December and laid out what the specifics—the majority of the specifics of this cable bill were going to be, or at least what we thought they were going to be. Your answer is that you've only had this for a short period of time. Where is the administration's proposal in terms of setting against what is forward now?

Mr. IRVING. There are a couple of things. We produced a white paper in the last Congress and this Congress with regard to our position and I will forward the white paper from last year and again this year. We do have a point of view. We have stated that point of view repeatedly before this committee and others.

Second, we supported last year's bill—423 to 4, that bill passed. We would support that bill. If that bill were introduced to this committee, we'd support it immediately. It had nothing with regard to cable in it.

Third, there were ongoing negotiations until last Tuesday night, I understand, with regard to the cable provision. We understand that Democrats and Republicans were working up until the wee hours of Tuesday night, before the introduction Wednesday, to try to come to a bipartisan agreement on the cable regulation provision, and that was not successful.

We've now had——

Mr. COBURN. We tried to enroll Mr. Markey in support of the bill, that's true.

Mr. IRVING. And the administration believes that, had you been able to enlist majority, Democratic support for the cable provisions in the bill, we might have been able to support it as well.

Mr. COBURN. Then, would you spell out for me—I'm from Oklahoma, maybe sometimes a little bit slower—would you spell out for me how you would change, specifically, the cable regulation in this bill?

Mr. IRVING. One thing I would do, I would immediately discard the effective competition test that would get rid of any protection for consumer immediately upon the conclusion of the video dial tone proceedings at the FCC.

Instead, we would be happy to work with this committee to try to find some middle ground between complete deregulation in 15 months, whether or not competition exists, and continuation of the existing system. We'd love to work with you on that and we think we have some proposals there. But, leaving every consumer in this country subject to monopoly rates 15 months after enactment is a problem.

The second thing we would do is we would get rid of the buyout provision that says, that if you're in a town of under 35,000—and I assume that some of you—some of your constituents are—that they're not going to have the benefits of competition, that we're not going to let people come into those communities. We're going to assume that they have to be subject to monopolies. We assume that the telcos and cables must combine in those communities.

Mr. COBURN. Well, let me carry this a little bit further. So, basically you're saying that the Federal Government does have a role in regulating entertainment. Where's your proposal to regulate the movie theatres in Oklahoma?

Mr. IRVING. I'm not asking to regulate entertainment. In fact, I want competition. I think the best thing this government can do is promote competition so no one has to regulate anybody in this industry. But, so long as there's monopoly we think—and we have, in fact, regulated movie theatres.

We broke up the distribution chain years ago because there's a problem between production and distribution lines back in the 1940's. In fact, if you look at the history of this country, several times we've stepped into the entertainment industry because of the anticompetitive, monopolistic practices in the movie industry.

It's not the content. It's not the industry. It's the fact that they're monopolies.

Mr. COBURN. Okay. Just one thing that I would remind you of, nine out of the 21 Democrats on this committee cosponsored this legislation. So, that would say we had a fairly good bipartisan agreement on this bill.

Mr. IRVING. Congressman, without speaking for any members, I did note through the press and through talking to staff that several of those members signed on to this bill with the hope and expectation that the cable provisions could and would be modified and reformed in much the direction that the administration would like to see them modified and reformed.

Mr. COBURN. I think that's a legitimate point.

Thank you. I have no other questions, Mr. Chairman.

Mr. FIELDS. I thank the gentleman for yielding back.

The ranking member of the full committee, the gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. I'd like to welcome you back to the committee, Mr. Irving and Ms. Bingaman, we're honored that you're with us. Thank you both for being here.

Mr. Irving, my time is somewhat limited, so I'll ask these questions and then ask you to respond, very briefly, with greater—and later, with greater detail.

First of all, please comment, specifically, on the bill's modification or repeal of national limits for radio and television, local limits for radio and television, broadcast station, newspaper cross-ownership prohibition, network cable cross-ownership prohibition, and broadcast station cable cross-ownership prohibition.

Maybe you and Ms. Bingaman can do it very briefly and then give us more for the record, if you please.

Mr. IRVING. We have grave concerns about all of those provisions, particularly in the aggregate.

Mr. DINGELL. Ms. Bingaman?

Ms. BINGAMAN. We share those concerns. It's, we think, a very serious policy issue that could result in effective monopolization of American media in particular markets, and lack of diversity presents competition problems, lack of diversity problems, foreign ownership problems and we have grave concerns about it.

Mr. DINGELL. Would you just enumerate, briefly, your views on foreign ownership, please?

Ms. BINGAMAN. Our concern is that as fast as non-broadcast media, generally, U.S. firms are not allowed to enter foreign markets; and this is a one-way street. It allows foreigners to enter the U.S. without the right of U.S. companies to buy in foreign markets. We think that's a problem.

Mr. DINGELL. So, it is your view that that must be reciprocal?

Ms. BINGAMAN. It should be reciprocal, absolutely. It ought to be tit for tat, an even playing field around the world. It is absolutely not right that foreigners should be able to come in here and buy up American companies, you know, and broadcast; and American companies cannot go elsewhere. What is that good? We can't understand why that is——

Mr. DINGELL. It is grotesquely unfair. Let me ask you this question. Would you distinguish between broadcast and non-broadcast?

Ms. BINGAMAN. Yes. The administration does distinguish between broadcast and non-broadcast. We have—there's a 25 percent rule on the broadcast. We have concerns about even reciprocal purchases of American broadcast companies beyond approximately 25 percent by foreign entities for obvious reasons.

This is the way Americans get their information. This is the way we know what's going on in the country and it's important, we believe, for those reasons that these be limited to 25 percent foreign ownership.

Mr. DINGELL. And also that we distinguish on broadcast mass media and other kinds of telecommunications services?

Ms. BINGAMAN. Precisely. There's a line to be drawn there, we believe.

Mr. DINGELL. Thank you. With the prohibition line against foreign ownership of mass media. Very well.

Earlier this year, Ms. Bingaman, in a speech before the National Press Club, you discussed a change in the Department's approach

with respect to the administration's consent decree's VIII(c) restriction on Bell companies. Specifically, you indicated that the Department would only approve VIII(c) requests if certain steps were taken to open the local loop to competition.

Were the Bell companies parties to this change? And did they agree with the new approach that the Department would utilize for considering the VIII(c) requests?

Ms. BINGAMAN. Congressman Dingell, as they say, I'm glad you asked that question, because I did not say that. I am glad to have a chance to say I did not say it. There's been substantial confusion and I may not have written the speech as carefully as I should have. Let me clarify, because this is an important issue.

VIII(c) provides several avenues for the Bell companies entering adjacent markets. One is that the local monopoly no longer exists and that there's competition; and second is, even if the local monopoly exists, there's no substantial possibility of harm to competition in the local markets. VIII(c) very clearly does not allow me to change the terms of the VIII(c) test, and I did not intend to do so.

In fact, the Department this Spring—since I gave that speech at the end of February—has agreed to grant waivers in the information services area for the Bell companies to provide long distance on a certain set of conditions. We'd work closely with them to be able to support that waiver, and the local monopoly still exists.

I think as they say, action speaks louder than words. We have granted waivers since the date of that speech where the local monopoly still exists. Breaking the local monopoly and allowing competition is one way to meet VIII(c), but there are other ways.

I appreciate the chance to clarify that, Congressman Dingell.

Mr. DINGELL. Thank you, Ms. Bingaman.

Mr. Chairman, I would ask you now to consent that I be permitted to communicate in writing with additional questions to this panel, and that they be inserted in the record at the appropriate place.

Mr. FIELDS. Taking that into consultation, with no objection.

Mr. DINGELL. We will be careful.

Thank you both. Thank you, Mr. Chairman.

Mr. FIELDS. The gentleman from Ohio, Mr. Gillmor, is recognized.

Mr. GILLMOR. Thank you, Mr. Chairman.

A question for Ms. Bingaman. In your testimony, you spoke rather negatively about the checklist concept of determining when you have competition in the local, and said it was a myth and wouldn't work. Could you be more specific about how you think that should be determined in lieu of the checklist, and what procedure you'd use?

Ms. BINGAMAN. Our concern, Congressman Gillmor is that a checklist alone may not create the conditions for competition. I think we should understand that no country has tried to do before what we are trying to do. That is not a reason not to do it, by any means. No country had ever broken up its telephone service before either. We did it and it was the right thing to do.

But I think we have to understand that these are tremendously complex issues. The local exchange is a sophisticated, computer interconnection, number portability, the opportunity for price

squeeze on resale, there are a myriad of issues which may mean that a checklist, if satisfied, we are not able to foresee today how to create competition.

What I'm trying to say is, we have no experience in this. This is unbelievably complex. It does not mean we shouldn't do it, but it means we should respect the complexity. We should say, these steps need to be done—I'm not opposed to a checklist. I think it's fine to specify, and I think there are a lot of good elements about this checklist where things where they work will improve as well.

It's not the checklist as such, it's that there's no test to see whether the checklist has in fact created competition before the Bell companies get into long distance. That to us is the critical problem with the approach of the bill right now. There needs to be an agency, the Department of Justice, in the middle of doing this.

Mr. GILLMOR. Well, all right. The checklist is only a guideline. We are in the process of formulating legislation to make the change that's been recommended for a long time, but, at some point—whether we give the Justice Department the authority or not—there has to be a determination made by someone.

Even if the Justice Department had it, what test would you use and how would you determine it? At least here we have a standard that's headed in that direction.

Mr. BINGAMAN. Congressman, we filed a brief with Judge Greene supporting our Ameritech proposed consent decree of about a month ago. We filed that and we filed our brief on May 1. In that brief, which I will deliver to you because it lays out our views as well as I would know how to, we state that under the Ameritech proposal, under which Ameritech renders first, it interconnects its competitors, it applies to us for authority to go into long distance.

We have 120 days—a very short time frame—after getting the information to judge the state of actual competition. The test, as in that proposed order, is the actual competition and substantial possibility for additional competition. We look at that first, but we look to see, have competitors hooked up? Are they being stymied? What are the prices of resale? Are there price squeezes? Is there number portability in effect, or will there be shortly? What is actually happening? What has gone on and is the local Bell Company, frankly, in good faith and moving promptly to allow competitors to hook up? This is complex stuff.

That's the test we would apply. We would not apply a market share test. We would not require the Bell Company to lose some amount of preordained market share. We would want to see that there is actual competition and substantial possibility for additional competition in a short time period, and then let the chips fall.

Mr. GILLMOR. Thank you. A question for Mr. Irving, if I have the time.

I just want to clarify something on the foreign ownership. You made it very clear in your comments with Congressman Oxley that you're opposed to permitting foreigners coming in without reciprocity. What I'm not clear on is what your position is—would it be allowed if we have reciprocity?

Or, I had some indication from what you said that it's only permissable if we work it out as part of some multilateral agree-

ment. You wouldn't be satisfied with something that allowed foreigners to enter the U.S. market only on the condition that American companies could enter foreign markets.

Mr. IRVING. It's really a three-part test. One, our optimal solution would be a multilateral agreement. We think we can achieve that. We're working to achieve that by next year. April 1996 is the deadline for that, if we can achieve it.

In the interim, we believe that reciprocity would make sense. We'd certainly want to make sure that the administration has a chance to participate in an active fashion, not give all the power to the FCC to make those reciprocal determinations. Third, we would not change our law at all with regard to noncommon carriers.

With regard to broadcast spectrum, we believe that the 20 to 25 percent prohibitions are adequate and should be sustained.

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

The gentleman from New York, Mr. Manton.

Mr. MANTON. Thank you, Mr. Chairman. I want to welcome Larry Irving to the other side of the table and say welcome from one Queens' boy to another. I waited in the borough of Queens for cable television for about 20 years after Manhattan was all wired. I became impatient during that time and invested some $5,000 in an 11-foot, diameter satellite dish on my roof, which I now find is obsolete. Smaller DBS equipment is now available and offers better service.

Mr. Irving, yesterday we heard discussion about the need for a bad actor provision to go after the 5 percent or so of those cable operators who are abusing customers. What in your mind constitutes a bad actor and how can you possibly determine that so that the 95 percent of operators who are not bad actors are not hurt by unnecessary regulation?

Mr. IRVING. I think you identified the key question we have to try to respond to. We would like to make sure that somebody who is raising their rate above what we think is a reasonable rate for cable operators to charge. Where competition exists, what are cable operators charging? Who's outside that rate? Those are the people we want to capture. We want to get those people who are gouging their customers.

You're right. It's not every cable operator. But, I worked for a congressman once who said that laws aren't passed for the good actors. They're passed for the bad actors. That's why we need—we need to protect those consumers who would be in areas where there are bad actors. We're trying to develop that language. I know that other members on this committee are working to develop that language. That's exactly the kind of revision we think we need.

But the key is going to be, what's a reasonable rate? Then, how much outside of that reasonable rate you can be? The terms are going to be very difficult to identify and put on paper. We think we can achieve those terms and we think we should achieve those terms, and then the administration would be much more likely to support legislation that contains such terms.

Mr. MANTON. Now, isn't it true that under the 1992 Cable Act, for those systems that face regulation, virtually all of them face

upper tier regulation of cable programming by virtue of the bad actor test in the Act?

Mr. IRVING. That is correct.

Mr. MANTON. Is that not a perverse situation?

Mr. IRVING. I don't know if it's a perverse situation. I do think that the way that the FCC has implemented the regulations could be reviewed. We'd be happy to work with this committee to review it and make sure that the bad actor provision is a true bad actor provision. That's the desire of the administration, to keep consumers protected in the event of a cable operator acting in a fashion that is monopolistic and gouging its consumers.

Mr. MANTON. Thank you, Mr. Irving.

Now, for Assistant Attorney General Bingaman, in your testimony you've ably articulated your concerns about the inadequacy of the checklist approach in H.R. 1555. Are there improvements that we can make, or is it irreversibly flawed?

Ms. BINGAMAN. To the checklist itself, you mean?

Mr. MANTON. Yes.

Ms. BINGAMAN. I believe that the language about economically reasonable throughout the checklist is a serious incentive to the Bell companies to perhaps not grant the kind of services that you want to see granted. I think the good faith negotiation under the supervision of State commissions is a problem.

I can tell you in this Ameritech order that we just negotiated with Ameritech and other people, it took literally thousands and thousands of hours, and it was similar in concept to what would be required here. That is, looking at what kinds of things would have to be done. This is an arduous problem.

I think the negotiation approach is a problem. I think there are other invitations to litigation in this—the language integral to the efficient transmission on page 8, line 7 to 13. I think the biggest problem with the checklist is that it purports to be complete. That's the real core problem.

We can sit here and fix some of these details, but we are not omniscient. We can't foresee the future, and as I've said before, no one has ever done this before. We need to look hard at what has actually happened and what problems come up that are not foreseeable.

I'll give you a real fast answer here. In 1969, the FCC required the old Bell System to allow competing telephones to be hooked up to the system, at our request. We initiated that, so it doesn't make any sense to say, competitors can't make a telephone. Anybody can make a telephone. It doesn't have to be Western Electric. Well and good. No problem.

The mind of the Bell companies is not stupid. These people are pretty inventive, smart people. They come up with something called a "protective coupling" apparatus—which is a piece of equipment that goes between the competitors' equipment, which caused it not to work. Did anyone ever think of that? Never in their wildest—and there ensued 10 years of litigation over whether protective coupling apparatus are okay.

That's the kind of thing we can't foresee, we can't imagine right now. The core problem with the checklist is we don't leave any play in the joints for unforeseen things which may well happen which could stifle competition. If that happens, the entire phone system,

the entire telecommunications system of the United States and the hard-won gains we've made are at risk.

We want to keep these adjacent markets competitive. We want the Bell companies to compete. The goal of this legislation is interconnection and competition in the local network. But I don't think we should kid ourselves that we can sit here today and foresee everything that may play out in the next 3 or 4 years.

So, that's the basic problem.

Mr. MANTON. Will the administration be submitting proposed amendments?

Ms. BINGAMAN. I don't know about proposed amendments. We will write a white paper as fast as we can, or some statement of position. We did that with the Senate bill. It's quite detailed. It's 10 or 12 pages long. We've just had this a week and have not had time to do it, but we'll be very pleased to work with the committee.

Mr. MANTON. I think it will be helpful.

Ms. BINGAMAN. Okay.

Mr. MANTON. Thank you. I yield back the balance of my time.

Mr. FIELDS. I thank the gentleman.

The gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman and good morning.

Mr. Irving, have you read the book, Globalization of the Mass Media, Department of Commerce National Telecommunications Information Administration? Are you aware of this report?

Mr. IRVING. I reviewed it. It was produced by my predecessor.

Mr. STEARNS. Did you agree with the conclusions in it that your predecessor came up with in the book?

Mr. IRVING. Obviously not, Congressman.

Mr. STEARNS. That's why I'm a little concerned when I listen to you. The staff has read this report and they pointed out several sections in here. It appears that the report sort of confirms many of the things that this subcommittee has been doing.

In fact, the report states that many of the broadcast ownership rules are outdated, anticompetitive, and they recommend repeal. So, we're having a little trouble here listening to you this morning, after getting this very fine document. Your comments are dramatically different from those that are in this document.

The question I have for you is, what evidence, what reports have you compiled since this 1993 report was made, that has made the 1993 report in your mind wrong or obsolete. And, if you have such evidence, perhaps you could share it with this committee. Maybe we could have some of this documentation—to corroborate what you're saying, based upon this report which was done, and we think accurately reflects the communications marketplace.

Mr. IRVING. When that report was done, I think I sat back there and at that point—it was produced by the Bush Administration, NTIA.

Mr. STEARNS. Are you saying that the Bush Administration slanted this, totally? Is that you're testimony today?

Mr. IRVING. I'm not impugning any motives. I'm saying that, economists—and you're going to have a lot of them come before you over the next year. You've had a lot of them before me and after me. Economists can come to a lot of different conclusions based upon the same evidence.

92-967 O - 95 - 9

No one has produced a study quite like that other than NTIA back then. But do I think that the globalization of mass media study, if it calls for complete change in all of our broadcast structural regulations is wrong today? Yes. Did I think it was wrong when it was produced? Yes. Did I tell Ms. Oberchosky and Mr. Chappel that? Yes.

Mr. STEARNS. Mr. Irving, you and I both know that this report was not made out of thin air. There was testimony after testimony. There were many rulemakings to put this together. There are statements from industry. There are quotes from people who are not elected to any political offices. Are you discounting this whole report?

Mr. IRVING. I'm not discounting the entire report. I think there's a lot in that report that's very good. What I am saying, however, is that to make fundamental, wholesale changes in every one of our structural regulations that are designed to protect localism and diversity would be a mistake to do it, simultaneously at this time—simultaneously, without any modification, I think that would be a mistake.

Mr. STEARNS. Mr. Irving, I think the staff and I would appreciate it if you would give us documentation which shows concrete evidence, based upon either testimony or whatever you can provide, to show that this 1993 report is incorrect in its conclusions, because throughout this report, where there's multiple ownership, cross-ownership, the same words come out about the updating, and reforming to make it more competitive.

So, with that, let me move now to Ms. Bingaman. As you know, even within our Republican conference, there's a question of bringing the Justice Department in, and many on this committee don't think there is a role for the Department of Justice.

Given the years of experience that you've had in telecommunications, could a local company such as a Bell Company prevent competition from developing in its local exchange market without violating any antitrust laws? Because we would like to make the FCC the gatekeeper—that's probably not the right word—but you seem to indicate you want to be intimately involved, at every step of the process, you want to be there.

You know, we're trying to unleash competition, so that competition can get out there and we can bring the cost down quickly, and if the Department of Justice is involved every step of the way, it's going to be more expensive and slow it down. Aren't there enough laws on the antitrust side to prevent it, so you'd be triggered at that point and we don't have to have you intimately involved from the beginning?

Ms. BINGAMAN. I think it would be a bad mistake to do exactly that. That's the thrust of my testimony here today, that we need to be involved. We've been involved for 20 years——

Mr. STEARNS. I don't mean to interrupt you, but tell us specifically what tools do you need that you don't have now?

Ms. BINGAMAN. We need—we have the tool now. We have the VIII(c) test.

Mr. STEARNS. You have enough antitrust laws now.

Ms. BINGAMAN. Well, but this——

Mr. STEARNS. Why should this bill provide any more tools to you?

Ms. BINGAMAN. This bill would repeal the modified final judgment's VIII(c) test, which today allows the Bell companies into competitive markets if, either there's no local monopoly, or they can show that there is no substantial possibility that they will use the local monopoly to impeded competition.

So, we have a test today that works. We've granted approximately 270 waivers allowing them into adjacent markets, recommending to the court that they be allowed, and supporting their applications.

We deny very few of them. We work with them hard to find ways, so the test exists today. What we're suggesting is that same test be embodied in this legislation with the same role and that the test today be married with the legislation that exists, much of which is very good, and let us work expeditiously, quickly, fast, under a tight deadline, to insure there's no substantial possibility of harm in adjacent markets.

The Ameritech case I discussed with Congressman Gillmor is one way to meet that. You look at other ways as well. You look at safeguards, ability to cross-subsidize, incentives and so forth.

Mr. STEARNS. And still have all the antitrust laws in place too?

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

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. FIELDS. The gentleman from Virginia, Mr. Boucher.

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

Ms. Bingaman, I'd like to express a welcome to you and to Mr. Irving to our committee today.

Ms. Bingaman, I'd like to begin with and continue some of the discussions we had on Tuesday in the House Judiciary Committee about the terms and conditions under which Bell Operating Companies can offer interLATA and long distance services.

You may recall from our discussions on Tuesday that the Judiciary Committee bill contains a provision that when calls are originated out of the local service area of the Bell Operating Company, those calls shall not be subject to the interLATA restrictions of MFJ. They, therefore, would be exempt.

The theory of that, of course, is the Bell Company does not operate a network out of its local calling area and therefore a bottleneck would not exist and there is no potential for anticompetitive harm.

I would welcome your comments on that provision, and particularly whether you agree that we should insert such a provision in the legislation in this committee?

Ms. BINGAMAN. Congressman Boucher, I'm glad to see you here today. You're an expert in these subjects and it's a privilege and an honor to discuss them with you.

The out-of-region situation is one that was presented to Judge Greene by the Bell companies in 1987, rejected by Judge Greene, rejected by the court of appeals, and therefore, there are court rulings holding that out-of-region long distance does present potential problems.

We have this very issue under investigation right now at the Department of Justice. Briefly, the problem is as follows. Each of these Bell companies is approximately one-seventh or one-eighth of the land mass of the United States, and they're contiguous and

they're large. They have millions and millions of lines, $10 billion upwards of revenue.

If they are competitors to the long distance company—the three major, AT&T, MCI and Sprint—in six-sevenths of the country, the only place they're not a competitor to those long distance companies is their own one-seventh.

You have the following situation. AT&T, MCI and Sprint all have to hook up to the local network in the region they're selling into; but that region is also a competitor of those companies in six-sevenths of the country. They have a lot of control over the local network in originating access and terminating access. The long distance companies have to deal with them on a close, constant basis to local equipment, to talk about marketing, to give them new plans, to terminate access, to originate access to their customers.

The concern that Judge Greene and the court of appeals had in 1987 was that there would be incentive and ability, if they were competitors of the long distance companies to discriminate against them. We're investigating that right now to see if conditions have changed in the 8 years since——

Mr. BOUCHER. Let me say that I appreciate the fact that you're investigating it. The only potential problem could be in terminating the call, because that is the only place where the company can exercise any kind of monopoly power. The termination of the call is essentially a done procedure. It simply goes off on the wire to which the receiving customer is connected. So, it's difficult for me to see how there could be a potential problem.

Ms. BINGAMAN. Congressman, that is not my understanding. Originating access is potentially more of a problem than terminating access.

Mr. BOUCHER. But the call would originate by the free will of whoever initiates the call, entirely outside of that particular company's calling territory.

Ms. BINGAMAN. Yes.

Mr. BOUCHER. They exercise no monopoly power there whatever.

Ms. BINGAMAN. No, that's—you're right about a particular call coming in from out of region, but——

Mr. BOUCHER. That is the——

Ms. BINGAMAN. No, no, that's true. The way you just said it is true, but it doesn't take the next step.

Mr. BOUCHER. Let me go on, if I may, to another question. We could talk about this——

Ms. BINGAMAN. I've got a great answer, but I'll submit it in writing.

Mr. BOUCHER. I wish I had more time, in which case I would like to explore it with you.

But, let me simply say, I'm glad you're examining that and if you have some advice for us in advance of markup, we would welcome it.

Let me ask both of you this question. I am somewhat concerned about the potential that—if, Ms. Bingaman, your recommendation is accepted, and the Department of Justice is given the opportunity to have a prejudgment role in the ability of Bell companies to offer long distance, that we may in fact, result in a system of dual regu-

lation, where both the FCC and the Department of Justice will serve a clearinghouse function on that question.

It seems to me that on an issue as straightforward as this, that type of dual regulation simply is not necessary. So, my question to both of you is, comment if you will on the potential for dual regulation. As a part of that answer, tell me if you support roles both for the FCC and the Department of Justice, and, if in fact you do support dual regulation, why do you think that's appropriate in this case?

Ms. BINGAMAN. Congressman Boucher, we support it for the same reasons that the Congress—that the House of Representatives voted it out by 423 to 4 or 5 votes last year, and this committee voted it out virtually unanimously or unanimously. We support it because the two agencies are fundamentally very different in what they do, as I stated previously.

The FCC is a technical, engineering, regulatory agency. We are market experts. We have very different roles, very different functions. If we move in parallel and in tandem with short deadlines, there need be no delay. But the market analysis and the understanding of the 50 experts that we have in-house, right now, who have developed tremendous depth of experience working through telecommunications alone, is important to the Nation and should be used in this important question.

The only other thing I'd like to say is, I would not say this is straightforward. This is one of the most complicated things in the world, frankly, telephone network issues. It is ungodly complicated. I mean, it is an amazing morass, which is almost a black box, if you haven't been involved in it.

It may be straightforward to you, respectfully, because you have 10 years or more of expertise in this. It is an amazingly complex and complicated area and we are expert in our end of it. The FCC is expert in their end, and the country should use both of our expertise.

Mr. SCHAEFER [presiding]. Thank you.

Mr. BOUCHER. If I could simply ask Mr. Irving if he could respond, Mr. Chairman?

Mr. SCHAEFER. Respond quickly.

Mr. BOUCHER. Mr. Irving?

Mr. IRVING. I also support on behalf of the administration a role for both the FCC and the Department of Justice; and the main reason is the uncertainty of the checklist. We've never tried the checklist before. It's laden with terms such as "just and reasonable," "economically feasible/technically feasible," nobody knows how that's going to be determined.

We're striving for competition, not deregulation. What we want is competition. We want to make sure that the tools are there to protect that competition.

Mr. BOUCHER. Thank you very much.

Mr. SCHAEFER. I thank the gentleman from Virginia, and of course, I think our whole side of the isle is looking for competition, too, on this whole thing.

I will recognize myself for whatever time I may consume—as the chairman said, 5 minutes. I want to add a moment to get some per-

spective on this whole issue that seems to have lost some sense of proportion in this whole debate.

The panel here this morning in their testimony has said that telephone and cable service remain monopolies that should not be deregulated until actual competition has arrived. I want to spend a moment to draw distinctions between telephone and cable service. Explain why this sort of moral equivalency between telephone and cable is simply misguided.

It's been long accepted—my own staff is cutting me off. But, the equivalency between cable and telephone is misguided. It's been accepted Federal policy that telephone is a critical, lifeline service, indispensable to our every day safety, welfare and convenience of the American people. I think we all agree that we as a society have a responsibility to insure that each American has access to some degree of telephone service rates—service at affordable rates.

It's also important to notice that virtually every American consumer even has access at any cost to telephone service offered by someone other than the incumbent provider. Let's compare that to cable and cable service. I'm sure that there are some who would say that cable is indispensable to their everyday safety, welfare and their convenience. But in an age where TV violence is exploding, literacy is dropping and the family is generally disintegrating, is TV really a right that the government—the government—should be creating?

I only say for the sake of this legislation, there is a Federal interest in continuing regulation at the local level only of the broadcast and the PEG tier service. If one can suggest that there is a lifeline TV service, that is it.

Now, how far astray from national regulation can we drift when we say, as the FCC has, that MTV and other such cable fare is to be regulated by the Federal Government in the same strict manner as ABC, CBS and NBC? Or to say here, as some of today's witness describe it, Comedy Central is a regulatory equivalent of residential dial tone? This is just plain silly.

Because this issue is purposefully confused. As the day progresses, let me state for the record, unlike the case for telephone service, every American household is accessed to at least one, and some many more, competitive video providers today. The case simply has not yet been made that the Federal Government has a duty to do anything other than provide for access to alternative in the case of a purely entertainment service like the upper tier of cable.

We have provided that access. We will expand that access in this bill. It is time we focus on the real issues addressed by 1555, the building of advanced, broad-band networks and the benefits that it will bring to all Americans.

So, I would ask, Mr. Irving, am I correct? I'd like a yes or no answer. That the administration is ready to veto this legislation and let all those jobs and all those economically technological and social progresses go down the drain to insure that the FCC can continue to dictate the price of MTV?

Mr. IRVING. If my choice is yes or no, I can't answer that question.

As presently drafted, the administration does not support the legislation. We look forward to working with you, Mr. Schaefer, a long-time friend.

Mr. SCHAEFER. So you would say that the present situation, the administration would veto?

Mr. IRVING. I did not say that.

Mr. SCHAEFER. Simply because of the price of MTV?

Mr. IRVING. Congressman, I was very careful not to say that. I cannot say that. I'm not empowered to say that. I don't know the answer to that question. I do know——

Mr. SCHAEFER. Well, I may ask the chairman of the FCC when he comes up here the same question, then.

Mr. IRVING. He doesn't work for the administration. He's an independent agency and will have as equally a difficult time answering that question.

I cannot give you a yes/no answer on a veto. There's a long time between now and the time the President has to make that decision. I can't speak as to how he will make that decision. What we hope is that working together we can avoid a scenario where he has to face that issue.

Mr. FIELDS. The Chair will recognize the gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman. Let me first say, Mr. Irving and Ms. Bingaman, although I'm sure there's some controversy to some of your statements today, I don't think there's any controversy from this committee that you've represented yourselves and your agencies very well, and I compliment you for that.

The first question, Mr. Irving, let me say this, it's my understanding that in this provision there's no—rather, in this bill, there's no provision for simultaneous entry of local telephone service into the long distance, as well as the reverse. I wanted to get your thoughts of the pros and cons of having some kind of provision, or is it good or bad? What are the pros and cons to having simultaneous entry?

Mr. IRVING. We think simultaneous entry is not the right issue. The right issue is allowing the telephone companies, the regional Bell Operating Companies into certain areas when they market—when they've opened up their market and when there's actually a substantial possibility that they can impede competition.

We think the checklist is a good start there. We think that the Department of Justice's role to insure that the checklist works as intended is the better way to improve the bill. But we're not—we've never gotten caught up in the debate of simultaneous versus non-simultaneous entry. The real question is, can the regional Bell Operating Companies use their monopoly power to disturb the competitive marketplace? If they can't, let them go at it. If they can, then we wouldn't support them getting into certain activities.

Mr. GORDON. You don't think there's enough incentive to go into other businesses that they would move forward and open up those markets and not have that kind of simultaneous entry?

Mr. IRVING. I think there's a lot of incentive to get into new businesses. I think there's an even more incentive to try to keep the monopoly—the existing monopoly and get into the other businesses.

If the choice is getting into other businesses—keeping the monopoly, or just getting into other businesses, I think it's an easy choice for them. I think we're going to see a lot of litigation on the checklist. I think that's almost impossible not to have happen. There are going to be a lot of questions there. There's going to be a lot of terms that are going to have to be defined; and I think we're a long way from getting those markets truly open.

You're going to hear later from Lisa Rosenblum, Commissioner of New York. I've been following what's happening up in Rochester. There are a lot of questions. AT&T would say that not enough is happening fast enough, that some of the terms are too squishy. Rochester Telephone—or Frontier, now—would say, "We're doing a wonderful job. It's going to be a competitive market before you blink your eyes." The truth is probably somewhere in between, as it usually is in these kinds of debates.

But our issue really is—our concern really is, make sure those markets are open. Make sure they can't use their monopoly power that they've built up over 60, 70 years, and then when you know that you can really have competition in the marketplace, let them do anything they want to get into so long as you're protecting the rate payer.

Mr. GORDON. Let me go into another question real quickly, if I could. Representing small towns and rural areas, I have some concern about how long it's going to take for this competition to move from the urban, metropolitan areas into the small towns and rural areas, so that we too can benefit from this competition.

What are your thoughts, briefly, on how long this is going to take?

Mr. IRVING. Very briefly, I think it's going to take a long time. I think if this bill passes as presently drafted, it will take longer. Because this bill will make sure that you never get competition in towns of under 35,000, because it will allow the existing telephone monopolist, and the existing cable monopolist to merge, or allow them to be one joint venture.

That's going to slow down the pace of technological development; and you're not going to get somebody coming into a market where a telephone company and a cable company control that market. Why would a small entrepreneur come in? The cable company and the telephone company are fighting, maybe I can come in as a nitch market. If you allow this kind of concentration and aggregation of power between those two existing monopolists, you'll never get competition in small towns.

We want to make sure we get more competition, not less competition. We need to get rid of that 35,000 number and make it down to about 10,000.

Mr. GORDON. Another thing that concerns me is that there seems to be a dual track here between the large cable systems and the small cable systems. I've yet to really understand why they're being treated differently in terms of when they're going to be opened up.

Mr. IRVING. I don't understand why we did two things in this bill. One, forestall the likelihood of competition by making sure that you're allowing monopolies 35,000 and under; and also saying, that those places that are least likely to get competition also won't have any rate regulation protection.

Mr. GORDON. I'm talking about that the larger cable systems will be—there will be 15 months before they're deregulated. The small systems are immediately deregulated. I'm trying to find the logic for that.

Mr. IRVING. We don't have any—we don't understand why we would deregulate cable systems immediately in areas where there's no tangible proof of competition and where video dial tone is not coming in all likelihood. We think that's a mistake.

We tend to think—what we do believe is, small cable operators have a legitimate concern about the cost of regulatory oversight. We should try to find some ways—I think Chairman Hundt has done an admirable job in trying to find ways to address the legitimate concerns of small cable operators.

We don't want to leave rural Americans—I work for a President, as you know, from Arkansas; a Vice President from Tennessee. They have grave concerns about their constituents—their former constituents being left with no regulatory protection and no likelihood of competition in small towns across their states.

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

The gentleman from California, Mr. Cox.

Mr. COX. I thank the chairman.

Ms. Bingaman, I notice in your testimony that you have said that evidence of DOJ's expertise in assessing is that DOJ has reviewed over 350 requests for waivers under Section VIII(c), an average of one every 2 weeks. You don't mean to imply that it takes only 2 weeks to turn those around, do you?

Ms. BINGAMAN. It does not take 2 weeks to turn them around. Many of them are very complicated, 16 to 20 comments filed, tremendously complex in scope, national and regional, so, no. I didn't say—I said, that many had been filed in the period such the MFJ, so the average filing time. If I misstated it, I apologize. But that's what the thrust of it was.

Mr. COX. So it is not unusual for an application for waiver to take years, in fact?

Ms. BINGAMAN. Some of them take years, absolutely.

Mr. COX. What is the time limit in the Hyde bill, in which DOJ would have to answer these questions?

Mr. BINGAMAN. 180 days.

Mr. COX. So, whereas it now takes years, suddenly DOJ is going to be looking a circumstance where under law it's supposed to make a decision within 180 days, else it is deemed approved? Is that going to——

Ms. BINGAMAN. Congressman, I would point out——

Mr. COX.—alter the way you do business?

Mr. BINGAMAN. I would point out a couple of things. Number one, if this bill passes, all of the current work on our plate—and it's substantial—would be gone. The entire waiver process would be superseded by this bill. We have 50 people right now, lawyers, economists and paralegals, expert in this industry—because they work on these waivers, and they are complex and complicated—would turn their attention immediately to these applications.

We would probably have to add other people on an expedited basis. The reason we could do it in 180 days is because we would be doing nothing else. Right now we do a lot of other things. We

have many waivers before us, plus mergers in the telecommunications area, plus litigation.

Mr. COX. Once of these companies applied to the Department of Justice to ask for permission to enter into manufacturing or long distance, if you found that you had used up you 180 days and it was rather a complicated question, might you then tell the company that, if you were required to make a determination, if they really wanted to stand on their statutory rights that you would deny it; but that if they were willing to consent to an extension of time you'd continue to consider it? Has that ever been done by an agency?

Ms. BINGAMAN. It may well have. I honestly can't sit here and tell you. I'm not aware of a particular case where it's been done.

Mr. COX. Let me ask you this. If the statute is as you've read it in bill form, would you undertake to promise that the Department of Justice would never do that?

Ms. BINGAMAN. If I'm there, it won't do that? I can't tell you that I'll be there. If this passes and the applications are before me, I would sit here and tell you that, yes.

Mr. COX. That is to say that you would never tell an applicant your 180 day period of time is up?

Ms. BINGAMAN. Well, let me tell you one other thing here, however, congressman. These people—you need information from them. They have the information. We need it. They have tremendous ability to stall you and delay giving the information you need. In fact——

Mr. COX. So, let me ask you——

Ms. BINGAMAN. Well, let me just tell you. That's a tilted playing field you're setting up.

Mr. COX. I understand.

Ms. BINGAMAN. They've got the facts. They don't want to give them to us and we're under a tight time limit. They know everything and we've——

Mr. COX. You've made the point.

Ms. BINGAMAN. I won't buy into that.

Mr. COX. I'm under a time constraint myself, 5 minutes and I'm trying to ask the question so I can get an answer to it.

The question is, if you feel you haven't gotten enough information and you need more, and the 180-day time period is up, will you commit to us that you will not tell people, if you will volunteer to extend that period of time, we'll consider your application. Otherwise, we will say, no?

Ms. BINGAMAN. I would tell you, we would decide these things within 180 days of obtaining the necessary information.

Mr. COX. But, if you haven't obtained the information that you think you need, you would take longer than 180 days?

Ms. BINGAMAN. Congressman, I can tell you this——

Mr. COX. Would you promise not to take 180 days, even if you didn't have all the information you needed. Let me put it in that stark form.

Ms. BINGAMAN. Say that one more time. I missed it.

Mr. COX. If you did not have all the information you needed, would you promise nonetheless not to take longer than 180 days and not to ask people to extend, voluntarily?

Ms. BINGAMAN. Congressman, I think the answer to this is for this committee and the Congress to draft this in a way that simply will address the problems you're talking about. That would be to require the Bell companies to turn over the information, maybe have an administrative law judge on a 30-day turnaround so that you know the facts are outside of our control, is what I'm trying to say.

You have an independent arbitrator here. If that's what you're worrying about—I take it the thrust of this is bad faith on our part, in effect.

Mr. COX. No, actually the thrust of this—and I will yield, because my red light is on. But, the thrust of this is that, if currently it takes, as a matter of routine, years for DOJ to do these things—and we are going to pass a statute that says it all gets done in 180 days, that may be an unreasonable expectation.

I yield back.

Mr. FIELDS. The gentleman's time is expired.

Ms. BINGAMAN. The legislation can require 180 days, period. That can be done. If that's the question.

Mr. FIELDS. The gentleman from Illinois, Mr. Rush.

Mr. RUSH. Mr. Chairman, I too welcome the two witnesses, Mr. Irving and Ms. Bingaman. I applaud you for your enlightened and very frank testimony this morning.

Mr. Irving, I want to start with you, and Ms. Bingaman, I'll ask you to respond, also, to this question.

First of all, I want to commend you on the report that was released just last month. Your report that identified the financial barriers faced by minority entrepreneurs and businesses seeking to compete in the telecommunications industry, to suggest possible solutions, and to stimulate efforts which addresses this critical issues.

I'd just like to ask you, would you share with the committee your thoughts on how we reach out to small business, women and minority owned companies who want to compete with and/or joint venture with our Nation's largest corporations in the telecommunications industry

Mr. IRVING. I think the key is making sure that those small businesses, particularly women-owned and minority-owned small businesses have access to capital. I think that we need to find ways to give incentives to the majority companies, the large companies, the Fortune 20, 100, 500 companies to do joint ventures, and to assist these companies they built.

I know in the past, legislation that passed this committee on telecommunications reform has included incentives for companies to do business with minorities. I think we need to continue to try to find ways to address it, both voluntary, but also maybe government incentives.

The reality is, government incentive programs have resulted in more minority and female ownership opportunities. I think that is important. I think, particularly, as we look at things in this bill that will cause less diversity of ownership, that will cause more concentration of power, the minority community and women do need an opportunity to also participate in this ongoing telecommunications revolution. We can't be silent and not allow diver-

sity to be one of the things that we try to protect and project in this legislation.

Mr. RUSH. Ms. Bingaman.

Ms. BINGAMAN. I have nothing further to add on that.

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

Mr. FIELDS. The Chair appreciates that.

The Chair now recognizes the gentleman from Washington State, Mr. White.

Mr. WHITE. Thank you, Mr. Chairman. Mr. Irving, it's nice to see you again. Ms. Bingaman, thank you for being here.

Ms. Bingaman, I'd like to make sure I understand exactly how you'd approach things under the new bill, if we did give the Department of Justice some oversight authority. I've got to tell you, it really sent chills down my spin to hear that you're going to unleash 50 lawyers and economists on this problem and help solve it for us. You know, it seems a little counterintuitive to me. I'd like to explore just a little bit what sort of authority you think you'd like to have.

In response to some earlier questions this morning, I gather that the authority that you're looking for is a continuation of the authority that you have under Section VIII(c) of the consent decree. Is that essentially the sort of authority that you'd like to maintain?

Ms. BINGAMAN. Yes.

Mr. WHITE. Doesn't that strike you as, that's kind of the wrong model for how we should approach this issue? I mean, we are the Congress. We ought to decide for ourselves what we think competition is, then we should have one Federal agency administering those standards. Why should we use a consent decree, negotiate it among the parties in the judicial setting to try to solve this problem for us. Why isn't it the province of the Congress to make this decision?

Ms. BINGAMAN. I think the reason for using it is because the Congress enacted the antitrust laws 105 years ago in the Sherman Act. Section VIII(c), which is what we're talking about, no substantial possibility of impeding competition in adjacent markets, is in the words of the Bell companies themselves in a combined brief to the D.C. Circuit in 1989. The elements of Section VIII(c) together prescribe a classic antitrust standard that a line of business restriction should be removed when there's no reasonable likelihood that a regional company could obtain market power.

This is not something different. This is something that is classic antitrust. You are dealing here with a particular industry that is unique. The country has followed for 90 years a policy of having local monopolies. We are now changing that policy, but we want antitrust laws to apply.

For antitrust law to apply in these particular facts, the standard that has been described, and which is operated under right now, is a classic antitrust standard and makes sense.

Mr. WHITE. Okay. But, we're not going to repeal the Sherman Act. We're not changing the antitrust laws. You maintain that jurisdiction. What we are going to do is revisit the issue in this particular industry and hopefully wipe out some of the incredibly com-

plex standards that we're negotiating in this consent decree that's now over a decade old.

So, it seems to me that it's entirely unprovident to wipe that clean and try to do this as efficiently as possible.

Ms. BINGAMAN. Well, the problem with that is, you're not wiping the slate clean of the accumulation of market power of the Bell companies for 90 years under the old system. That's a fact. And the facts that cause that remain, and the legal standard is 10 years old. The monopolies go back 80 years. And we're struggling with how to deal with that. I think this is a reasonable way to do it.

Mr. WHITE. And I understand your position. I would respectfully suggest to you that our adoption of a checklist is precisely that. It's precisely a congressional determination of what we think competition in this market should be.

Let me ask you another question. Because, you mention a fact that we're dealing with very complex stuff here. I certainly agree with that. It's a complicated thing, but I would submit to you that it isn't your job and it's not my job to figure all these issues out. It's the job for the industry itself, with minimal government participation to make sure that they're figuring out the complex interrelationship of all these technical standards.

You know, the idea that we're going to file a lot of legal briefs. And that we're going to unleash a lot of really smart lawyers and accountants on this to figure it all out, and economists, frankly seems to me exactly what we're trying to avoid in this legislation.

Ms. BINGAMAN. Congressman, you're going to unleash the Bell Company and they have many more than 50 lawyers, let me tell you. They've got thousands, and they are paid out of rate base. They are paid out of monopoly revenues from millions—250 million local subscribers and businesses in the United States, and you're saying, turn them loose, their legions of lawyers—way more than 50—and everybody better get out of the way.

What we're saying is, there needs to be competition and you're dealing here with powerful, powerful monopolies, which have been created legally, and we can't simply say, these people are like shoe sellers. They're not. This is a very different business, very different technology and powerful monopolies in the middle of it.

Mr. WHITE. And I'd just respond, we're also going to unleash the competitive forces of other people against these monopolies.

The whole point of this legislation is not to have a forum in the Justice Department where the Bell companies can use their lawyers to delay the competition from those other sources. So, I think that's really what this legislation is about.

Ms. BINGAMAN. Well, I couldn't agree with you more, but I think we disagree fundamentally on how to go about it.

Mr. WHITE. I think we do, too.

Mr. FIELDS. Ms. Bingaman and Mr. Irving, we really appreciate your attendance, your patience, your attention to the questions and concerns of our members. This is an open process. We welcome your suggestions. I would encourage, however, that we need your comments sooner than later, because we do plan to mark this up next week in subcommittee and then full committee the next week.

Thank you very much for coming in to participate.

Ms. BINGAMAN. Mr. Chairman, thank you very much for having us. We appreciate it very much.

Mr. IRVING. Thank you, Mr. Chairman, and we will be back to you with our further comments.

Mr. FIELDS. Thank you very much.

Chairman Hundt, we welcome you to the table.

It's my pleasure to welcome to the subcommittee, the Honorable Reed Hundt, Chairman of the Federal Communications Commission. Chairman Hundt, we will afford you the same courtesy that we afforded the first panel. We won't put a time limit. We just ask that you show some restraint and recognize that it will be a long day.

STATEMENT OF HON. REED E. HUNDT, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. HUNDT. Thank you for inviting me. I recognize that this is the dreaded lunchtime appearance, and I will aspire to be very brief in my opening comments.

I want to congratulate you, Mr. Chairman on the very hard work that you and your staff clearly put into this bill. I want to compliment the whole committee. I know that there was a bipartisan process and that although there is disagreement on some provisions, there is agreement on a substantial amount of the provisions and I think the nation should recognize that.

I would like to state clearly that there cannot be a more knowledgeable chairman or more knowledgeable committee in all of Congress, and it's a privilege to appear in front of you.

Why is this bill important? Mr. Chairman, the most recent example that I had was a couple of days ago in Richardson, Texas, in your home State. I went to the Richardson Junior High School and I saw there that wireless communications technology has been put into every classroom, due to a charitable effort by Southwestern Bell and the Cellular Telephone Industry Association.

As a result of this experiment—the first of its kind in the country—it has been discovered that productivity for that school has gone up 10 percent in just the first year. Fifteen days of teaching have been saved, per teacher, by the use of communications technology. We shouldn't be surprised. This is the exact same phenomenon that has been discovered by American business as communications technology has permitted us to vault into first place in productivity, worldwide.

Your bill gives the FCC a mandate to create incentives that will help us build communications networks into every classroom—and I want to thank you and congratulate you for that. Your bill, second, is important because it is going to create a greater likelihood that the children at Richardson Junior High School, and all the other children in the country will be able to move into a thriving economy in 21st century America, and that they will have good jobs, high-paying jobs waiting for them.

The majority of high-paying jobs created in this country today lie in the communications, information, entertainment and affiliated sectors in this country. That's why the efforts that you're engaged in here in your committee, Mr. Chairman, are important.

Now we're all counting on competition to do the job of creating jobs; and to make our economy thrive. We can count on competition to do that. That is the number one lesson of antitrust law, and I spent 20 years as an antitrust lawyer before I got my current job, and I believe in it to the very core of my set of values.

Our problem is that we have extremely limited competition in major communications markets. Cable has more than 60 million subscribers, its competitors—excluding the C-Band dishes, which you can't use in most areas—number less than 3 million. Ninety-nine percent of all telephone calls start and end in a monopoly.

Long distance competition is less vigorous than it should be. A glaring contrast, when we're able to—as Ronald Reagan used to say—"obsolete problems." When we're able to find new ways to bring in new competition, we can solve these bottlenecks, these monopoly situations. The best example out there in the market today is PCS, the cellular monopoly that Assistant Attorney General Bingaman talked about was a real problem in this country.

It has been solved, in my opinion, by the PCS auctions, which are bringing in three new competitors. Everyday you pick up an article from a newspaper that talks about how it's bare-knuckle competition, prices are going down, jobs are being created, the number of subscribers is going through the roof, this is the best thing going on in the communications sector. The PCS, local communications market is the most vigorous communications market in any country in the world. That's what we want to see in every one of the markets that is now dominated by monopolists.

Two key steps. First, take down all the barriers. This bill does that. Second, give the government the ability to create fair rules of competition. The bill does, in fact, aspire to that end.

What is our big concern here? Our concern is this, suppose all of these very, very large industries turn out to be like Sumo wrestlers, pawing the ground endlessly, throwing the chalk in the air, muttering various implications, but in fact, never quite rushing their huge bulks into competition with each other—spending their time threatening, but not competing?

The only way to avoid that is to make sure that fair rules of competition are created so that the invitation to compete becomes irresistible. That's the core issue in this bill. Does it do enough to create those fair rules of competition? I respect the intent. I want to mention several concerns and then cease and let you ask any questions that you wish.

First, I'm concerned about certain provisions that appear to strengthen the cable monopolies at the expense of their competitors.

Second, I'm concerned about whether the bill gives sufficiently explicit legal authority to the FCC to scrutinize and enforce the spirit and meaning of the checklist conditions and the other conditions of like entry into long distance.

Third, I am concerned about the possibility of promoting regional and local media monopolies, before the conversion to digital that will totally alter the scarcity question for the media.

Fourth, I'm concerned about the prospects of foreign monopolies being able to buy into our markets, while they are still monopolizing their home markets; and as the global media developments

occur that the congressman mentioned earlier, we must be attentive to the fact that if a foreign company is a monopolist in its own country, it has the prospect of using that monopoly to leverage unfair competition into this country. I'm concerned about that.

These are the concerns that I have. I have some other more detailed concerns, but I understand, Mr. Chairman, that this bill is being discussed today in an open atmosphere and that these concerns may well be that which you would wish to follow up on with me, and with the other witnesses. I am confident that progress can be made, and that the right bill for the country can come from this committee in very short order.

Thank you for inviting me.

[The prepared statement of Hon. Reed E. Hundt follows:]

Prepared Statement of Hon. Reed E. Hundt, Chairman, Federal Communications Commission

INTRODUCTION

Mr. Chairman and Members of the Subcommittee: It is a pleasure and a privilege to appear before you today to discuss H.R. 1555, the "Communications Act of 1995", and telecommunications reform in general. The Members and their staffs who participated in its drafting are to be heartily commended. H.R. 1555 represents a comprehensive effort, building on those of the last Congress, to bring the communications laws up to date to reflect the tremendous changes in this sector.

First, I want to note how much I support the basic policy thrust of promoting competition in telecommunications markets. The bill will advance this goal in many areas. There are provisions, however, that I believe should be reexamined. In one vitally important policy area—bringing advanced telecommunications services into our classrooms and libraries and anchoring them in all our communities—I think we need to do more.

THE COMMISSION'S ROLE

H.R. 1555 commits considerable responsibility to the Commission to carry out the bill's policy. By doing so, it recognizes that in several vital areas, competition remains but a goal and legislative as well as administrative action will be necessary to make this a reality. The bill recognizes that in the absence of a competitive environment, neither the purchasers of goods or services, or the economy as a whole, are well served. H.R. 1555 comprehends that it is the transition of moving markets toward a competitive environment where the work of the Commission, as well as state authorities, is imperative.

Competition is an effective means of pursuing lower costs and prices, higher quality, innovation, and quick response to changing needs. But competitive markets do not suddenly mature by legislative or administrative mandate. The Commission has long worked to foster competition. In the deregulation of customer premises equipment ("CPE"), in the development and implementation of a system permitting competing long distance companies to use the local telephone network to originate and terminate calls, and in the creation of the technical capability that permit consumers to select their long distance carrier, the Commission has played a critical role in removing barriers to entry by new competitors and ensuring that users have access to competing service providers. In the development of the new personal communications services (PCS), the Commission's key premise was to allow the market to determine the number of competitors, the services offered and prices charged.

The Commission's work in PCS has demonstrated the tangible benefits of competition. With the authority that Congress gave the Commission in 1993, it launched the first-ever auctions of the public airwaves, permitting the market rather than bureaucrats and lobbyists, to determine who gets valuable wireless licenses. High bids in the auctions the Commission has held to date total nearly $9 billion—the equivalent of $35 per United States citizen or about $100 per U.S. household. That is also $9 billion toward deficit reduction. Just as important the PCS auctions introduced advanced wireless telephone and data services, stimulating tens of billions of dollars in investment and creating hundreds of thousands of jobs throughout the country. PCS will provide competition to the cellular telephone business, reducing rates dramatically. There are predictions that 40% of the population will be wireless users

in ten years and that wireless will challenge the traditional wired network for basic phone service.

The Commission's role in removing barriers to entry by new competitors and ensuring that users have access to competing service providers is further reflected in its expanded interconnection proceeding. Expanded interconnection enables competitive access providers (CAPs), interexchange carriers (IXCs), and others to terminate their own transmission facilities at the local exchange carrier's (LEC) central office and to interconnect with interstate access services, including switched and special access services. Its import is greater user choice, increased LEC efficiency, faster deployment of new technology and reduced rates for services.

Additionally, in implementing the program access policies of Title VI of the Communications Act, the Commission's work has been directed toward enhancing competition and diversity in the video programming market. The provisions of the law prohibit unfair or discriminatory practice in the selling of programming to multichannel programming distributors. The Commission's implementation has set a careful balance of prohibiting exclusivity in the sale of video programming except where such exclusivity is justified by factors such as promotion of new services.

In these and a range of other areas, the Commission has shown its commitment to competitions value. Its actions show that these efforts include confronting unnecessary or duplicative regulations do increase costs and hinder development of fully competitive markets in telecommunications services. This is a fundamental aspect of the Commission's responsibilities.

That competition is effective does not mean that its potential is an adequate substitute. In several important market segments, most notably local telephone service and cable service, competition has not arrived. Furthermore, competition will not reach all areas and all users at the same time. Competition arrives first to high-volume users in urban and suburban areas. The telecommunications revolution is in transition to a new environment where there can be choice among competing suppliers of local, long distance, video and wireless telephone services. In this transition, federal and state officials have a responsibility to promote competition wherever and whenever possible and to enhance access to competitive markets for both consumers and providers of services and products. They must be cognizant of markets not yet competitive and have an ability to refrain from imposing obligations that undermine rather than foster the continued development of competitive markets.

But there are limits to what the Commission can do within its present authority alone. The American people and business need telecommunications legislation to bring about a new era of competition. H.R. 1555 provides the impetus in many important respects.

For example, H.R. 1555 addresses the interconnection responsibilities of telecommunications providers which are essential to telephone competition. The specific interconnection duties enumerated for local exchange carriers provide the Commission with the guidance it needs to promulgate clear rules. In addition, H.R. 1555 commits to the Commission the flexibility necessary to permit it to refrain from imposing obligations that would undermine rather than foster competitive markets. While these responsibilities are well within the Commission's expertise, the timeframes imposed, as well as the potential number of individual petitions the Commission will have to act upon imposes a substantial challenge.

The provisions of H.R. 1555 relating to license terms of broadcasters seek to structure a two step license renewal process. These provisions are consistent with recommendations of the Commission's Special Counsel on Reinventing Government.

With respect to foreign ownership restrictions contained in current law, reexamination of these provisions is timely and appropriate. Section 310 is a most powerful lever in opening restricted overseas markets to U.S. investment. But it would be a mistake simply to repeal Section 310(b). Any change should be flexible enough to be market opening, not market closing. The Commission has instituted a proceeding proposing that the public interest standard it uses in determining whether to apply Section 310 take into account the reciprocal openness of the market in the nation from which a potential foreign owner comes. Any revision of Section 310 should embody this reciprocity principle.

As to advanced television, it is essential that after a reasonable transition period, the government recapture the current analog spectrum. Only then will large amounts of contiguous nationwide spectrum be available so that its value is maximized to spur additional jobs, investment competition and auction revenue. Additionally, any fee structure that is imposed should not distort use and stifle consumption. The Commission should also not become intensely involved in monitoring, allocating and auditing the relative uses of the spectrum. The sections of H.R. 1555 relating to advanced television raise these concerns.

The extensive provisions of H.R. 1555 that address the local telephone exchange and impose interconnection responsibilities on the local exchange carriers, as well as the conditions for entry into long distance service by the Bell Operating Companies, are carefully tailored to ensure that a fair competitive balance emerges. In contrast the provisions addressing cable, where there is similarly virtually no competition, reflect no such balance. The definition of effective competition will deregulate the cable programming services tier in most markets, without a showing of actual competition or service offerings by potential competitors. Further, in setting a new threshold for rate complaints, the authority of the franchising authority is eliminated. The provision will essentially eliminate the ability of individual subscriber complaints to be considered or reviewed.

SERVING ALL AMERICANS

The provisions of H.R. 1555 addressing the reform of universal service seek to ensure that its important objectives are implemented in a manner that does not distort efficient investment or competitive markets. The bill recognizes the need for a comprehensive review and directs the Commission to commence its review promptly.

Importantly, H.R. 1555 needs to be expanded to bring the benefits of telecommunications to all Americans. President Clinton and Vice President Gore have stated a national goal of connecting the nation's schools and libraries to the information superhighway by the Year 2000. Speaker Gingrich has noted the importance of bringing advanced telecommunications to the schools. It was only last week that I appeared with him at a public school in Washington to demonstrate how telecommunications technology can enhance the education of our Nation's children.

The information revolution is leaving our schools behind. As telecommunications technology increases productivity and access to information across our economy, our classrooms are cut off from the communications revolution. Sadly, an educator from the 19th Century would feel completely at home with the technology of today's classroom. Every day, 45 million teachers and students enter a setting in which only 12% of the workplaces—the classrooms—have even basic phone lines. In this day and age, in which every shipping clerk is hooked up to a computer network and half of all workers use a computer at work, only 3% of the classrooms are networked.

A computer network connected to the classroom means that every teacher and child has access to the worlds greatest libraries; every child can improve his or her math skills by working with tutors and interactive programs on-line. Basic literacy today has to include computer literacy.

Teachers can be far more productive on a network. Studies show productivity increases of as much as 30%. Networked teachers can exchange lesson plans, get tips from their colleagues, or obtain access to the Library of Congress or the National Archives for teaching materials. In rural areas, you can teach subjects through distance learning that the consolidated school district can't provide teachers for. Yet teachers simply do not have adequate tools to use the resources of the information revolution.

Technology can draw parents into the education process. Already, in schools that use simple voice-mail technology, parents can call into a mailbox to find out the homework assignment or information about a class trip. In the future, classroom networks could eventually extend to the home and thereby fulfill what educators say is their biggest unmet need: lengthening the learning day and involving the parents.

These community nodes can be the town squares of the future. They can serve rural areas as well as the inner city. A fundamental element of universal service should include improving the quality of educating our children. We will not have to network every home if there is ready access in the community to advanced telecommunications services.

The private sector needs to develop the technology and do the work to network the classrooms and libraries. But there is an important leadership role for federal, state and local government. I suggest the following principles:

Assist with installation costs. The initial cost of networking the classrooms is the largest of all classroom network start-up costs. Every classroom should have e-mail and the capability to access the Internet. Preferential service rates for schools will only help once the network is in place.

Identify a support mechanism that is fair and efficient. The mechanism chosen should not burden a narrow set of ratepayers. A universal service support mechanism from all telecommunications carriers should be considered.

Create no new bureaucracy. An education support fund might be created resembling the Universal Service Fund.

Be technology neutral. Schools should be free to choose among competing networking technologies and providers, i.e., satellite, cable television, wireless cable, and wireless telephone, in addition to local telephone connections.

Create network and leverage other investments. In order to keep the cost low and ensure that awards are made only to school authorities committed to using and maintaining the technology, support should be based on a matching commitment to create the network—and not to fund the purchase of computers, program software, or teacher training. Developing networks should inspire educational technology markets and economies of scale.

CONCLUSION

In summary, the world has changed dramatically since enactment of the Communications Act of 1934. The technological innovations, the entrepreneurial zeal that pervades many aspects of the industry, the extraordinary growth and enhanced rivalry, have contributed to its primacy in our economy and its impact on the quality of the lives of the citizens. These changes, however, have not brought about competitive markets in several vital areas, nor will the enactment of legislation. Nor are technological advances alone enough to make their benefits accessible to those in the most need, our children. It is only through the commitment to bring about competitive markets, and entrusting the Commission with the necessary tools and resources to effectuate these important principles, can the new environment fulfill the promise of enhancing the lives of all Americans.

Again, I appreciate the opportunity to appear today. As always, the Commission's staff is available to assist the Committee in any way in bringing this legislation forward to enactment.

Mr. FIELDS. Thank you for that testimony.

Chairman Hundt, let me just ask. We do have a vote pending on the floor. If this committee were to stand and recess until 12:45, would that conflict with your schedule? Would you be able to come back?

Mr. HUNDT. I will be happy to abide by that.

Mr. FIELDS. Okay. This subcommittee will reconvene at 12:45.

[Brief recess.]

Mr. FIELDS. The subcommittee is called back to order.

Chairman Hundt, let me recognize myself for 5 minutes and begin. You made a statement in your opening remarks that you thought that the checklist—and I may be paraphrasing—was a good start, but that you felt that there might be some gaps that could present some problems to the Federal Communications Commission.

Could you identify what you see as shortcomings?

Mr. HUNDT. Well, I'm not so sure I'd put them in the category of shortcomings, but what I was specifically alluding to is, number one, I'm concerned that it be clear that the FCC has the legal authority to in fact scrutinize the verifications that are supposed to be filed pursuant to the checklist scheme; and to make an independent and reasoned judgment about whether the checklist has been met.

I'm really raising the point so that you will have an opportunity in the course of the hearings and the creation of a legislative record to give us assurance.

Mr. FIELDS. Do you have specifics where you may not have the jurisdictional authority?

Mr. HUNDT. I'm not sure it's a question of jurisdictional authority. It's a question of the meaning of the specific words that are in the bill.

The checklist scheme is a new concept. I don't think that it has any particular precedent that I know of; and I think we should all

recognize that legions of lawyers will subsequently come in and tell the FCC what it means, and other legions will tell us that they are wrong.

Mr. FIELDS. Let me encourage you, as I did with Secretary Irving and Assistant Attorney General Bingaman, that any suggestions you have we would really appreciate those suggestions prior to this weekend. We're going to be evaluating a number of suggestions from a number of different parties. This is an open process.

Also, in your statement on page 4, you talk about confronting unnecessary or duplicative regulations that increase cost and hinder development of fully competitive markets and telecommunication services. And you say that's a fundamental aspect of the Commission's responsibilities.

On page 58 of our bill in Section 229, we have a mandatory forbearance section that sets out some specific determinations that the Commission can make, by which regulations can come under the forbearance.

The general question is, does this help you in confronting those unnecessary and duplicative regulations that you testify about?

Mr. HUNDT. This is a very, very good provision. What your bill is doing here, Mr. Chairman, is dealing with the judicial decision that says that the FCC does not under the 1934 Communications Act have the power to stop asking for tariffs. You have correctly perceived that, while the court may be correctly interpreting the 1934 Act, it is one of the examples of how the 1934 Act is broken and needs fixing.

Mr. FIELDS. Of course, we would appreciate any other specifics that you think—regulations that could come under this that would actually help in promoting competition.

Let me go to the point now—the panel prior to your testimony—one of the main thrusts was the need for Justice Department involvement. What we have done in drafting is to attempt to come up with a model that opens the loop. We've tried to be as specific as possible. We have created time frames and a procedure, and in reading the legislation and also in the drafting phase, we've done everything possible to make you the ultimate traffic cop. In essence, verifying the certification that comes from the State, that the loop is open.

Do you see a need for a further backstop? Do you feel you're not capable of making the decision that the loop is actually open?

Mr. HUNDT. I feel that whatever agency of government receives these delegated duties needs to recognize that they are very grave and very serious duties. These are very complex issues. It is necessary to do market analysis to perform the duties that the statute does specifically give—in this case to the FCC.

That means you will need—we will need economists, antitrust lawyers, statisticians, industry analysts, top quality lawyers. It is not a question of hiring any infinite number of them, it is a question of recognizing the reality that literally thousands of lawyers will be employed by the private sector to litigate every word of your bill. That is an inevitability, and we are going to need to be beefed up in order to deal with that.

But we also are going to need, at the agency, to recognize that you have asked us to meet very strict time frames, and that we have a duty to you to do that. We will meet those deadlines.

Mr. FIELDS. I'm going to impose the same time restraints I have on the other members, but I would like for you to respond in writing as to why you would need antitrust attorneys. The answer you just gave—because it appears to us that most of these are questions of fact.

[Responses appear at pg. 360.]

I'll now recognize the gentleman from Pennsylvania, Mr. Klink.

Mr. KLINK. Thank you, Mr. Chairman.

Mr. Hundt, first of all, kind of going down—I apologize for getting back a little late from the last vote, if you've already answered this.

I know that you were here this morning when we were having the discussion with the previous panel in regard to the Department of Justice involvement in this. If I could just ask you—and even if you take my 5 minutes, go ahead. Because what I am interested in is your position on what you heard testified to today by the Assistant Secretary and the Assistant Attorney General, in regard to the DOJ dual role with the FCC.

Did that make sense to you? Does it not make sense to you? Where do you come down on that? I notice you said that you were an antitrust lawyer, so you bring that perspective to it also.

Mr. HUNDT. Well I have enormous respect for the Department of Justice for the Antitrust Division, and for Assistant Attorney General Bingaman. Essentially the role that Assistant Attorney General Bingaman was describing was the role of analyzing the markets.

This is, as I understand her, in the context of the checklist, the question of analyzing the markets as the checklist verification will describe them. She is, as I understand it, saying that the Department of Justice is very well equipped and well qualified to perform some of the role that you are delegating here to the FCC.

The point I would make is, the role does not go away. Whatever agency is put in, whether it's the FCC or the Department of Justice, the role does not go away.

To anticipate a little bit, the letter I will be sending to Chairman Fields, that's what antitrust lawyers do. You analyze markets, you see whether or not people are adhering to and complying with fair rules of competition; and the important point here to make is that competition is not a state of grace, once achieved, which is forever maintained; competition is always a struggle by its own terms.

In competition, the purpose of every competitor is to become a winner, which means to become a monopolist. It is a constant paradox in competition that it is always driving toward—if there is a really big winner—ultimately a monopoly.

That is why there is the notion in this bill that fair rules of competition will be set up, and will be continuously in force. The bill specifically provides opportunities for people who feel that after entry, if there is a violation of those rules, that they will be able to come in and file complaints.

To anticipate a little bit the letter I will send you, that is the kind of work that I did for 20 years as an antitrust lawyer; and

that is the kind of work that this bill would give to the FCC. It could—you could elect to do it with the Department of Justice. I don't think that we're ill-equipped to handle this role. I certainly don't think that they're ill-equipped to handle it.

Mr. KLINK. Is there territorial parity now?

Mr. HUNDT. The problem is the fact that the role doesn't go away, no matter what. Sorry, sir.

Mr. KLINK. That's all right. I hate to interrupt you, but is there territorial parity? I mean, do you—would prides be hurt? Is there an idea that you'd like to keep this power in the FCC for any particular reason? Or, is it something that you would feel comfortable allowing the Department of Justice do, and let the FCC do the things that the FCC is doing and has done so well?

Mr. HUNDT. If I may say so—and I think Assistant Attorney General Bingaman would agree with me on this—this legislation and the duties that it confers of a delegated character are just too important to in any way be reduced to turf battles between agencies. Neither Assistant Attorney General Bingaman, nor I, plan on making lifetime careers at these agencies.

The debate ought to be about where the right place to put these responsibilities is, considering the separation of powers. For example, do you want these responsibilities in an independent commission that is subject to congressional oversight? Would you rather have them in the Executive Branch, where the Department of Justice has a rather different role, vis-a-vis congressional oversight?

I would suggest to you that it is an appropriate area of debate and reasonable people could differ, but it shouldn't be about turf battles.

Mr. KLINK. You also—if I could shift gears just for a second here with what time I may have remaining. You were also talking in your testimony about wanting to get the information superhighway—for lack of a better term—into all the schools.

Mr. HUNDT. Yes sir.

Mr. KLINK. How would you envision—you also talked about incentives to build wireless into the schools—how would you envision this being paid for? Is this something that you would like to see the taxpayers of this great Nation foot the bill for? Or, is it something you would like to see as a responsibility of some of those who acquire great new markets? Where does this fall in?

Mr. HUNDT. Excellent, important question. For 61 years since the 1934 Communications Act, and even before then, it has been the policy of this country to recognize that it is better for everybody, if we have techniques to make sure that virtually everybody can have affordable access to communications.

That is why we have 93 percent of our country with telephone service today. That is not driven exclusively by competition. In fact, it is hardly driven at all by competition, since local telephone service for residential users is essentially not in a competitive condition today.

It is the Universal Service Fund that makes sure for a particularly high cost to consumers, for the poor, for the aged, there are techniques for them to have their telephone bill reduced to an affordable rate so that they can have telephone service.

But we have had a huge oversight in this country. We have done nothing to put even humble telephone lines into our education community. Ninety percent of our classrooms don't have a telephone line. The teacher can't call for advice. The teacher can't call for help.

Now, this is totally inconsistent with our goal of having everybody participate in the networks. Fortunately, the bill gives us the mandate to make sure that we don't leave out the education community. The bill does do that.

Mr. KLINK. I yield back. I still didn't hear who pays. I'm sorry if I missed that.

Mr. HUNDT. The Universal Service Fund is a pool of money which is drawn in large part from access charges, and then it is redelegated to the needy, in essence, so that the networks can be extended. That's the technique.

Mr. KLINK. I yield back, Mr. Chairman. Thank you.

Mr. FIELDS. I thank the gentleman.

The vice chairman of the subcommittee, Mr. Oxley of Ohio.

Mr. OXLEY. Thank you, Mr. Chairman.

Chairman Hundt, you notice in Communications Daily, for example, today it was announced "MCI and News Corporation have formed a global venture up to $2 billion." This follows in the path of the agreement that Disney and Ameritech, Bell South and others—and the ability of Sprint—to try to attract the capital through investments from French Telecomm and Deutsche Telecomm which I think all of us agree, ultimately for American companies, the search for capital to be able to build out, and to be able to provide the kind of competitive services that the public is demanding.

I think all of us would applaud those efforts and think they are clearly in the best interest of the consumer to do that, to give him more choices. But the key to it is to attract capital.

The reason I raise this, as you know, the whole attention on 310(b) and our efforts to try to repeal 310(b), as you know, in an act that was passed back in 1911 during the first World War. I'm interested in your views.

First of all, if Section 310(b) is repealed and the foreign ownership is determined in the market access approach, in your estimation, who would make that determination? Would it be USTR or the FCC?

Mr. HUNDT. If we had an effective market access test?

Mr. OXLEY. Yes.

Mr. HUNDT. Instead of an absolute cap?

Of course, as you know, Congressman, you're harkening back to the excellent hearing that you held on this subject before in which various representatives of these agencies danced around that question.

I think, again, that's a policy call. I would defer to your judgment. I think the FCC is perfectly capable of doing that. I do think that, as Chairman Fields mentioned, we sometimes have, and we do have at this time, a GATT process, which is a multilateral process.

We need to provide for a multilateral agreement to override any particular bilateral investigation, which is what you would be doing

if you were looking at effective market access in the context of a single transaction.

So, I think you should have market access investigation in the single transaction, and the FCC would be highly competent to do that, if we continue to have the resources. But, if you have a bilateral negotiation, clearly that should be able to override. That's why USTR is mentioned in this context, because they are in charge of those bilateral negotiations.

Mr. OXLEY. Well, as you know, the European Union has determined that the telecommunications facilities in those member countries be liberalized by January 1998. So it does appear—and the Germans were here just a month ago to announce the liberalization of their Deutsche Telecomm, which was an encouraging possibility. Obviously, our efforts to try to keep in step with the British, now the Germans, and ultimately the rest of the European Union in that regard.

In your testimony, your written testimony, on 310(b) you don't mention broadcast. Do you distinguish between broadcast and telecommunications with respect to that section? If so, how would you distinguish?

Mr. HUNDT. I don't make an absolute distinction in my testimony, and as I testified in front of your committee, I don't perceive it as necessary to make an absolute distinction. That is because I think that over the next few years it is going to be very, very difficult to perceive strict confines between these industries.

You mentioned in your earlier question transactions that already are showing the crossing of lines, and the kind of muddling of classification. I do think that in mending the public interest examination, and including in the effect of market access, it would be appropriate to permit—if it were the FCC—the FCC to have the opportunity to examine general public interest issues with respect to broadcasters, when the acquisition comes from abroad.

In your hearing, I can't remember which congressman mentioned it, but someone raised the hypothetical of a potential acquisition from a hostile country. Well, if you have the public interest standard, generally, still in the law, you obviously could rule against that kind of transaction.

Mr. OXLEY. Thank you. Thank you, Mr. Chairman.

Mr. FIELDS. The Chair recognizes the gentleman from Illinois, Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman.

Chairman Hundt, I also welcome you here to this committee and I wish when you get back to your office if you would pass on my best regards to Commissioner Barrett, a lifelong friend of mine from Chicago.

Mr. HUNDT. I will do that.

Mr. RUSH. Yesterday I asked one of the members of our long distance industry if access for our Nation's classrooms should be a core principal of universal service, and should the Federal Government have a role in promoting access to telecommunications technology to our Nation's classrooms.

The answer was something—and I'm going to paraphrase this—because their industry is so heavily regulated, and must operate in a competitive market, it is not the place of government to also

mandate upon these companies, "social policies." What are your thoughts on this subject?

Mr. HUNDT. Well, I don't think it's reasonable to say to any particular company or any particular industry, "You would have the duty, all by yourself, to deliver communications technology to classrooms and you don't get paid for it."

You haven't suggested that. The bill doesn't suggest that. I wouldn't suggest that. I do think it's reasonable to say to our entire telecommunications sector, you're giving an awful lot to the country by your commercial activities, but in addition, we would like to arrange a scheme where you will be able to tap into a pool so that you can, at a particularly low price, extend communications technology into the classrooms.

Now, we know this, if just pursuing commercial ends, all by itself, were to get communications technology into the classrooms, it already would have happened. But not only has it not happened, but there is no place in the United States where it is more difficult to get access to communications than in any classroom in the country.

We have to solve this problem. We are plenty rich enough to solve it. We would be too poor in spirit if we were not to take this on. Now, it can't burden just one industry or one company, but it can be a fair burden shared by everybody, and they can be compensated with the universal service techniques that have worked for us for decades.

Mr. RUSH. Do you see any deficiencies in the bill as it's currently drafted? If you do, what kind of remedies would you suggest?

Mr. HUNDT. Well, if I can, I'd like to—on this subject—take advantage of the chairman's request and give you something—if we have anything—in writing tomorrow, if I could do that.

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

Mr. FIELDS. I thank the gentleman for yielding back.

The gentleman from Ohio, Mr. Gillmor.

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

Let me follow up a little bit on this line of questioning. I think the problem clearly isn't that the technological ability is not available to the schools, but rather it's a matter of money. In fact, in probably thousands of schools across this country, it's being poorly utilized.

I want to follow up on the aspect of how you pay for it. Let me just pose a hypothetical example. In a sense, this new information technology is the new textbooks.

We have not said in the past, whether it's been school textbooks or lab equipment, that they should be paid for by the publishers of textbooks or the makers of lab equipment. We've said that this is an educational function and the schools and taxpayers in those districts should pay for these services, which they can do now with the new technological capabilities we have.

Is it your position that we ought to reverse that long-held view of education and say it's now a Federal responsibility to provide that? If so, I really didn't get an answer to the question that was asked earlier, but how are you going to pay for it? How much is it?

Mr. HUNDT. The education function, virtually everywhere in this country, as I hardly need to say, is a government function.

Mr. GILLMOR. But it's 94 percent State and local government function; and it's a 6 percent Federal Government function which—I don't want to get too far afield—incidentally generates half the reports that the education community has to fill out.

Go ahead.

Mr. HUNDT. And I believe that the principal burdens should be and carried at the State and local level, as far as education is concerned.

But I don't think that it is wise to take a school district in Ohio, Illinois or any particular State and say, "Well, you're on your own," when it comes to dealing with communications.

With respect to every consumer in the country, we have arranged a variety of schemes that make sure that they can have affordable access to telephones. That's our universal service scheme. That is why——

Mr. GILLMOR. But having a phone line going into the school doesn't solve the problem. Who's going to pay for the equipment? Are you proposing we do that? I believe this is the peanut share of the cost of dealing with this problem.

Mr. HUNDT. Well, I certainly agree it is not the greater part of the problem of bringing technology into education. It is a smaller part. But I think it is a crucial part.

We have repeatedly found that just getting networks into businesses immediately changes the businesses. They know what to do with computers once they're connected to networks. They know how to talk to each other. They know how to use E-Mail. Congress is doing the same thing. It is changing the way it behaves. It is a terrific revolution.

All I'm saying is that since we have a whole variety of very sensible plans that make sure that communications technology is affordable to every residence in the country, it is a very small but crucial addition to make it available to every teacher in the classroom. We have 2 million teachers in 2 million classrooms. We have almost 200 million telephone lines. We need 1 percent more—just the 1 percent more—to get them into the classrooms.

Mr. GILLMOR. Okay, but you're not proposing anything other than the phone line going in there, which doesn't solve the problem. That's basically your answer, as I understand it.

Mr. HUNDT. The telephone line is a crucial part of this. It is the telephone line, as phone companies now bill them today, that is access to the information highway.

But, I would say to you, congressman, I am also not proposing that the telephone companies be anointed as the exclusive providers in these services. I'd like to see cable and the wireless and telephone companies all compete for the right to be able to provide these kinds of services.

But I think we have to recognize that you need a mixture of local revenue, State revenue, corporate volunteers and PTA activism, and some universal service funds. You put that stew together and it will be bubbling and good for everybody.

Mr. GILLMOR. Thank you.

Mr. HUNDT. Yes, sir.

Mr. SCHAEFER [presiding]. The gentleman's time has expired.

The gentleman from Colorado now will ask a couple questions here. I appreciate the opportunity for you to be here this morning, Mr. Hundt. As you know, we've worked long and hard on trying to piece together a piece of legislation. We've really taken a lot of what we had in last year's bill and then expanded on it a bit, as a number of individuals know in this room.

I would just have to say that I was pleased to see the FCC just last week finally come out with a new ruling and rate relief for small operators—after some 2½ years—of which we have talked about before.

I'd just like to ask the gentleman how he arrived at the 400,000 subscriber number? How was this calculated?

Mr. HUNDT. You're referring to the definition of the——

Mr. SCHAEFER. Yes, for small operators.

Mr. HUNDT.[continuing] operators eligible for moving to the national average technique that Meredith Jones and the Cable Bureau have created here.

I will fully concede that there is a mixture of science and art involved in this. There is no absolutely right place to draw the line. The line is—if you study the size of MSOs in this country—a reasonable break point. There is a huge number of companies on the small side of it. About two-thirds of all companies are below that line, about a third above. On the other hand, about 10 percent of the consumers are below that line.

When you start to go right above that line, you will very greatly change that dynamic. If you add just one or two more companies, you greatly add to the number of consumers. So, when you look at the chart, it looks like a sensible break point. But I couldn't tell you that it shouldn't be a few more or a few less.

Mr. SCHAEFER. The legislation as it is now written, of course, says 1 percent of the subscribers in the country.

Mr. HUNDT. Right.

Mr. SCHAEFER. Which is really about 600,000. So, there's not a lot of difference there between the two. In this particular case, we're going to be taking in again, as you stated, most of the operators—maybe not most of the subscribers, but at least most of the operators.

As you and I have spoken before, major concern has been that these small operators are just going out of business, or selling out, at the detriment in many cases to the consumer, who is out there that they supply.

So, I want to compliment you on finally reaching this particular ruling or regulations that you have finally put out.

Mr. HUNDT. If I could—thank you very much. Cable brings so few compliments to the agency. It's always nice to collect them when they're available.

The break point that you have suggested, congressman, would take us from approximately 66 percent—which is our break point—to 71 percent of operators. It would take the number of subs from 10 percent to 31 percent.

So, that's what I meant by saying, as you go above our ceiling, you greatly add on the sub side, but you don't get that many addi-

tions on the number of operator side. But, I will concede to you, this is a judgment call.

Mr. SCHAEFER. Well, we've hassled with this for quite a while, trying to come up with a correct—talking with small operators and everything else—to come up with a correct percentage that we can deal with.

Now, according to your figures, less than .03 percent, that's three one-hundredths of 1 percent of cable subscribers have actually filed a complaint against their cable company at the FCC since September 1993. Now, because of the one-complaint threshold, which we have talked about and which I have a lot of concerns with, the FCC has to investigate some 4,000 cable systems creating a backlog of cases which has taken you on an average—until at least last September—to finally come up with a solution.

Now, of these complaints that you looked at, you found in favor of the operator—the operator—about 97 percent of the time. Now, would you agree or disagree that there is little consumer benefit out of this single complaint and that maybe we ought to look at a different complaint structure?

Mr. HUNDT. I do think you should feel free to look at a different complaint structure, but I would not agree that the current complaint structure generates little consumer benefit.

The current complaint structure is the chief enforcement technique. It is, in my judgment, the case that most operators—the overwhelming majority of operators—comply with the rate regulation without the need for complaints; but that is in part because only one complaint is necessary to trigger the process, and consequently, they are greatly motivated to comply anyhow.

Now, I would say, congressman, that the bill in this area does give me a little bit of concern, because of its differential results. The bill says that the number of complaints to trigger a process are either 10—I think, or 5 percent—whichever is greater.

What this would mean is that if you by chance happen to live in New York, in order to register a complaint, you would have to have 50,000 people because you're in a 1 million subsystem, whereas, if you happened to live somewhere where there were only 200 subscribers, then you'd only have to find 10 people to file a complaint.

But, from the consumer perspective, I would think that there's no particular reason for you to have to find 50,000 people in New York and only 10 people in a small town. From your perspective, the situation is that you'd feel that you've been wronged.

A cure of this—a partial cure of this, if I might be so bold—would be to allow a local franchising authority to trigger the complaint process, which the bill I think does not do.

Mr. SCHAEFER. So—but, if we're looking at 5 percent, we know we have a bad actor, when we have a problem with this many people filing a complaint about it. But that also means that 95 percent of the people are happy.

Mr. HUNDT. Well, if you're in a very small town and there's only a couple hundred people, 5 percent becomes a very, very small number. So, in that case, actually you tilt, I think, too much in favor of the small number of complainants. You would, I would

think, rather have the local franchising authority have the responsibility for triggering the complaint.

But I just don't quite see the equity between dividing between those consumers who happen to be consumers of big companies, and those who happen to be consumers of small companies.

Mr. SCHAEFER. Well, I think a lot of these people sitting up here at this table, including myself, would be very happy to have 95 percent of the people liking us.

If indeed we are a bit off base on this, let me ask you this question? Do you think in your own mind that one single complaint from a franchise that has 400,000 or 50,000 hookups is justifiable to basically put a hold on a cable operator?

Mr. HUNDT. As I read the 1992 bill, the purpose of the one-complaint trigger was to create a substantial deterrent so that virtually everyone in the industry would comply, regardless of the possibility of complaints, because the trigger is so sensitive.

Mr. SCHAEFER. One complaint, I mean, can be anything or anybody. We even had cases where a professor in a school had his students write complaints to see how the system worked. Therefore, what did it do? It basically held neutral a cable operator.

So, all I'm saying is, there's got to be some other ground out there that we can plow on this one and figure out another way by which to institute this.

I think my time has expired. I didn't have my light on here. We will recognize the gentleman from Massachusetts.

Mr. MARKEY. Thank you.

Welcome, Mr. Chairman. You run an agency with roughly 2,000 employees that basically oversee about one-eighth of the American economy. This bill includes a list of checklist items that have to be put on the books in order to protect smaller companies as they're trying to get into the local telephone business loop, amongst other things.

Do you have enough personnel to get this done in 2 years?

Mr. HUNDT. With respect to the checklist subject, I would say that we have substantially less than 200 people who have the skills set and the positions in the agency to address the checklist issues. That's a very, very small number. They will be out numbered by industry litigants and lobbyists by a factor of, who knows, a hundred to one. I think it's a very serious concern.

Mr. MARKEY. Okay. Now, on the issue that—related to the issue that the gentleman from Colorado was raising—well, under the standards of the bill as it exists today, you would have to have upwards of 5 percent of the subscribers complaining in New York City. That would be, perhaps, 50,000 people.

If 50,000 people sign a petition complaining about their cable rates, they probably wouldn't be calling you a bad actor, there would probably be other words they'd be using and probably representing a much larger constituency that would be angry. I don't think we have to reach that level to know that there's a problem.

On the issue of uniform pricing, in the legislation as it's presently drafted, there's a provision that narrows the application of so-called uniform pricing. My concern about it is this, Mr. Chairman. My fear is that whenever a cable company would see a satellite dish, a DBS dish, an 18-inch dish, they'd go right to that person

and say, "Well, in apartment one through 100 they're going to keep the same cable price. But for you, sir, we're going to give you a $50 discount if you will dump that DBS dish, and for you you're not going to have the same price as everybody else."

That would essentially allow these large cable companies to strangle this DBS industry in its crib, as it's just growing, if they were allowed to go in and do that kind of predatory pricing.

Could you give me your views on that issue and how you think we should deal with it?

Mr. HUNDT. I think the uniform pricing changes that are suggested, I'm sorry to say, very much tend to strengthen the cable monopolies at the expense of their competitors.

The marketing practices that would be permitted by this proposed change in the law, I think we would have to say would be directed very specifically at DBS, MMDS and Cable Overbuilders. They would all be instances where the huge market share that most cable companies currently have could in fact be extended by discriminatory pricing.

Discriminatory pricing sometimes is good for consumers. But when there's a large incumbent monopolist that can engage in discriminatory pricing, then it is an anticompetitive technique and we do not now have enough competition in video programming to allow that, if we really want to get more competition.

Mr. MARKEY. I share your concerns and I hope we can work something out on that to make sure that this DBS industry is not made vulnerable by that predatory pricing practice.

You know, most of the members of this committee voted for GATT and for NAFTA, I amongst them. There's kind of a deal there that's struck. America lets the low-end jobs go as we tie in the high-end jobs that require better skills with the technologies related to the industries that you oversee.

In this bill we have a universal service provision that tries to achieve the goal of getting these computer technologies into every classroom in America. Do you have any recommendations to us with regard to how we insure that every kid, regardless of what income background they come from, has access to the technologies that gives them and their families a sense that they can compete for jobs in this modern 21st century economy that we're already living in?

Mr. HUNDT. We know how to fairly accomplish incentives that build communications networks to rural America, to poor people. We have a number of tried-and-true techniques, such as relay service, that make communications technology available to the disabled. We need to use those tested, proven, workable techniques and just give a different goal, which is the goal of making sure communications technology can reach the education community, and reach the next generation.

I think that specificity is what is wanted here in terms of the legislative mandate; and if we have any specific worries—and I think we do—we will be giving them to the chairman as he requested earlier by tomorrow.

Mr. MARKEY. I do think it's very important for us to continue to focus upon the necessity of insuring that every child—increasingly that child has access to a handgun in their school yard, in their

neighborhood at age 10, 11 and 12. We have to have the competing technology in the classroom that the child can use. Right now, only 5 percent of all classrooms in our country are wired for this technology.

Unless we deal with that disparity, the mother just won't have— the father won't have the competing technology to challenge that handgun as an alternative means of dealing with the society that gives them little hope. We give them hope by putting this in the classroom, and also giving them access at home at reasonable rates.

I thank you for your efforts in that direction.

Mr. OXLEY [presiding]. The gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman, and I just want to welcome my good friend from the FCC, Mr. Hundt. I think everybody up here feels you're very forthright and able, so we're glad you took of your time to come here.

We've probably been talking about our telecommunications bill, but I'd also like to ask for your comments on H.R. 1556, which is dealing with broadcast ownership reform. Maybe you could specifically give us your opinion in this area, to repeal or modify the broadcast cable or network cable ownership restrictions; and then I have another follow-on question.

Mr. HUNDT. I think that it's certainly high time to layout a blueprint vis-a-vis media ownership that is appropriate for the digital age. I think that, for example, when we do roll out the digital spectrum, and if as this bill suggests, broadcasters have the ability to deliver in Washington, DC 40, 50 or 60 different signals, then it will be very fit, right and proper to reexamine the ownership restrictions and make sure that what we are applying is a good antitrust paradigm.

You should not be able to buy so many of the signals that you can dominate the market. We should have competitive markets, but we don't need to have arbitrary restrictions such as only one network per city.

I do think, though, congressman that it's very important that we all recognize that TV markets on a local basis are very different city-to-city. I don't have to tell the members of this committee. I'm sure that they know and can compare notes. In some cases, there are 10, 12 stations in a market. For a city like that to have two of those stations owned by one network doesn't seem to raise any anticompetitive risks.

Mr. STEARNS. Specifically, in the bill 1556, do you have objection with the 35 percent ownership at the date of enactment of the law, and then a year later going to 50, and then the FCC at the end of 2 years going ahead and—I mean, would you endorse that today? Would you say that that is an acceptable proposal?

Mr. HUNDT. Well, the national ownership cap going up, as you know, congressman is something that we suggested at the FCC. I can't, as a matter of law, prejudge our ruling there, but I can tell you what we suggested there, and what's in this bill are pretty much the same thing.

Mr. STEARNS. I take that as endorsement. It's close enough. What about broadcast newspaper restrictions, national local TV ownerships? This whole mass communications is sort of one line in

this bill that everybody just sort of glosses over, but it means of course, deregulation of ownership for publications, newspaper publications, radio and everything.

Do you agree? Could you give that same kind of indirect answer that you just gave on the other one?

Mr. HUNDT. I think the lines between these different industries definitely are blurring. Your bill foresees that those blurrings will become inevitable and that we won't be able to perceive lines.

I don't disagree with that, but I do very much think that it is important to have government continue to have the power to watch out for and protect against many monopolies on a city-by-city, market-by-market basis.

If you're in a town where there's only one newspaper and one cable company and four TV stations, I don't think we should have just one or two firms own all of those outlets. I think that would be anticompetitive. But, if you're in a town with two newspapers, a cable company and 14, 15 TV stations, the competitive circumstances would be different there.

So, I very much hold to the notion that markets should be judged on their own individual facts, and that good antitrust policy, which the FCC tries to follow, should be able to be implemented on a market-by-market basis.

Mr. STEARNS. Well, in this bill that we have, we do specify that you have the authority under those circumstances to see if competition is being fulfilled. Do you feel under this bill, this 1556, that you will have sufficient language so that you could protect the local markets from being dominated by one corporation?

Mr. HUNDT. I do have some suggestions that I'd like to give you, if I could be so bold, in writing——

[The responses appear at pg. 360.]

Mr. STEARNS. That would be excellent.

Mr. HUNDT. [continuing] that would permit me to say, yes, to your question.

Mr. STEARNS. Well, Mr. Chairman, I think—and I also said that to my good friend from Massachusetts, Mr. Markey, that we have got sort of an endorsement by Mr. Hundt for our amendment dealing with broadcast ownership, sort of an indirect. We have played off what he has requested. He seems to be pretty happy, as well as dealing with mass communications. So, with his input, perhaps we can get a bipartisan bill here.

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

Mr. FIELDS. Thank you very much.

The gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman.

Good afternoon, Chairman Hundt. It's good to see you and thank you for being here today.

First of all, I applaud your efforts about the issue you brought forward some time ago, and I hope that that dream comes true about connecting our schools. I think if there is any way to boast about America being prepared for a new century, it would be that we would form policies that would actually make that a reality.

So, I want to thank you for your leadership on that; and acknowledge some of the views here at the committee and hope that it will become a reality.

I wrote to you recently about an issue, and I know that you know that I'm concerned about it. That's the issue of interoperability and what the FCC views its role to be in establishing an information network on which equipment and applications can connect and communicate with ease.

What are your views on this issue, particularly with respect to set top boxes in homes across America? Do you believe that the language in the bill that we are shaping is appropriate?

Mr. HUNDT. Thank you very much, congresswoman, for your remarks and for your interest in the education issue.

I think that the core principle of interoperability is another way of saying that consumers should have the power to choose among competitors, that they should not find themselves confronting a bottleneck anywhere in the communications pipeline. If they're looking at a TV set or a computer screen, it ought to give them choice of whatever long distance company, of whatever software, or of whatever TV show that might come down that appliance.

The core principle of interoperability is the only way to make sure that the policy of competition that this whole committee is endorsing, actually, ultimately will be meaningful for the consumer. I am concerned—as we all should be concerned—that it is so hard for us to look around the corner here and see where the potential issues really rely.

The industries are certainly doing that. But I don't believe that it is a question that should be exclusively left to industry, because the public interest needs to be represented here. I very much commend the bill for making it clear that the principle of interoperability ought to be enshrined in law.

I will have some modest suggestions about changes in the language in this area; but you do have the principle in this bill, although I think it possibly should be tweaked a little bit.

Ms. ESHOO. Let me follow up by asking you, should people not be able to—shouldn't they also be able to choose among standards in terms of who's offering what?

Mr. HUNDT. That's a very, very hard question. Sometimes standards are pro-competitive. Sometimes standards are anticompetitive.

A core issue is whether a standard is set by a monopolist. That often means that it is not a standard in aid of competition, but may be a standard that's created precisely to preclude competitors. Another issue is whether a standard that is adopted by an industry is one as to which there are proprietary rights so that no one else can share the standard.

I cannot, I'm sorry to say, give you a particularly easier, straightforward answer, because this is such a complex problem. That is precisely why I have the view that the public interest in interoperability should be enshrined in law, and that the agencies of the government such as the FCC and the Department of Justice should be able to constantly make sure that industry standards—whether they're de facto or set by industry consortium—are not used anticompetitively.

Ms. ESHOO. Wouldn't it be more prudent to help shape those so that the competitors would know what the rules of the game are and then operate that way for the best interest of—not only competition, but what competition is really good for—the consumer.

92-967 0 - 95 - 10

If we fail to reach that standard, then we will have failed. But, wouldn't it be more prudent to do it that way?

Mr. HUNDT. I tend to think that the key is to give delegated power to an agency such as the FCC. As a rule, it would be better if the government did not have to select the standard.

For example, in PCS, we did not select a transmission standard. We think that the competitors should fight it out. On the other hand, with respect to the digital broadcast of TV signals, I think we will authorize the standard, because it will be pro-competitive to have a common standard.

There just is never going to be only one way to do this. It's going to be case-by-case, issue-by-issue problem, and our agency should have the ability to follow the law that you lay out and apply it to the different facts of different emerging industries.

Ms. ESHOO. Thank you.

Thank you, Mr. Chairman.

Mr. FIELDS. I thank the gentlelady for yielding back.

The gentleman from Washington State, Mr. White

Mr. WHITE. Thank you, Mr. Chairman and welcome, Mr. Hundt.

I'd actually like to follow up on some of the excellent questions asked by my colleague from California on the question of interoperability. Let me just make sure I understand what you're saying.

You said that you thought the principle of interoperability should be enshrined in law. What did you mean by that?

Mr. HUNDT. You know, interoperability can mean many different things. Let's suppose that the question is the picture that's presented on your TV screen of the future, the TV that combines a computer and that gives you access to either broadcast TV, cable or on-line services or the Internet.

Now, suppose that picture were generated by software that was provided exclusively by one company in the marketplace. Suppose that one company were to say, "Well, we are picking the number of services that will be carried on the picture, and we've decided for example that if you buy our software, which happens to have"—and I'm making this up—"a 90 percent market share, you can't subscribe to any long distance company except the one we provide you."

That would be—although it's a cartoon version—an example of how the consumer was denied choice.

Mr. WHITE. I understand, but I guess I was asking you a little bit more specific question. Do you think the principle of interoperability ought to be enshrined in the law, and you have some discretion or ability to administer that, what kind of ability are you looking for? What are you going to have in there that you think your commission should be doing?

Mr. HUNDT. A specific mandate to order that standards be open when, in fact, the absence of that order would lead to anticompetitive situations and the exercise of monopoly power.

Mr. WHITE. Okay, so in other words, you'd like to have something that says you can review the standards that the government—that the industry adopts, and that if in your judgment, you think they're anticompetitive, you can come in and change things. Is that essentially what you have in mind?

Mr. HUNDT. That would be part of it. That would be one option.

Mr. WHITE. What else would you like to have?

Mr. HUNDT. Well, I think that you might be able—and I think that Congressman Eshoo suggested this—you might be able to empanel industry groups, give them the mandate to develop standards that are open, not have the government pick the standard, but establish the principle that those industry groups would develop open standards. That would be another way to address the same problem.

Mr. WHITE. I mean, you know, as I understand it—and I think you're probably in agreement with me—the principle of interoperability really is a software problem. It's a question of how the software is going to allow all these various elements on the network to work together.

You wouldn't take the position, would you, that there is a lack of choice in the software industry itself now? I mean, you wouldn't say that there's a lack of consumer choices now in the software industry, as opposed to the telecommunications industry, would you?

Mr. HUNDT. That is a very general question and with great respect I have—by no means consider myself to be sufficiently expert to give you an answer. I can tell you that I don't go a week without hearing from some computer company, and everyone says, there's plenty of competition. The next one comes in and says, they're just about to be driven out by a monopolist.

So, I hear lots of different views.

Mr. WHITE. Let me make it a little bit more specific.

Let's say that you had the same sort of choice available in the telecommunications industry in the future that you have in the software industry now. Would you intervene in that situation and try to make it more competitive, or would you be satisfied with the sort of choices that are available to consumers?

Mr. HUNDT. I'm simply not now sufficiently versed in the software markets of this country, with their many different operating application features to give you an answer that's worthy of being put on this record; but I will say in general what I think you already know, which is that, all competitive markets run the risk of devolving into monopolized markets. All monopolized markets can, with fair rules of competition, be broken up by new competitors.

These are always fluid situations. All I'm saying is that I commend the bill for establishing the principle of interoperability and recognizing that it will have different applications in different years to different markets.

Mr. WHITE. There really isn't any question, is there Mr. Hundt, that we've got one of the most competitive software markets around. The choices have been evolving year-by-year.

If you buy a programmed software application this year, it's going to be obsolete next year. Is there really any question whatsoever that we have a highly competitive, very pro-consumer market in software?

Mr. HUNDT. If you restate the question, congressman, with slightly more narrow confines, you—as I think you know—are going to run into very serious debate. If you ask the question about financial application packages, you will be talking about a lawsuit that's just been filed to debate this very question.

Mr. WHITE. Sure, okay. Thank you very much.

Mr. FIELDS. I thank the gentleman for yielding his time back.

The Chair now recognizes the gentleman from Virginia, Mr. Boucher.

Mr. BOUCHER. Thank you very much, Mr. Chairman and Mr. Hundt, welcome again to this subcommittee. We're always pleased to have you before us. We learn a great deal from the information that you provide. Today is certainly no exception.

I'd like to ask you about an issue that is not squarely addressed in our legislation, but which will be coming before the FCC in the not-too-distant future, concerning the desire of broadcasters to make a transition from their analog system of delivery today to a digital system of delivery.

In order to do that, it is necessary that there be a means of transition. That means of transition, in all likelihood, will be the award of a second, six-megahertz of frequency by the FCC to broadcasters for the purpose of making that transition.

They would then begin broadcasting in digital format on that second six-megahertz, and for a period of years—it's been suggested about 15 years—there would then be a gradual transition of the consumer premise's equipment from analogue television sets to digital television sets. At the end of that 15 years, when the transition is complete, the first six megahertz on which analogue transmission is occurring today and would continue to occur during that 15-year period, would then revert to the public domain and would be available for other uses.

Now, the question is this, what we have anticipated is that broadcasters would use the second six megahertz for digital transmission, but there's a great deal of doubt about what that digital transmission will be. A great deal of time and effort has been invested by what is known as the grand alliance of companies in developing a standard for high-definition television.

But there is no real assurance that broadcasters, if they have total freedom of choice, will elect to make the investment in equipment necessary to deliver HDTV quality signals. In fact, a number of broadcasters have suggested that they in fact would prefer to deliver a multiplex of signals over the additional six megahertz that could be lower quality—or lower standard than HDTV, which itself is about 1,100 lines of resolution. A lower quality digital signal be 500 or 600 lines of resolution.

In the legislation that we have considered today, we have referred to this new era in television as advanced television services. But we're basically leaving it to the FCC, in these early drafts, to make a decision as to what advance television services will mean. Will that be the higher quality resolution of high definition television? Or, will it be something less, along the lines of preference many broadcasters have expressed?

I wonder if you're prepared today to give us some indication of the direction that the FCC intends to go in determining what advanced television services will mean? Will the public get the benefit of HDTV, or will the public simply get the benefit of a lower quality digital service?

Mr. HUNDT. This is a huge topic, as you know, congressman. It's about the end of TV as we know it and the beginning of a poten-

tially different product, including everything that we know from TV today and a heck of a lot more.

I, of course, can't speak for the Commission, and I want to qualify my remarks by saying that I don't want to prejudge any of the rulemakings that will be involved in this process. I would like to respond, if I could, by just sharing with you such precepts that I currently have rattling around in my head on this subject.

Mr. BOUCHER. That's fine.

Mr. HUNDT. And, with a lot of caveats, go from there.

First of all, I think it's crucial that broadcasters have an opportunity to acquire a new spectrum so they can broadcast digitally. That is going to be essential, in my judgment, for them to be able to compete with the rest of the digital world, and that's everybody—digital DBS, and digital cable, and digital IMTS and digital dial tone.

Everyone's going digital. Receivers are going to be made digitally. Digital TVs will be spreading across this country starting in the beginning of 1997. That's what everyone tells me and they're probably right. Broadcasters need to be able to transmit to the digital receivers of the future, and they'll need spectrum to do that.

Second, we should take them up on their oft-stated willingness to turn off the transmitters of the analogue era that they currently have, and to abandon that analogue spectrum. It's of enormous benefit to this country to get back that spectrum, to repackage it, to run clear channels across the country, and to auction it for fair value to incentivize new industries.

But, if you're going to ask them to give up the old spectrum, you need to find some way to compensate them, if you want to be fair, because they paid—not in an auction, but in the private market for that old spectrum. You can either compensate them by giving them money, or by giving them, in essence, as a substitute for cash, something in kind—namely, new spectrum.

So, those are the key principles as I know them, vis-a-vis broadcasters. Next, broadcasters ought to be able to enjoy the benefits of everybody else working to convert consumers to digital. In other words, if cable and satellite companies are going to be encouraging their consumers to convert to digital, let's make sure that all the equipment is compatible so that broadcasters can have the same customers as part of their target audience.

Next, let's focus on the fact that when broadcasters have digital spectrum, if you adhere to free-market principles, they will have the opportunity to deliver many, many different kinds of products, voice, video, data, 75 radio stations for each six megahertz of spectrum; or 5 or 6 different TV signals.

Just as a starting point, congressman, it seems to me that it would be a very difficult burden to demonstrate why the government should constrain the flexible use of that spectrum. It would be a very difficult burden to show why the government should interfere with the market forces that would otherwise dictate how that spectrum should be exploited.

Last, but not least, we shouldn't forget about the consumers who are going to have to spend serious, additional money for this digital conversion. It may be wise to give attention to schemes in which

those who wish to engage in the conversion on the sell side have some burden to bring the consumers along on the buy side.

The United Kingdom has done this, by the way, and I can tell you a little more about it, if you like, later.

Mr. BOUCHER. I thank you for that answer. Let me just ask one brief follow-up question.

If, as you suggest, government does not impose any restraint on the way in which broadcasters utilize the second six megahertz. Given what I discern as a propensity on the part of broadcasters to offer multiple, lower quality digital signals as compared to a single, higher quality, high-definition television signal.

What assurance will there be that all of the time and effort that went into developing the HDTV standard to begin with will produce anything of use?

Mr. HUNDT. Well, the standard is a wonderful standard, because it is flexible. It is a four-layer standard that gives the ability to deliver a string of digital bits that can be used as the individual operator wishes to primarily be devoted to conveying a high-definition picture with eye-popping quality, but also alternatively, to deliver a number of other low-quality, but still—lower-quality, but still beautiful pictures. It can be used to deliver the Washington Post, if anyone would want that, right into the lap-top computer of everybody in this area.

Tremendous flexibility comes from the standard that is being promised us by the end of the year.

Mr. BOUCHER. Well, thank you for the information. It's a subject that I'm sure we will discuss at great length in the future.

Mr. Chairman, thank you for allowing me to take just a couple of additional minutes.

Mr. SCHAEFER [presiding]. The gentleman's time has expired.

Mr. Hundt, I'd like to have your comment on the Federal and State roles in reviewing the checklist to insure that the Bell companies have complied with the openness requirements that they have?

Mr. HUNDT. As I understand the bill, Mr. Chairman, the State role would be to—let me rephrase it.

Each State would have the obligation and the opportunity to verify compliance with the checklist. As I understand the intent of the bill, for example, a regional Bell Operating Company that operated in a number of States would have to obtain the okay from each of the States in which it operates before it could go into the long distance business, at least that's how I read this particular provision.

Then, subsequent to that, the FCC would have a final verification process that is fairly compressed in time, in fact, extremely compressed in time, but that gives us assurance in the nature of review—a substantive review that the compliance process at the State level has been full and fair.

That's what I understand is the process.

Mr. SCHAEFER. So, in your mind, is this a fairly good process? Or, does that have to be changed? Or, do you think this will work?

Mr. HUNDT. I think that it is a workable process. I think we have to recognize that the States, like the Federal Government, have no particular experience in reviewing this checklist. This is a new concept; and I think it is right and proper for the bill to give the FCC

the responsibility to lay out specific rules detailing the meaning of the checklist factors.

As I understand the bill, the concept is that the FCC will do that and therefore all States will have a common definition to apply so that there won't be differential definitions in the different States. If I have that right, I think it's very sensible to have that national policy.

Mr. SCHAEFER. Now, you've had the opportunity to deal with timetables and deadlines in the past, and you mentioned the latest challenge posed by timetables in this particular bill. In your estimation, are they realistic? If not, how much time is really needed?

Mr. HUNDT. Timetables are always a question of resources. If you have people with the right skills, set to go with nothing else on their plates, you can accomplish an awful lot in a big hurry. I think that there is no reason why we can't meet the timetables, but we will have to have the resources and we'll have to be able to devote them to these specific tasks.

That, of course, will lead to our request that some other tasks at the FCC be trimmed down, which I hope we'll be able to discuss with this committee in the next few weeks.

Mr. SCHAEFER. Well, we can move the cable bill over to the Department of Commerce or something like that.

Mr. HUNDT. Do you think they would like to have that over there?

Mr. GILLMOR. That would give you plenty of resources.

Mr. SCHAEFER. Okay, let's see here—I'm going to take about a 10-minute recess. The ranking member had another question, or two, Mr. Chairman. If you would indulge us, we're waiting for him to come back from the vote.

Mr. HUNDT. Sure.

Mr. SCHAEFER. I'd like to allow him to ask a couple more.

Mr. HUNDT. Sure.

[Brief recess.]

Mr. SCHAEFER. The Chair would acknowledge the fact that the ranking member is here now, and even though the 10 minutes has not expired, we're going to allow him to ask his question.

Mr. MARKEY. Thank you. I thank the Chair very much.

Mr. Chairman, just for the record, your silence on the question of whether or not you endorse the Stearns broadcast—deregulatory broadcast provisions and all of its particulars—did not mean that you assented to all the particulars of that amendment, I assume, but I would like to hear your——

Mr. HUNDT. No, I actually meant to convey that I didn't think that the bill as drafted sufficiently addressed the issue of over-concentration in local markets.

Mr. MARKEY. Thank you.

And the other point that I would like to make is on the question of interoperability, and just to lay out, again, where the problems can develop when competitors to these large companies that control the bottleneck decide that they don't want competitors in their field.

So, as you remember, back in the 1970s and the early 1980s, AT&T fought the introduction of Feature Group D so that it would be possible for MCI and Sprint and others not to have to have the

17 digits that their customers would have to dial in order to get into the long distance network, and it was only because of the intervention of the FCC to ensure that that level of blockage was removed that the long distance marketplace was able to open.

Similarly today, if, for example, Pacific Telesis partnered with American Express to provide a new banking service, and Bank of America or some other financial institution wanted to get into the same business, we have to be sure that that partnership between the local telephone company and one financial institution doesn't result in a design of the software that walls out the other competitors that could reach consumers as well.

If, for example, Bell Atlantic purchased Compuserve, we would want to make sure that they didn't design the software in a way that kept out American Online, or a whole range of other competing software provides at the same time. And that is the essential notion here, that it is really not a question of anything other than whether or not the FCC can serve as a backstop to guarantee that proprietary standards are not designed in a way that walls out competition. Is that a fundamentally accurate description of what you view as the problem?

Mr. HUNDT. Your comments are accurate and are very eloquent.

Today, almost 100 percent, maybe 95 percent of all consumers have one-plus dialing. They like it. It gives them choice for long distance; it gives them the opportunity to enjoy the benefits of competition. Now that is the exact same idea that we want to perpetuate as consumer choice becomes more complex and the multimedia offerings come into the market. Consumers are going to be very unhappy with all of us if they are not able easily to exercise the power of choice.

Mr. MARKEY. Thank you.

I thank the chairman very much.

Mr. SCHAEFER [presiding]. The Chair recognizes Mr. Cox.

Mr. COX. Thank you, Mr. Chairman.

In a country with a quarter billion people, the residential telephone penetration rate is 94 percent, so, is that the degree to which we've achieved it?

Mr. HUNDT. That is an example of the deceptiveness of averages. According to our studies, approximately 1 out of 5 of all the people in Camden, New Jersey, do not have affordable telephone service, 13 percent of the Hispanic citizens in Los Angeles County, do not have active telephone service, close to half of all Native Americans in this country do not have active telephone service, nor do children in this country, who live in poverty—which is 25 percent. A huge percentage are in homes where there is not active telephone service.

Mr. COX. Which is consistent, I take it, with 94 percent penetration in a country of a quarter of a billion people?

Mr. HUNDT. It certainly all adds up to the average that you mentioned, although interestingly, last year for the very first time, that percentage dropped by about 0.4 percent.

Mr. COX. If we can agree, generally on that figure—and I agree with you that 6 percent of Americans is a little figure.

Mr. HUNDT. It's actually, I think, 93.8. Because it's down about half a percent from the statistics and that's a very meaningful drop. It's the first drop in decades.

Mr. COX. Now, the penetration for televisions is 97 percent?

Mr. HUNDT. Well, they are free.

Mr. COX. Well, the television sets certainly are not free.

Mr. HUNDT. That's true, but the broadcasting is free.

Mr. COX. I wonder how it is that we ended up getting to 97 percent penetration for television service without a legislative mandate for universal service?

Mr. HUNDT. Well, this is one of those issues of network economics and I do not understand it with expert comprehension myself, but the basic principal is that competition in the private market will extend a network to a certain point; and that point almost always will be somewhere below 90 percent.

If you do nothing at all to provide cross transfers of money, you will never have networks that achieve 95 and 96 percent penetration. It will not happen.

Now, why do you care? It's because there are other benefits of having networks that reach 95 and 96 percent. You have more people who get employed. You have more productivity in the economy. You have more consumption in the economy. That is why it is generally regarded as economically very sensible to create schemes that build networks out past what is called the private optimum to what is called the social optimum.

Mr. COX. We've got a joint board in the bill that's going to be set up, Federal/State joint board, to recommend ways to preserve universal service. The FCC is then going to take those recommendations and put them into regulations; and the whole thing sunsets after 5 years.

Is it your understanding of the bill that the regulations would also sunset after 5 years?

Mr. HUNDT. No. But, I of course, could be corrected by you on this. My interpretation of the bill was that the joint board process was supposed to expire within 5 years, but that the commitment to universal service would continue on under this bill. As I said, I can be corrected if I misread this.

Mr. COX. The regulations would continue well beyond 5 years.

Mr. HUNDT. I hope our commitment to affordable connection to the information highway is never going away.

Mr. COX. Can you imagine a time when government mandated universal service would no longer be needed?

Mr. HUNDT. Competition should make technology—communications technology—cheaper and cheaper and cheaper. As that happens, it should become less and less of a financial burden for anyone to build networks to the so-called social optimum. It should be that the amount of transfer that is necessary can very much diminish.

But it will almost always—as far as anyone can foresee—be necessary to have some transfer of funds from one place to another, if we wish to maintain the commitment to have networks be accessible to everyone.

For example, the use of the networks is changing radically over time. Based on the study that we've done so far, the reason why

people are beginning to drop off of the telephone system is because we have erroneously linked long distance bills to local telephone bills, and in many places, you lose your local telephone service if you have trouble paying your long distance bill. I don't think that's logical. We should change that.

Mr. COX. The answer to the question that I just put, are you of the view, therefore, that government mandated universal service should be in existence for the indefinite future?

Mr. HUNDT. I think publicly desired universal service will continue forever and is a very good idea. And, yes, it will be necessary to find some source of revenue to make that happen.

Mr. COX. Is publicly desired the same as government mandated?

Mr. HUNDT. It should be.

Mr. COX. Okay. Thank you.

Thank you, Mr. Chairman.

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

The Chair will recognize the gentleman from Washington, Mr. White.

Mr. WHITE. Thank you, Mr. Chairman.

Mr. Hundt, I just wanted to follow up on a couple of question from our discussion before.

As I understand it, your thought in reviewing an interoperability standard would be on a competitive model. You'd really review it based on what the competitiveness in the industry is. Why would we have you do that rather than the Department of Justice?

Now, we had the Department of Justice in here this morning. They want to get into your bailiwick. You want to get into their bailiwick. Why don't you each stay in your own bailiwick and we won't have to worry about it?

Mr. HUNDT. Well, of course, my concern with this issue is only insofar as it relates to our communications systems in this country.

Mr. WHITE. Right.

Mr. HUNDT. I think if the FCC is going to continue to be a repository of expertise vis-a-vis communications networks in this country, it is an agency that has a potential to perform the task that you and I talked about.

Mr. WHITE. Right.

Mr. HUNDT. It is not imperative that it be the FCC. It just happens to be a place where there will be expertise, nor need it be exclusively the FCC.

Mr. WHITE. Okay. In general, I'd kind of operate under theory that if we could have one agency, you know, seeking to do a particular function, that probably would be better. You wouldn't anticipate that you'd be administering the antitrust laws would you? Your thought would be that we'd give you some additional standard in this law that you would then administer? Or, would you look at this from an antitrust law standpoint?

Mr. HUNDT. Antitrust law and competition policy is all the same body of knowledge. That is why 15 U.S. Code, Section 21 specifically gives the FCC authority to implement the antitrust laws with respect to communications. That is why courts have repeatedly held that if the FCC does not consider the antitrust and competition policy, it is subject to reversal.

Mr. WHITE. Okay.

Mr. HUNDT. So, I don't see the issues as separate or combined between the two agencies.

Mr. WHITE. So you're not looking for additional review authority in this bill. You're simply saying that you'd like to continue to have the authority you have under the antitrust laws. Is that a fair statement?

Mr. HUNDT. I'm saying that I actually commend the bill for enshrining the interoperability principle; and I think that applying it in specific cases one will use competition policy as we have always done.

Is that being responsive?

Mr. WHITE. Not quite.

Do you want additional authority beyond what you have under the antitrust laws in this bill to review these sorts of things? Or, do you think what you have is okay?

Mr. HUNDT. Well, I like what's in the bill. There is an issue in the bill about whether it is as specific as it might be applied to some of the emerging software topics that you and I discussed. I intend to communicate my views on that issue in my letter tomorrow, which I'm sure we'd be delighted to——

[The response follows.]

The Commission takes a cautious approach to intervening in the telecommunications marketplace, particularly given its rapidly-changing and technologically dynamic nature. However, where bottlenecks emerge, we must be vigilant and take steps to protect the American public from the potential abuse of any resulting market power. As telecommunications services move into the digital age, we need to ensure that consumers have the continued ability to choose freely among competing providers and to select the equipment used to access these networks and facilities. As an example, the Commission needs to be alert to circumstances in which industry interoperability—whether they are de facto or set by an industry group—are used anticompetitively. We believe that the Communications Act, related statutes, and provisions of H.R. 1555, as introduced, give the Commission sufficient authority to address such interoperability issues. There remains a question, however, whether H.R. 1555, as passed by the House of Representatives on August 4, 1995, would impact current Commission efforts to address interoperability issues involving consumer electronics equipment.

Mr. FIELDS. Will the gentleman yield to Mr. Markey?

Mr. WHITE. Sure, I'll be happy to.

Mr. MARKEY. The whole, you know, thrust of the last 4 or 5 years in the committee has been, how do we deal with this antitrust case back in 1982? So the objective, even including the checklist is to as much as we can, deal with this Justice Department issue.

So, what we're trying to do in this bill in all areas possible, is give to the FCC the authority to be able to create standards and protections that keep antitrust law—keeps these things out of the courts and allows for the FCC to work with industry participants that create standards that don't necessitate the antitrust cases, but then keep this progress that we want to see happen locked up in court decisions indefinitely.

So, there's a balance here and I think that we're trying to move it out of the courts.

Mr. WHITE. That's right, and I just want to understand from the chairman exactly what his approach was to that, and I think I do now understand it.

Mr. FIELDS. Mr. Chairman, we very much appreciate your patience in sitting with the committee, and rearranging your schedule. Thank you for being with us.

Mr. HUNDT. Thanks for having me.

Mr. FIELDS. We would like for our third panel to please assume your position at the table.

We really appreciate this panel for its patience. We have four distinguished witnesses: the Honorable Lisa Rosenblum, Deputy Chairman, New York Public Service Commission; Ronald Binz, the Director of the Colorado Office of Consumer Counsel; Rochelle Specter, Councilmember, City of Baltimore; and Jane Scully, Councilmember, City of Falls Church, Virginia.

Ms. Rosenblum, if you would please begin. We are going to ask that if you can present your remarks in 5 minutes; and at the end of 5 minute, I'll ask you to summarize if you're not finished.

Thank you.

STATEMENTS OF LISA ROSENBLUM, DEPUTY CHAIRMAN, NEW YORK PUBLIC SERVICE COMMISSION; RONALD J. BINZ, NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES; JANE SCULLY, CITY COUNCIL MEMBER, FALLS CHURCH CITY, VIRGINIA; ROCHELLE SPECTER, COUNCILWOMAN, CITY OF BALTIMORE AND MEMBER, BOARD OF DIRECTORS, NATIONAL ASSOCIATION OF COUNTIES

Ms. ROSENBLUM. Good afternoon, Mr. Chairman, Congressman Markey and members of the committee. Today I am appearing on behalf of the National Association of Regulatory Utility Commissioners, which represents the State utility commissions in the 50 States. We very much appreciate the invitation to appear.

NARUC's view is that H.R. 1555 makes a significant contribution to Federal telecommunications policy reform. It provides a sound framework to accelerate robust competition and to maintain our long-standing commitment to universal service. We applaud the committee for this intelligent legislation and appreciate the willingness—particularly of committee staff—to work with the States.

H.R. 1555 wisely recognizes the critical role of the States in bringing about local dial tone competition. Many States, including Michigan, New York, California, Illinois, Washington, Massachusetts and Oregon, among others, are leading the way to more customer choice and lower prices.

The legislation's requirement that the States certify the competitive checklist for RBOC interLATA entry is a major—let me underscore major—step forward and will enable the States to continue to spur competition. H.R. 1555's provision on universal service, the finest I've seen in legislation to date, will facilitate Federal/State collaboration on this critical issue while preserving State authority.

In the spirit of strengthening the legislation's pro-competitive goals, NARUC proposes that the committee consider revisions in three key areas: interconnection, local rate making and sunset provisions.

The interconnection section rightfully puts the RBOC's foot to the accelerator pedal to open the monopoly markets, and recognizes that State oversight of interconnection will facilitate competition.

NARUC has no objection to preemption of entry barriers, but we do question whether a Federal role in shaping intrastate, local competition arrangements is needed. After all, do you really want the FCC to be involved in overseeing, for instance, NYNEX agreements with MFS or Teleport for the exchange of local calls?

Given the substantial progress made in the States, we are concerned that the bill's interconnection provisions may retard procompetitive actions by many States. It would be unfortunate, in our view, if the bill could be construed to undercut, for example, Rochester Telephone's open market plan or other innovative State initiatives.

NARUC is also concerned that the pricing flexibility provisions could straightjacket States into an FCC mandated framework undercutting our ability to protect against anticompetitive pricing. Similarly, the bill's elimination of rate of return regulation would undercut important State authority to spur competition and may lead to unnecessary rate increases.

States are in the forefront of shaping price-cap regimes as part of comprehensive agreements that address service quality, network infrastructure and universal service. Federal preemptive efforts will impede these laudable achievements to insure a smooth transition to competition. We urge, as a bottom line, that the committee retain full State authority over intrastate rate making.

Finally, the legislation's sunset and forbearance provisions, while laudable in their goal to reduce unnecessary regulation, could be read to lead to the total elimination of State authority. And—and this would be most unfortunate to the establishment of unregulated monopolies—determination of regulatory requirements must be closely tied to the competitiveness of the market.

The legislation's inclusion of a State role in interLATA relief, in our view, should be extended to the sunset and forbearance provisions.

In sum, then, H.R. 1555 is a major contribution to congressional efforts to reform the national telecommunications' policy. NARUC offers our comment in the spirit of strengthening the bill's primary objectives to open the markets to competition and to preserve universal service.

Thank you very much.

[The prepared statement of Lisa Rosenblum follows:]

STATEMENT OF LISA ROSENBLUM, DEPUTY CHAIRMAN, NEW YORK PUBLIC SERVICE COMMISSION

Good morning Chairman Fields, Representative Markey, and members of the Committee. My name is Lisa Rosenblum. I am Deputy Chair of the New York Public Service Commission and Chair of the National Association of Regulatory Utility Commissioners Communications Committee. I am appearing today on behalf of the National Association of Regulatory Utility Commissioners (NARUC). I appreciate this opportunity to comment on the Communications Act of 1995, H.R. 1555.

Based on NARUC's preliminary review, H.R. 1555 provides a sound and effective framework for advancing competition in the telecommunications market while maintaining this Nation's long-standing commitment to universal service. We commend the Committee for its recognition of the key role of the states in ensuring a smooth transition to a robust competitive environment. Specifically, H.R. 1555 wisely includes a state role regarding the critical issue of RBOC entry into the interLATA long distance market and provides states with authority over interconnection policies which will facilitate local competition.

NARUC applauds H.R. 1555's balanced and clear approach to universal service and its recognition of the legitimate roles of both the Federal Communications Commission (FCC) and the states in addressing this issue. Protecting this Nation's long-standing commitment to universal access to affordable basic service during the transition to competition is one of the most critical challenges facing federal and state regulators.

NARUC, however, is concerned that certain provisions in the legislation, as currently drafted, may impede the development of a competitive market.

1. LOCAL COMPETITION: INTERCONNECTION AND TERMS & CONDITION

NARUC questions whether a federal role in intrastate interconnection is necessary. Moreover, states which are well on their way to developing a competitive marketplace should not be slowed down by the requirement that the FCC develop implementing regulations. Instead, states that have addressed local competition issues and those currently doing so, should be permitted to move ahead unless their actions conflict with the goals of this legislation.

2. PRICING FLEXIBILITY AND RATE OF RETURN

NARUC is seriously concerned that contrary to the federalist balance in the legislation, the pricing flexibility and the mandated elimination of rate of return regulation sections are an intrusion into local ratemaking that could straitjackett states into a mandated federal model that will deter innovation, impede competition and may result in unnecessary local rate increases. NARUC urges the Committee to retain full state authority over intrastate ratemaking.

3. SUNSET PROVISIONS

NARUC supports efforts to reduce regulation where unnecessary. However, the legislation's sunset provisions would enable virtually full elimination of state oversight over the transition without any input from the states themselves. NARUC urges the Committee to revise the sunset provisions to include a clear state role in determining market competitiveness, given our firsthand knowledge of market conditions.

Local Competition: Interconnection and Terms & Condition

The legislation recognizes that the terms and conditions of interconnection are critical to open entry policies and wisely provides the states with authority over interconnection arrangement. NARUC questions whether a federal role in intrastate interconnection is necessary. To facilitate competition, it is important that the regulatory process in Washington not slow down state competitive initiatives. States have led the way in opening and unbundling the network and many are well on the road to opening markets to competition. Some 18 states already have made a proactive decision to pursue competition in the local exchange market (See Appendix A for details). In 1995 alone, five state legislatures have adopted legislation designed to set the foundation for a competitive market.[1] At last count, close to 90% of all access lines are in states that currently allow local competition or are engaging in proceedings considering competition.

As we understand H.R. 1555, this positive procompetitive activity could be put on hold or significantly altered pending FCC action. This outcome would clearly undercut the objectives of the bill. We suggest, therefore, that the legislation be amended to make clear that states that enact and enforce competitive market initiatives including interconnection and access arrangements that are consistent with the overall requirements of the bill will not be subject to the specific interconnection processes delineated in the bill.

Given the states' critical oversight role regarding interconnection, NARUC is concerned that providing only 60 or 90 days for a state to review and certify that a carrier is in compliance with the equal access and interconnection requirements may be counterproductive. The "devil is in the details" regarding the terms and conditions of interconnection and the short timeline may not permit the comment and analysis necessary to discern whether the proposed arrangement will facilitate actual competitive entry.

The bill includes a process for considering whether rural companies should be exempted from the interconnection requirements. NARUC feels strongly that the

[1] So far in 1995, Georgia, North Carolina, Utah, Virginia and Wyoming have new statutes promoting local exchange competition.

states are in the best position to evaluate the risks and benefits of such an exemption and should play a key role in that determination.

Moreover, NARUC recognizes the value of reducing regulation as markets become competitive. In concept, the sunset provisions on interconnection and access offer an effective way to ensure that unnecessary regulations do not continue in existence. However, the provision in the bill would give the FCC sole discretion to determine whether a given market is competitive to trigger the sunset provision. It is imperative that state regulators be called upon to provide guidance in determining the competitiveness of local markets to avoid the potential for premature deregulation in what is still a monopoly environment. While the bill wisely recognizes that the states are in the best position to evaluate the competitiveness of the market for the purpose of interLATA relief and other local competition requirements, it fails to provide for state involvement at the time these regulations sunset. At a minimum, states should have a joint role with the FCC in determining when the legislation's provisions on access and interconnection should be eliminated.

Finally, in the area of local competition, while NARUC commends the Committee for including clear state oversight over the terms and conditions of new entrants, it is concerned that the bill may inadvertently limit state authority. Limitations on state terms and conditions should be confined to only those requirements which are in conflict with the goals of the bill and not, as proposed, with anything a carrier claims "effectively prohibits" their participation in the market.

Pricing Flexibility and Rate of Return

NARUC has a strong interest in the pricing flexibility and rate of return provisions of the bill given their potential to interfere with local ratemaking prerogatives. These provisions could inhibit rather than promote a fair and reasonable transition to competition.

Many states support pricing flexibility and alternative forms of regulation, including price caps. Currently, the majority of states either have implemented or have considered some form of alternative regulation for local carriers. In many cases, pricing flexibility and alternative regulation have been part of a comprehensive agreement that also addresses local competition, network infrastructure, service quality and universal service.[2]

The pricing flexibility and rate of return provisions limit state flexibility to develop precompetitive regulatory plans. With respect to the pricing flexibility provision specifically, while it recognizes a limited state role, it would enable a federally mandated one-size-fits-all model. Pricing decisions must be made based on the condition of a specific marketplace. Moreover, the standard used to allow for pricing flexibility does not assure that a market or geographic area is in fact competitive. Without the presence of actual competition, pricing flexibility has the potential to stifle local competition. We urge the Committee to review the pricing flexibility framework to give the states greater latitude to develop pricing flexibility approaches that further competition.

NARUC is also seriously concerned about the provision governing the use of rate of return regulation by state commissions. While the legislation gives the states some latitude at least regarding the elimination of price cap regulation, it mandates that rate of return regulation be eliminated even if there is no actual market competition. Many states are developing price cap approaches and conceptually, many would concur that rate of return regulation may be inconsistent with a competitive market. But, we feel strongly that federal mandates in this area will undercut the ability of states to shape comprehensive rate plans that spur competition, advance the infrastructure and protect universal service.

Finally, this provision would allow service providers to alternate between price and profit regulation, creating incentives to elect the form of regulation that will enhance profits in good times and guarantee profits in more difficult economic times. Notwithstanding this concern, as a general matter of policy, regulators and not the regulated entity should decide the form of regulation that is in the best interest of ratepayers.

Universal Service

We applaud the bill's sound approach to universal service. Under the bill, however, the Joint Board on Universal Service would be abolished after five years, which depending on the pace of competition, may be premature. The complexity of the issues and the need to continue to monitor them argues for a less definite sunset

---

[2] The Rochester Telephone Open Market Plan opens the local market to competition, gives the company significant pricing flexibility, freezes basic residential rates for 5-7 years, and contains service quality guarantees, while uncapping earnings.

provision. Moreover, states could make a significant contribution to the study of universal service which is required under Section 250 and the Committee should include states in that undertaking.

RBOC Entry into InterLATA

NARUC appreciates the recognition of the states' role in the RBOC entry determination. The bill does not, however, require a separate subsidiary for RBOC provision of interLATA service. During the transition to a competitive market, it is essential that regulators and competitors are able to detect improper cross subsidization or discriminatory practices. A separate subsidiary requirement would make it easier to detect these practices.

Entry of Registered Utility Holding Companies into Telecommunications

NARUC has concerns with the legislation introduced by Representatives Gillmor and Boucher (H.R. 912) that is intended to be offered as an amendment to H.R. 1555. H.R. 912 amends the Public Utility Holding Company Act (PUHCA) to enable registered holding companies to diversify into the telecommunications market.

NARUC is fully aware of the competitive forces that are working to reshape the electric utility industry, and state commissioners are working in earnest to ensure that these competitive forces thrive. With this in mind, NARUC does not oppose the entry of electric utility holding companies into the telecommunications industry, but seeks assurances that states will not be precluded from providing electric utility ratepayers with adequate protections from potential abuses. In fact, NARUC has previously recommended to Congress that any such entry be accompanied by adequate consumer safeguards. However, NARUC does not believe that H.R. 912 provides such adequate assurances.

More importantly, this issue is only a small part of the larger debate about whether broader changes to PUHCA are necessary. While NARUC appreciates the opportunity to present its views on this issue today, we believe consideration of this issue would be better suited during the coming debate on ways to change PUHCA in general. Only then can we assess the impact that H.R. 912 might have on ratepayers in the context of a changed PUHCA statute. Also bear in mind that the Securities and Exchange Commission (SEC) is currently conducting a review of existing consumer protection authority of all state commissions before deciding how best to change PUHCA, which is due for release this summer. For these reasons, NARUC asks that any amendments to PUHCA be deferred until a more comprehensive debate begins in this Committee on ways to change the statute.

Conclusion

Dismantling the telecommunications monopoly structures and developing a vibrant competitive market is complex and demanding. It requires both federal and state policymakers to put into place sound policies to spur competition while protecting universal service and service quality.

H.R. 1555 advances the much needed effort to reform national telecommunications policy. It recognizes the important role of both the FCC and state commissions in the transition in the critical areas of interconnection, RBOC entry into interLATA markets and universal service. NARUC's suggestions regarding the interconnection, local ratemaking and sunset provisions are intended to strengthen further the bill's procompetitive objective. We stand ready to work with the Committee as this legislation moves ahead.

Appendix A

State Regulatory Commission Treatment of Competition in Switched Local Service

[as of April 1995]

	Decision made: competition is allowed	Allowing competition under formal consideration	Allowing competition being considered informally	Allowing competition not being considered
No statutory or generic regulatory barrier.	CT, GA, IL, IA, MD, MA, MI, MT, NC, NM,[a] NY, OR, PA, UT, VA, WA, WI, WY.	HI, IN, KS, ME, NV, NC, OH, OK, SC, TX.	MN, NE, NJ, RI	DE, NH, ND, VT, WV
Statutory barrier		CO, DC, FL, KY, TN		AR, ID,[b] LA, MO, SD

State Regulatory Commission Treatment of Competition in Switched Local Service—Continued

[as of April 1995]

	Decision made: competition is allowed	Allowing competition under formal consideration	Allowing competition being considered informally	Allowing competition not being considered
Generic policy or order is barrier.	....	AZ, CA	....	AL, AK, MS

a Competition is allowed in US WEST service area.
b Companies may deregulate local service for business customers with over five lines.

SOURCE: The National Regulatory Research Institute, and the National Association of Regulatory Utility Commissioners, and trade press.

Mr. FIELDS. Thank you very much.

Mr. Ronald Binz, Director of the Colorado Office of Consumer Counsel.

STATEMENT OF RONALD J. BINZ

Mr. BINZ. Thank you, Chairman Fields. I represent a group of consumer advocate offices who are State-appointed advocates around the country, who are involved in these issues on the front lines.

I'm going back to Colorado and we have a meeting on Monday of next week to negotiate implementation of Colorado's statute on opening markets, for example. The same set of issues that you're dealing with in this legislation before us.

We appreciate the opportunity to come and talk to you today about how this bill is going to affect what's going on in the States and what consumers need in the way of protections.

We support the thrust of the legislation to increase competition in the telecommunications industry. We agree with the bill's basic premise and the commitment to open markets and to universal service.

These are not empty endorsements of competition. Consumer advocates have come to the view that effective competition is the most efficient way to increase consumer choice and to keep prices are reasonable levels. But we all know that the promise of a competitive telecommunications market will not come automatically.

Because of the industry's history and the power of its players, State and Federal regulators and Congress have a role in the transition to effective competition.

Along the way, we must not mistake deregulation for competition; and we must not strap consumers with the worse or all worlds, namely, neither regulatory nor market controls in the prices they pay for telecommunications services.

Chairman Fields, I'd like to focus on three issues which really haven't gotten attention yet, today, I don't believe. The first is the whole notion of entry. Should Congress preempt entry—preempt barriers to entry. Our answer to that is, yes. It's appropriate. It's an appropriate policy role for the Congress to set policy for the States. We do not object to that preemption.

We've identified a problem in the bill, and my written testimony addresses this in some length. In fact, we offer what I think is the first amendment from your witnesses today to fix that problem. We have a concern that the preemption there may be so broad as to strip States of the power of actually keeping bad actors out of the

telecommunications business in their States, if they fail to live up to consumer protection rules in the States.

The example we used—and I'm sure many of the committee members are familiar with some of the alternative operator service companies, who have generated volumes of complaints at the States and at the FCC for high charges from pay phones, those sort of long distance companies. There are some bad actors among them. We are concerned that the legislation not remove barriers to entry to the extent that carriers like that cannot be disciplined by regulation when competition doesn't do it.

The next area—and Commissioner Rosenblum's also mentioned this—we have some concerns, actually very strong concerns, about language in this bill eliminating rate of return regulation in the States. We think that that preemption is unnecessarily broad, and in fact will lead to conflicts in goals that this bill itself sets out.

There seems to be some assumption that States actually need a stimulus to actually begin to use alternative forms of regulation. That's simply not true. Very few States use what's been told—what's probably been told to you is a traditional rate of return regulation. Almost all States have moved to some variant on that. It may be price caps. It may be incentive regulation.

We're very concerned that the language in this bill is going to hamstring States. Now, without getting into the details which are set out in some length in my testimony, even if you move to a price cap regime, it is important to test the validity of that by looking at what rates of return have been earned. That's not rate of return regulation, but the prohibition in this bill may make those kinds of incentive plans and alternative plans infeasible or illegal. It's certainly going to invite lots of litigation over this issue. We think it should be competition and not legislation which removes regulatory restraints on noncompetitive carriers.

The third point I'd like to make, which has been touched on, is this notion of—or the issues surrounding the buyout of cable companies in region. We have very grave concerns about the language in this bill; and the language in parallel legislation in the Senate. We suggest that if you're going to have competition in local exchanges, it's going to come from cable companies and the buyout provisions are going to thwart competition.

In summary, Chairman Fields, we support the committee's efforts to increase the level of competition in the industry and we firmly believe that consumers' interests are tied to that. There are important features of this legislation which we support, but there are other sections which must be improved.

We appreciate the opportunity to present our views and look forward to working with you and the members of your staff, whom I would like to mention have been very open and very helpful in meeting with us to understand these issues that we've presented. We appreciate them, and thank you for inviting us to speak.

[The prepared statement of Ronald J. Binz follows:]

PREPARED STATEMENT OF RONALD J. BINZ ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Chairman Fields and members of the Subcommittee, my name is Ronald J. Binz. I am the Director of the Colorado Office of Consumer Counsel and Chairman of the Telecommunications Committee of the National Association of State Utility

Consumer Advocates (NASUCA). NASUCA is an association of 42 consumer advocate offices in 38 states and the District of Columbia. Our members are designated by state law to represent the interests of utility consumers before state and federal regulators and in the courts.

We appreciate this opportunity to discuss the effects that H.R. 1555 will have on the consumers we represent. NASUCA supports the thrust of this legislation to increase competition in the telecommunications industry. We share the bill's commitment to open markets and universal service. Further, we agree that the best way to deliver the promise of advanced services is through a competitive telecommunications industry, insofar as effective competition can be achieved and sustained.

NASUCA believes that effective competition is the most efficient way to increase customer choices and keep prices at just and reasonable rates. However, the full promise of a competitive telecommunications market will not come automatically. Because of this industry's history and economics—and the power of its players—state and federal regulators and Congress must play an active role during the transition to effective competition for local telecommunications services. Along the way we must not mistake deregulation for competition. We must also understand that deregulation without competition presents consumers with the worst of all worlds: neither regulatory nor market controls on the prices they pay for telecommunications service.

Mr. Chairman, here is our message: If Congress wants consumers to benefit from local competition, federal telecommunications policy must recognize four realities: i) Universal service at affordable, just and reasonable rates must be ensured; ii) Federal preemption of state regulatory authority must be limited to what is needed to achieve federal telecommunications goals; iii) Legislation must contain consumer protections to ensure fair pricing and prevent anti-competitive practices during the transition to competition; and iv) Consumer advocates must have a role in bringing the benefits of competition to consumers.

Here are the main points of my testimony:

- With appropriate consumer protections, NASUCA supports increased competition for local exchange telecommunications service. We support the entry and interconnection features of H.R. 1555, including the preemption and removal of legal barriers to local exchange competition.
- The preemption of state ratemaking in the legislation is unnecessarily broad. The "abolition of rate of return regulation" is not necessary and may lead to higher rates for telephone service as the prerogatives of state regulators are limited. This legislative language might actually invalidate alternative regulation plans already in place in many states. Further, the pricing flexibility language in the bill is vague and should be clarified.
- NASUCA does not oppose the entry of telephone companies into video programming within their region. However, they should not enter the video programming business by acquiring existing cable systems, since this will thwart the development of competition. The legislation should permit certain types of joint ventures between telephone and cable companies in-region to construct some distribution facilities. However, the bill goes too far in allowing telephone companies to become a super-monopoly for up to 10% of their customers.
- Bell Operating Company entry into long distance and manufacturing should be tested by the VIII(C) standard of the MFJ: whether a firm can impede competition in the market it seeks to enter. Fulfilling the "checklist" and "openness" provisions of this legislation provides some evidence that the standard has been met. But the Department of Justice should also have a role in making this determination. Further, post-entry safeguards are necessary until there is effective competition in the local exchange market.
- Because of the very significant consumer issues entailed, we support the bill's provision to include a state-appointed consumer advocate to the Federal-State Joint Board created in the legislation.

Chairman Fields, we view this legislation as a starting point for the Commerce Committee as it begins its work to bring competition in telecommunications for all consumers. NASUCA stands ready to offer its suggestions to improve the legislation so that it delivers on the goal we share with you: consumer choice in a competitive telecommunications industry.

LOCAL EXCHANGE COMPETITION AND REMOVAL OF ENTRY BARRIERS

NASUCA supports the general thrust of the legislation to increase competition in local exchange telecommunications markets. H.R. 1555 does this by opening up the local exchange to competition from new entrants and by requiring interconnection and interoperability of competing networks. These new entrants may be other LECs,

competitive access providers, cable television companies, wireless providers or hybrid combinations of all these. In the other direction, the legislation permits traditional local exchange companies to enter the video programming business.

While we believe this competition shows promise for consumers, it is not clear whether effective competition will develop in all markets. Even if effective competition eventually develops in most local exchange markets, the transition period can represent a substantial risk to the well-being of local exchange customers. Our support for increased competition is premised on sufficient regulatory authority remaining in place until markets are effectively competitive. Thus, NASUCA supports the federal preemption of the legal barriers to entry into local exchange service as long as states retain the authority to protect consumers.

H.R. 1555 attempts to strike this balance in Section 243 by preempting barriers to entry while permitting states to impose requirements necessary to protect consumers and ensure just and reasonable rates. There is, however, language in Section 243(b) that may jeopardize this balance. States may impose requirements to protect consumers provided that "such requirements do not effectively prohibit any carrier or person from providing interstate or intrastate telecommunications services..."

To see how this language might be interpreted to work against consumers, consider the situation of some alternative operator service (AOS) companies. Extremely high rates and shoddy customer service policies have made some of these companies the most notorious "bad actors" in the telecommunications industry.

Suppose a state regulator wishes to deny operating authority to an AOS provider because the firm violated customer service regulations. The state commission might be prohibited by this language from exercising its legitimate role to protect consumers in denying entry to the carrier. Even limits on rates such carriers can charge might be argued to "effectively prohibit" them from providing service.

This "effectively prohibit" language could also transfer policy-making power from regulators to the telecommunications industry. A relevant example is the dispute over "blocking" where caller identification services are involved. In some states, telephone companies threatened to refuse to provide Caller ID service unless the state regulatory agency acquiesce to the desired blocking schemes of the telephone companies. If a state regulator requires (for example) "per-line" blocking and a telephone company refuses to provide caller identification service under that condition, has the state "effectively prohibited" the carrier from offering the service? The language contained in the bill invites litigation over such questions.

Again, we emphasize that NASUCA does not oppose the preemption of state legal barriers to entry where necessary to carry out the clearly defined federal goal of local competition. But such preemption should not construct barriers to consumer protections. We recommend that the language in Section 243 be amended by placing a period after the word "rates" on page 12, line 12 and deleting the balance of the paragraph.

FEDERAL PREEMPTION OF STATE RATEMAKING AUTHORITY

In Section 247 the legislation forbids state regulators from requiring rate of return regulation. While the exact meaning of this language is not clear, it is an *unwarranted and unwise intrusion* into the legitimate prerogatives of state regulation. The results which will flow from this language will be inconsistent with other goals and purposes of the legislation. Depending on its interpretation, this section may invalidate many "alternative regulation" or "incentive regulation" plans now in use in states and at the FCC. NASUCA respectfully suggests that there is not a federal interest in the mechanics of state regulation and *in particular*, there is no legitimate purpose served by usurping the ratemaking authority of states in this way.

The term "rate-of-return regulation" is often used interchangeably with "cost-of-service regulation". The connection between these two terms is this: regulation sets rates that offer a carrier the opportunity to generate revenues to recover its costs and earn a return on investment sufficient to attract capital. The same result occurs in competitive markets: in a perfectly competitive market, firms recover their costs and earn a market return. If a firm exceeds market returns consistently, rival firms enter and drive prices down to a market level. This market control does not work, however, when a firm does not face effective competition.

In recent years, state and federal regulators have developed many variations on the "rate-of-return" model. Incentive regulation and price cap regulation are used by state and federal regulators to provide new incentives to carriers. But the fairness of these forms of regulation is measured by examining the resulting rate of return earned by the regulated firm. For example, the FCC recently reviewed the results of its three-year price cap plan for the RBOCs by examining, among other

things, the rate of return earned by the carriers under price cap regulation. It is critical to NASUCA and the consumers we represent that federal legislation not limit the ability of regulators to use the appropriate combination of regulation, including rate-of-return considerations. This is fundamental to the duty of regulators to ensure that rates are just and reasonable. We are concerned that the language in this section will destroy this balance.

As an example, many states have adopted alternative forms of regulation in which telecommunications carriers are permitted to exceed authorized rates of return as long as such "excess profits" are shared with ratepayers. Such "sharing" plans offer incentives to the carriers to become more efficient and attempt to increase earnings while returning a portion of such efficiency gains to customers. In order to administer such incentive plans, state commissions must measure the earned rate of return of a carrier and compare it to the benchmark for sharing. We are concerned that this form of regulation, while certainly not traditional rate-of-return regulation, will be invalidated by the language in this bill.

The legislation links abolition of rate-of-return regulation to the "openness" provisions of the bill. But "openness" is not the same thing as effective competition. If the Congress really wishes to tell states they cannot use rate-of-return regulation, there ought to be at least a link to actual effective competition. Otherwise, this provision serves only to hinder the efforts of the states to encourage competition while maintaining fair prices for services which are not yet subject to competition. "Abolition of rate-of-return" may seem only to abolish a *style* of regulation; in fact, it strikes at the core of the economic regulation of non-competitive telephone carriers. We think that effective competition, not legislation, should eliminate regulation.

To emphasize this last point, NASUCA agrees with the legislative language under the section "Termination of Price Regulation" (Section 247(c)). If competition is sufficient to effectively prevent prices from being unjust, unreasonable or discriminatory, we agree regulation of prices should end. After all, such competitive pressures are exactly the reason we do not regulate the price of groceries, computers, or even telephone sets. There is reason to think that today's non-competitive telecommunications services can become effectively competitive. But we must insist that state and federal regulation be permitted to adapt to changing market conditions without the type of unwise preemption found in this legislation.

In addition to addressing the type of regulation permitted, Sec. 247 also requires the Commission to establish criteria for determining whether a service "has become, or is substantially certain to become, subject to competition," and to establish "appropriate flexible pricing procedures" so that a provider can "respond fairly to competition." It requires states to apply such criteria to intrastate services upon application by a local exchange company for pricing flexibility treatment. NASUCA has several concerns about this language.

First, it is crucial that *upward* pricing flexibility should not be authorized unless there is *actual* and *effective* competition. Otherwise, a carrier will be able to use the pricing flexibility merely to raise rates for non-competitive services. This practice is known in the industry by the euphemism of "rate rebalancing." This is fundamentally unfair to monopoly customers and is directly at odds with the balance that this bill tries to strike. NASUCA recommends that this section be amended to reflect that only *downward* flexibility should be permitted until a service, such as residential basic service, is fully competitive. To ensure that such downward flexibility itself is not anti-competitive, prices should be subject to a floor of long-run incremental cost.

Second, incumbent local exchange companies can use pricing flexibility to frustrate the development of competition by underpricing potentially competitive services and freezing out competitors. This is exacerbated if such discounts are made up by raising prices (or failing to lower them as costs decline) on remaining monopoly services. In this way, a local exchange company can retain its customers and its earnings without actually becoming more competitive. The result will be to undercut the ability of alternative service providers to compete effectively and preserve the monopoly market power of the local exchange company. We are concerned that the current language of the bill would permit such a result.

Finally, it is not sufficient to find that a service is merely "substantially certain to become subject to competition." The existence of competition must be significant and it must be actual before pricing flexibility, especially upward flexibility, is granted. Further, the legislation should recognize that competition will not come to the telecommunications industry in a smooth and even fashion. The language on pricing flexibility (page 30, line 12) should recognize that competition may not be effective throughout a geographic area or throughout a service category.

RBOC ENTRY INTO VIDEO PROGRAMMING

NASUCA has historically supported the MFJ restriction on entry of the RBOCs into information services, including video programming. We were concerned that the entry of these largely monopoly local exchange carriers would harm consumers (through cross-subsidization) and come at the expense of a competitive information services market (through unfair competitive practices). We endorse the video programming provisions in H.R. 1555, while retaining these concerns. We also have substantial concerns about the "buy-out" provisions in the bill.

Three considerations lead NASUCA to support entry of the RBOCs into video programming in-region, with certain safeguards. First, U.S. District Court Judge Harold Greene has removed the MFJ barrier to RBOC entry into information services, including video programming. The remaining prohibition, in the Cable Act, may no longer serve consumers by guarding the monopoly of cable television operators. Second, the new alignments of industry players and the convergence of technologies increase the likelihood that competition for these services might actually occur. Third, the "demand-pull" for video services naturally combines with a national push for an advanced information infrastructure. With regulators enforcing proper safeguards, the entry of RBOCs into video programming may actually lessen the risk that an inappropriate share of the cost of a broadband network will be loaded onto basic telephone consumers.

It is very difficult to predict what shape the broadband services market may take. Given the very high cost of a broadband network, it is not clear how susceptible these services are to effective competition—the market (or its infrastructure) may well contain elements of a natural monopoly. Given these uncertainties, we think that policymakers should prepare for any of several possible futures in the industry, ranging from full competition to limited competition with residual market power.

Seemingly, the most likely pair of competitors in the local exchange will be cable companies and telephone companies. The convergence of the technologies and the investment patterns in these industries make this scenario appear increasingly likely. But potential competition between telephone companies and cable companies will be thwarted if these two industries are allowed to combine and limit competition. The legislation addresses this issue and permits telephone companies to purchase cable companies in their region within certain limits. But these limits are not stringent enough, leaving us with very serious concerns about this potentially anti-competitive provision of the legislation.

Video entry in-region by the RBOCs should not be accomplished by the acquiring existing cable providers. Competition for local services will be defeated by the formation of a super-monopoly combination of a local telephone company and a local cable company. For that reason, we support a prohibition on purchase of existing cable systems by the RBOCs entering video services in-region. The existing "rural exemption" is set by the FCC at a reasonable level (2,500 residents) to ensure that small communities receive cable service.

The much higher thresholds in this bill go well beyond the levels needed to ensure cable service reaches rural areas. The legislation permits buy-outs of systems serving places with a population of up to 35,000 or, under certain conditions, up to 50,000. A telephone company may purchase cable systems serving up to 10% of the households in its region. While these limits in the legislation are preferable to none at all, NASUCA cannot support a provision that allows an RBOC to purchase existing cable systems and become a super-monopoly for up to 10% of the households in its region. If a telephone company chooses to cluster its purchases, that company could acquire most of the cable systems in an area as long as it stayed under the 10% limit region-wide.

While NASUCA opposes acquisition of cable companies by telephone companies in-region, we think that joint ventures between cable providers and telephone companies should be permitted for the construction of certain broadband distribution facilities. In the same way that consumers today have competitive choices for long distance without having two copper wires into their homes, it may not be necessary to have two wires all the way to the home to have local competition. The legislation, in Section 654(b)(3) at page 88, authorizes joint use of the facilities between the end-user and the cable company's last multi-user facility. NASUCA suggests that similar language could authorize joint construction of the "last mile" of the distribution facilities needed to bring switched broadband service into the home. We emphasize, though, that joint ownership of content or programming should not be permitted.

Sharing the cost of distribution infrastructure through such joint ownership substantially addresses the arguments in favor of permitting one carrier to acquire another in the same region. As long as joint ownership of programming or content is prohibited, consumers could receive competitive broadband services sooner and at

lower cost if the owners of the two wires (copper and coax) are allowed to jointly build a portion of the broadband distribution network. Of course, if such a joint venture is undertaken in lieu of two-wire competition, the terms and prices of access must remain regulated and the single network must remain a common carrier.

UNIVERSAL SERVICE AND AFFORDABLE SERVICE

The bottom line on whether consumers benefit from local exchange competition will be measured by the effect on universal service and on basic telephone rates. Consumers understand that the *cost* of telecommunications services is declining. It is difficult for them to understand why the *price* of local telephone service is not also declining. It will be *incomprehensible* to consumers if local telephone rates increase in the name of competition.

NASUCA supports the Universal Service section of the legislation. The combination of the Federal-State Joint Board and the guiding principles announced in the legislation provide the framework for a successful plan to maintain universal service. We also support the reservation of state authority to impose universal service obligations on intrastate services.

In Section 247(d) (page 32), the legislation provides that states shall ensure that, for three years, rates for "voice-grade" residential local telephone service be based on rates in effect at the time of enactment of this legislation. This section of the bill contains the kernel of a very important consumer protection. We support this language and suggest three ways it should be improved.

First, the word "voice-grade" connotes a narrow definition of service to which this section applies. Today, universal service is a bundle of services: single party, dialtone, usage, TouchTone, toll access, E911, white pages directory listing, etc. This section of the bill should be clarified to align with the group of services which constitutes basic residential service at the time of enactment of the legislation. It is also reasonable that the FCC, in consultation with the Joint Board, could determine the appropriate scope of such services as part of its proceeding on universal service.

Second, the bill language should be clarified to require, simply, that the price for this group of basic residential services be capped at rates in effect upon enactment. The term "based on" is not adequate direction to the states in implementing this section and may not offer sufficient rate protections for this basic service.

Third, it is reasonable to continue some price protection for this service beyond the three-year sunset in the legislation. NASUCA suggests that a ceiling price for this basic level of service should apply until the local exchange market is competitive. Otherwise, it is unclear what happens to the price of this basic service after three years. We are concerned that the price could be subject to pressures of "rate rebalancing."

RBOC ENTRY INTO LONG DISTANCE AND MANUFACTURING

NASUCA has supported the MFJ restrictions on the RBOCs because they increased competition and eliminated the opportunity for RBOCs to use monopoly telephone services to cross-subsidize competitive services. H.R. 1555 opens telecommunications equipment manufacturing and long-distance markets to the RBOCs following their compliance with the "openness" provisions of the legislation.

We believe that the standard in the MFJ is correct: an RBOC should be permitted to enter a proscribed line of business only if there is no substantial possibility of impeding competition in the market it seeks to enter. This is the "VIII(C)" test found in the MFJ. While compliance with the "competitive checklist" in the legislation offers some evidence that the VIII(C) standard has been met, NASUCA offers two additional recommendations for the legislation.

First, the RBOCs are still local exchange monopolies. While legislation can open local markets to competition, no bill can *make* these markets competitive. The standards in this bill for RBOC entry into manufacturing and long-distance means that monopoly local telephone companies will become participants in competitive telecommunications markets before they face effective competition in their own biggest market. This fact elevates the importance of consumer and competitive protections in the legislation. Further, the trigger in the legislation requiring actual competition apparently does not require competition in all markets or even in all locales for a given service.

In H.R. 1555, authority for the RBOCs to engage in various telecommunications activities is accompanied by "post-entry" safeguards only for electronic publishing. These same safeguards should apply to manufacturing and long-distance entry until the local exchange market is fully and effectively competitive.

Second, the Department of Justice should have a concurrent role with the states and the FCC in determining when the RBOCs enter the long-distance and manufac-

turing markets. The Department, as a party to the MFJ, has a special role in reviewing whether the VIII(C) standard has been met. A concurrent review by DOJ will not impede the RBOCs' ability to enter long-distance and manufacturing if, indeed, they are not able to impede competition in these markets.

CONSUMER REPRESENTATION ON THE FEDERAL-STATE JOINT BOARD

H.R. 1555 establishes a Federal-State Joint Board to implement some of the most critical elements of the legislation. NASUCA strongly supports the language that places a state-appointed utility consumer advocate on this joint board.

Direct representatives of telephone consumers will provide a unique perspective to the Joint Board. For example, H.R. 1555 requires the Joint Board to consider "the nature and extent of the services encompassed within carriers' universal service obligations." NASUCA submits that the evolving concept of universal service requires input from consumers and their advocates. Consumer representatives, with day-today direct contact with telephone subscribers, are in a superior position to provide information about the nature of services demanded by consumers in this era of rapid technological changes.

Further, consumer representatives will provide an original, and often absent, evaluation of whether a universal service plan appropriately targets telephone subscribers in danger of dropping off the telephone network. A consumer representative will also provide a unique perspective on the funding mechanisms for various universal service programs. NASUCA members have substantial experience in these areas and will bring a perspective not shared by state or federal regulators. The FCC's recent experience with consumer input in its Network Reliability Council demonstrates the uniqueness of the consumer perspective.

Finally, we recommend that the five year sunset provision for this Joint Board (page 30) be eliminated from the bill. It is too early to know how rapidly technology, competition and consumer demand will combine to shape the definition of universal service. These issues may be substantially settled within five years; there may be substantial change after that. A prudent approach would be to continue the joint efforts of state and federal representatives to define universal service and keep its price, especially for rural areas, at reasonable levels.

CONCLUSION

We support the Committee's efforts to increase the level of competition in the telecommunications industry. We firmly believe that the consumers' best interests are tied to a more competitive telecommunications industry.

There are features of this legislation which we support, but there are other sections which must be improved if the bill is to enable fair competition and serve telecommunications consumers. NASUCA appreciates the opportunity to present our views on this important legislation and look forward to working with the members and staff of this Committee to improve the legislation.

Mr. FIELDS. Thank you very much.

Ms. Specter?

Ms. SPECTER. I'm going to allow Ms. Scully to go before me.

Mr. FIELDS. Okay, fine.

Ms. Scully, Councilmember, City of Falls Church.

STATEMENT OF JANE SCULLY

Ms. SCULLY. Thank you. I am Jane Scully and I'm a member of the City Council of Falls Church, right down the road. Some of you may know it.

I would like to thank the chairman and members of the subcommittee for the opportunity to be before you today testifying on House Resolution 1555. On behalf of the National League of Cities, and the National Association of Telecommunications Officers and Advisors.

I would ask that my oral testimony, as well as a statement from the NATOA be entered into the record.

Mr. FIELDS. Without objection.

Ms. SCULLY. Thank you.

I am personally delighted to be here today in support of the growth and development in telecommunications, an arena I've explored as both a school board chairman—so, therefore, I applaud all the concerns that are being demonstrated in terms of the schools. I have to tell you that in terms of funding, though, that for the last several years, the main funding source for telecommunications in our school system has been grocery store receipts collected by the PTA. I would hope that within this bill you could bring us some new notions about how we could move further on that.

But now I'm a councilmember. It is at the community level that the true impact of these dramatic telecommunications changes will be most widely experienced. In people's personal lives, their jobs, their schools and libraries, their hospitals and transportation, not to mention their own personal safety.

I believe the telecommunications development will help us create new jobs and develop a growing economy. We favor greater competition in the local telecommunications marketplace, that should bring out the best and the best priced services.

Therefore, we now call on Congress and the administration to make municipal and county leaders full partners in building the new information super highway. We know our communities, large and small, rural and urban, rich and poor. It is critical that each one benefits from what you the Federal Government and we the local governments can build together.

That said, there are number of issues of concern to local governments in H.R. 1555. I will address only one. That is the ability of local governments to continue to manage and to receive compensation for the use of their public right-of-ways. We're concerned that H.R. 1555 does not adequately address this issue.

With regard to management, public rights-of-way belong to the community and are managed for their use. Local governments have controlled the upkeep and welfare of their streets and sidewalks, alleys and easements for centuries. We have worked with telephone companies, cable companies, electric and gas companies in laying wires alongside storm and waste water manage—drainage systems, traffic signal systems, all users of our right-of-ways.

We see the same responsibility before us to ensure that the development of the information super highway is done just as effectively. As you can imagine, coordinating these projects can be quite complicated. Local governments have become the central repository for information on the location and identification of all lines, pipes, wires and facilities. The localities have developed a framework for determining what goes where, what safety rules apply, when and where street cuts can be made. In particular, we have to manage the disruptions in traffic, business and the impacts on citizens affected by this work.

Expansion of the number of telecommunications services and providers will create even more demand for access to the public right-of-way, more frequent demands on the limited accesses. Local jurisdictions must continue to have the ability to act as arbiters of disputes over placement and as coordinator for such construction. This should not slow the development process, rather, it should guarantee its safe and rapid progress.

With regard to compensation, tearing up streets and sidewalks, to allow for pulling wires and laying pipes is an expensive proposition. Local governments have always collected compensation from private users of the public right-of-ways as a sort of lease or license to offset the physical, material and administrative costs involved.

In Falls Church right now, we have had so much work done in our downtown area that we're having to buy up new easements and rework the entire roadway. Without such compensation from users, we simply couldn't do it. The entire project would have to come from local dollars, and we couldn't do it.

Mr. FIELDS. Ms. Scully, if I could ask you to summarize, please?

Ms. SCULLY. Yes, certainly.

We feel that we should continue to have the right to ask for the fair price to make up for the wear and tear, the administrative costs on our cities, and our governments, that this advanced technology will bring.

I thank you very much for all the work that you all have done on this. I know we'll all be the beneficiary.

[The prepared statement of Jane Scully follows:]

STATEMENT OF JANE SCULLY, CITY COUNCILMEMBER, FALLS CHURCH CITY, VIRGINIA, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES AND THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

Good Morning. My name is Jane Scully, and I am a city councilmember in the city of Falls Church City, Virginia. I would like to thank the Chairman and members of the Subcommittee for the opportunity to testify today on behalf of the National League of Cities and the National Association of Telecommunications Officers and Advisors concerning H.R. 1555. I am testifying on behalf of 135,000 municipal officials from over 17,000 cities and towns across the nation.

While we have long supported ensuring a more competitive environment to enhance our national telecommunications infrastructure, we believe that must be a joint effort. Therefore, we call on Congress and the Administration to make municipal leaders full and equal partners in building this new information superhighway. Although global competitiveness and the information superhighway have occupied much of the focus of this legislation, it is critical that any Congressional action assure that our country's communities—large and small, rural and urban, rich and poor—benefit from changes in telecommunications laws and policies. It is at the community level where the true impact of these dramatic changes will be experienced—in people's personal lives, their jobs, schools, libraries, hospitals, transportation, and public safety. Perhaps no form of communication in America is better known or more critical citizens than 9-1-1. So any changes immediately affect one of the most important services local governments provide.

Local governments welcome and encourage the development of the information superhighway. Local governments believe that development of the information superhighway may result in economic development and new jobs in local communities. We are eager to see the benefits of the information superhighway available to all our citizens and encourage its development. Indeed, many cities are already enjoying the benefits of this new technology—through institutional networks, and use of the new technology in schools, libraries, and governmental services.

Local governments have long-standing policies that state that there should be greater competition in the local telecommunications marketplace, which should result in lower prices for consumers, businesses, institutions and other users of telecommunications services. In many communities, local governmental entities are one of the largest users of telecommunications services and would benefit from the lower prices that would result from competition.

LOCAL GOVERNMENT CONCERNS

There are many issues of concern to local governments in H.R. 1555. However, because of limited time, I will address one very important issue for local governments. The issue is the ability of local governments to continue to manage and receive compensation for the use of the public right-of-way. We are concerned that H.R. 1555 does not adequately address this issue. Language in H.R. 1555 that al-

lows local governments to require construction permits from telecommunications providers is not adequate language.

PUBLIC RIGHTS-OF-WAY

As stewards and custodians of public property, local governmental authorities have a responsibility to ensure that the development of the information superhighway is done reasonably, properly and in a safe manner. We have a critical responsibility to ensure that its construction does not endanger lives or unduly disrupt commerce. We have the lead responsibility to determine priorities about access to and use of public rights-of-way to balance the-needs and priorities of our taxpayers. We are concerned about the potential erosion of local authority and management of the public rights-of-way and associated compensation and consumer protection issues. We are opposed to any proposal which would involve a preemption of our citizens' rights and priorities or would permit public subsidies of right-of-way to be used for private profits.

Traditionally, wires have been laid in the public right-of-way along with other utilities. Local exchange companies have one set of lines, long distance companies another, cable companies others and fiber optic providers still others.

Local governments, as owners of the public right-of-way, customarily have authority over the use of that right-of-way. Implicitly, local governments recognize the preeminence of the public right-of-way for vehicular and pedestrian uses and subordinates all other uses to these transportation needs. Local governments have become the central repository for information on the location and identification of all lines, pipes, wires and facilities in the streets, thus eliminating conflicts among users. Local governments provide a rational process for the allocation of space in the right-of-way and a framework to determine when and where street cuts are to be made and how other disruptions to the public can be minimized.

Local governments also have a very practical role to play with regard to the private use of the public right-of-way. The local government is, in fact, the arbiter of disputes involving placement and location of facilities. Although wires and fiber optic facilities use little space, right-of-way space in many areas is very congested. In a major urban, central district, electric, cable, telephone, storm and wastewater drainage systems, fiber optics (loop carriers), gas and traffic signal conduit all compete for space in the public right-of-way. Expansion of the number of telecommunications services and providers will create more demand for access to the public right-of-way, making the role of arbiter even more critical.

Local governments collect compensation from private users of the public right-of-way. This compensation can be viewed as analogous to a lease or a license; the fee serves as compensation for the use of the public property by the private, *for-profit* telecommunications providers. Every time a street or alley is cut to install or repair a facility, the life of that street or alley is dramatically reduced. Companies with facilities in the public right-of-way create administrative burdens for local governments in laying, maintaining, operating and repairing lines. Assuring that such street cuts have minimal safety and traffic impacts similarly affects our budgets. Companies also require administrative time to resolve disputes among themselves and with the city's citizens. The compensation offsets these costs to our taxpayers. Without this compensation, local tax dollars would be used to subsidize for-profit telecommunications providers who occupy public rights-of-way.

Federal policy must not preempt local authority to manage the public right-of-way, nor impose new, unfunded federal mandates on us by eliminating compensation for the use of the public rights-of-way.

CONCLUSION

The vision for a highly advanced, robust telecommunications landscape which will deliver services that are meaningful to the businesses, institutions and residents of each individual community will be realized only if such communities have a role in their development. That role must balance the need for streamlined entry and relaxed but uniform regulation with the needs and interests of people in their own unique locales. As recognized by the 1934 Communications Act, localism cannot be administered nationally, and Congress and the federal government must not forget the diversity of our nation's communities in designing the new telecommunications environment.

We appreciate the opportunity to testify before the Subcommittee, obviously in five minutes it is difficult to cover all the issues of concern to local governments. The National League of Cities and the National Association of Telecommunications Officers and Advisors looks forward to working closely with the Subcommittee on

these issues to make all consumers the true beneficiaries of the new information superhighway.

Mr. FIELDS. Thank you very much.

Ms. Specter, did you want to give a statement also?

Ms. SPECTER. Yes.

Mr. FIELDS. Okay.

Ms. Rochelle Specter, Councilmember, City of Baltimore.

STATEMENT OF ROCHELLE SPECTER

Ms. SPECTER. Baltimore City is a consolidated city/county government. Today I'm representing both Baltimore City and the National Association of Counties, where I serve as a member of the Board of Directors. The statement also reflects the views of the United States—U.S. Conference of Mayors.

I appreciate the opportunity to testify on H.R. 1555. As members of this subcommittee know, local governments are a diverse group with many different policies on, and experiences with telecommunications.

However, what most local governments have in common is the knowledge that the expansion of America's telecommunications system, or the information super highway as it is called, will take place on right-of-ways constructed and paid for by these governments, largely with funds collected from taxpayers.

This being said, both the City of Baltimore, NACO, and the U.S. Conference of Mayors, welcomes the competition in the telecommunications industry, which this legislation seeks to foster. If competition results in lower prices for phone, video and long distance services, it will be good for my constituents.

It should be good for Baltimore, the other 3,100 counties and the thousands of cities in the United States, which are often among the major purchasers of telecommunications services in the community.

Finally, it should be good for economic development, since those local governments with advanced telecommunications systems will be able to use these systems as a tool to retain and strengthen existing businesses, and an incentive to attract new jobs and industry.

The counties and cities have both a duty and a responsibility to manage the public right-of-ways and receive reasonable compensation for the use of these assets. We cannot afford to let Congress preempt our authority to do this. For counties alone, the public right-of-ways represent 1.7 million miles of road on which they invest over $10 billion each year to maintain, adding the investment of cities, this total exceeds $30 billion.

In Baltimore City, we have 2,200 miles of roads and alleys to maintain. The cost to us to do so is $130 million, annually. Let me remind the subcommittee that the primary purpose of roads and the reasons that taxpayers allow us to spend funds on them is the movement of traffic.

We're to manage the right-of-ways and move traffic in the most efficient manner possible, we must be able to manage these right-of-ways and determine how they are to be used. This means that the City of Baltimore, not a telecommunications company, must determine when a roadway can be dug up to install wire. It means that where in the roadway wire is placed.

It also means, for example, that if a telecommunications company needs to install fiber in the same right-of-way where there is already necessary private or public utility work—such as electric transmission lines, or a needed traffic management system, or an emergency communications system—the local government must be able to coordinate construction, minimize public cost and control disruption of traffic and public access.

We do not buy the argument that because local governments want compensation for the use of taxpayer owned property, they are erecting barriers to entry. On the contrary, we deemed it irresponsible to force taxpayers of our communities to subsidize profit-making companies by giving them free or reduced cost access to public property.

Every time a right-of-way is opened up, it's useful life and value is reduced. Local governments must be compensated for the rent of that right-of-way, just as we would be if we leased any other piece of public property to a private sector company.

Can you imagine the outcry of Congress, if Congress tried to pass a law that required private property owners to turn over their property for free or for less than its market value to another private property owner, so that the latter could build a telecommunications system, whose profits would go to its stockholders?

Even the Federal Government recognizes it has something the telecommunications industry wants. The FCC has recently auctioned off air waves and earned $10 billion. In contrast to the major cost of building and maintaining local government right-of-ways, the air waves have cost the Federal Government nothing, and can be hardly viewed as an asset comparable to a road.

On the other hand, counties have a tremendous disincentive to try to extract unreasonable fees from telecommunications providers. If we go that route, our constituents, local businesses and voters might get——

Mr. FIELDS. Ms. Specter, could I ask you to suspend just a moment. Put a place holder there and I'm going to suspend the hearing. We had 15 minutes to vote and we're down to about 1 minute. As soon as I return, we'll pick up right at that point.

Ms. SPECTER. I have to finish this so I'll do it.

Mr. FIELDS. All right.

[Brief recess.]

Mr. FIELDS. We're back in session.

Ms. SPECTER. Oh, that's very good.

Mr. FIELDS. I'm going to recognize the gentleman from Massachusetts for his questions. I'm sure he'll yield some time for you to complete your opening statement, then he has some questions I'm sure he wants to ask the panel.

Mr. MARKEY [presiding]. Thank you, Mr. Chairman, very much. I very much appreciate the—is he gone? Just like the old days? Yes, Ms. Specter, your statement concluding your testimony?

Ms. SPECTER. I would like to continue.

Mr. MARKEY. Yes, please. Why don't you finish.

Ms. SPECTER. Let me take this opportunity to make several suggestions for changes in H.R. 1555.

We believe that Section 243, preemption, needs to be altered. At a minimum, it should be made clear that nothing in this section

would preempt the State or local government from managing the public right-of-ways and collecting reasonable compensation from substantially similar providers of telecommunications services.

Additionally, while Baltimore City has no major problem with the construction permit language in this section, it is not an adequate protection of local authority to control public right-of-ways. The installation of a new telecommunications system in the county is a complicated matter, and the construction permit is normally a final formality, with a charge to cover the cost of sending an inspector out to the site and the related paperwork.

The parity of franchise language in this section is problematic, as it may mean many local governments have received no compensation for new, private uses of the right-of-ways. This provision preemptively forces local governments to treat every provider of telecommunications services exactly the same for the purpose of compensation.

Many phone companies occupy the rights-of-ways under century-old agreements and do not pay compensation. This will have the effect of limiting fees to all new users to what any other user, such as the local exchange carrier, the phone company, is paying. This one-size-fit-all provision is the type of requirement imposed by the Federal Government on local governments, which has made many of us uncomfortable with many Federal statutes.

On a positive note, let me add that Baltimore City supports the provision in Section 656, that requires a video programming affiliate, or multi-channel video programming distributor, using a video platform, to deliver cable services to pay a fee to a local government. This section also requires the Federal Communications Commission to prescribe regulations for public education and governmental use.

However, the fee provision should be expanded to include any cost imposed by the phone company as a condition for receiving video programming. NACO is also concerned about Section 106, preempting of franchising authority regulation of telecommunications services. While Baltimore City and other local governments would be able to continue collecting franchise fees from cable operators, this section appears to change how franchise fees will be calculated by lowering the base to which the fee applies.

For instance, advertising revenue collected by the cable company as a result of the grant of the franchise would no longer be part of the gross revenue base. A second related concern is that the bill prohibits the franchising authority from requiring the cable operator to provide telecommunications services or facilities.

Currently, franchising authorities negotiate as part of a franchise agreement the provision of institutional networks. Such networks already bargained for in Baltimore City and many other jurisdictions, may be considered telecommunications services, and local governments would be prohibited from enforcing prior agreements upon renewal or negotiating for them in the future.

Mr. SCHAEFER [presiding]. Ms. Specter, if you would please summarize.

Ms. SPECTER. I'm just about finished.

Further, we're concerned about Section 202. The bill will make it more difficult for consumers to obtain relief from the Federal Communications Commission for improper rate charges.

Basically, members, it is really a very important premise that local governments be protected in the management and compensation of their right-of-ways; and I do hope you will work with NACO people in terms of making some adjustments to this legislation.

Thank you.

[The prepared statement of Rochelle Specter follows:]

STATEMENT OF ROCHELLE SPECTER, COUNCILWOMAN, CITY OF BALTIMORE, AND MEMBER, BOARD OF DIRECTORS, NATIONAL ASSOCIATION OF COUNTIES

Mr. Chairman and members of the subcommittee: My name is Rochelle Specter. I am a councilwoman in the city of Baltimore, Maryland, a consolidated city-county government. Today I am representing both Baltimore City and the National Association of Counties (NACo),[1] where I serve as a member of the board of directors. This statement also reflects the views of the U.S. Conference of Mayors.

I appreciate the opportunity to testify on H.R. 1555. As members of this subcommittee know, local governments are a diverse group with many different policies on and experiences with telecommunications. However, what most local governments have in common is the knowledge that the expansion of America's telecommunications system, or the information superhighway as it is called, will take place on rights-of-ways constructed and paid for by these governments largely with funds collected from taxpayers. This being said, both the City of Baltimore, NACo, and the U.S. Conference of Mayors welcome the competition in the telecommunications industry which this legislation seeks to foster. If competition results in lower prices for phone, video and long distance services it will be good for my constituents. It should be good for Baltimore, the other 3,100 counties and the thousands of cities in the United States which are often among the major purchasers of telecommunications services in a community. Finally, it should be good for economic development since those local governments with advanced telecommunications systems will be able to use these systems as a tool to retain and strengthen existing businesses and an incentive to attract new jobs and industry.

However, counties and cities have both a duty and responsibility to manage the public rights-of-way and receive reasonable compensation for the use of these assets, and we cannot afford to let Congress preempt our authority to do this. For counties alone, the public rights-of-way represent 1.7 million miles of roads on which they invest over $10 billion each year to maintain. Adding in the investment of cities, this total exceeds $30 billion. In Baltimore City, we have 2,200 miles of roads and alleys to maintain. The cost to us to do so is $130 million annually.

Let me remind the subcommittee that the primary purpose of roads and the reason that taxpayers allow us to spend funds on them is the movement of traffic. In order to manage the rights-of-way and move traffic in the most efficient manner possible we must be able to manage these rights-of-way and determine how they are to be used. This means that the city of Baltimore, not a telecommunications company, must determine when a roadway can be dug up to install wire. It means that we determine where in the roadway wire is placed. It also means, for example, that if a telecommunications company needs to install fiber in the same right-of-way where there is other necessary private or public utility work, such as electric transmission lines, an enhanced traffic management system, or an emergency communications system, the local governments must be able to coordinate construction, minimize public cost, and control disruption of traffic and public access.

We do not buy the argument that because local governments want compensation for the use of taxpayer owned property they are erecting barriers to entry. On the contrary, we deem it irresponsible to force taxpayers of our communities to subsidize profit making companies by giving them free or reduced cost access to public property. Every time a right-of-way is opened up, its useful life and value is reduced. Local governments must be compensated for the rent of that right-of-way, just as we would be if we leased any other piece of public property to a private sector com-

[1] The National Association of Counties is the only organization representing county government in the United States. Through its membership, urban, suburban and rural counties join together to build effective, responsive county government. The goals of the organization are to: improve county government; act as a liaison between the nation's counties and other levels of government; and achieve public understanding of the role of counties in the federal system.

pany. Can you imagine the outcry if Congress tried to pass a law that required private property owners to turn over their property for free or for less than its market value to another private property owner so that the latter could build a telecommunications system whose profits would go to its stockholders? Even the Federal Government recognizes it has something that the telecommunications industry wants. The FCC has recently auctioned off airwaves and earned $10 billion. In contrast to the major costs of building and maintaining local government rights-of-way, the airwaves have cost the Federal Government nothing and can be hardly viewed as an asset comparable to a road.

On the other hand, counties have a tremendous disincentive to try to extract unreasonable fees from telecommunications providers. If we go this route, our constituents, local businesses and voters, will not get the new telecommunications services they want, and will let us know at the ballot box.

Let me take this opportunity to make several suggestions for changes in H.R. 1555. We believe that **Section 243: Preemption** needs to be altered. At a minimum, it should be made clear that nothing in this section would preempt a state or local government from managing the public rights-of-way and collecting reasonable compensation from substantially similar providers of telecommunications services. Additionally, while Baltimore has no major problem with the construction permit language in this section, it is not an adequate protection of local authority to control public rights-of-way. The installation of a new telecommunications system in a county is a complicated matter and the construction permit is normally a final formality, with a charge to cover the cost of sending an inspector out to a site and the related paperwork.

The "parity of franchise" language in this section is problematic as it may mean many local governments would receive no compensation for new private uses of the rights-of-way. This provision preemptively forces local governments to treat every provider of telecommunications services exactly the same for the purpose of compensation. Many phone companies occupy the rights of way under century-old agreements and do not pay compensation. This section would have the effect of limiting fees to all new users to what any other user such as the local exchange carrier (the phone company) is paying. This one-size fits all provision is the type of requirement imposed by the Federal Government on local governments which has made many of us uncomfortable with many federal statutes.

On a positive note, let me add that Baltimore County supports the provisions in **Section 656** that require a video programming affiliate or multichannel video programming distributor using a video platform to deliver cable services, to pay a fee to a local government. This section also requires the Federal Communications Commission to prescribe regulations for public, educational and governmental use. However, the fee provision should be expanded to include any costs imposed by the phone company as a condition for receiving video programming.

NACo is also concerned about **Section 106. Preemption of Franchising Authority Regulation of Telecommunications Services.** While Baltimore and other local governments would be able to continue collecting franchise fees from cable operators, this section appears to change how franchise fees would be calculated by lowering the base to which the fee applies. For instance, advertising revenue collected by the cable company as a result of the grant of the franchise would no longer be part of the gross revenue base.

A second related concern is that the bill prohibits a franchising authority from requiring the cable operator to provide telecommunications services or facilities. Currently, franchising authorities negotiate as part of a franchise agreement the provision of institutional networks. Such networks, already bargained for in Baltimore and many other jurisdictions, may be considered "telecommunications services," and local governments would be prohibited from enforcing prior agreements upon renewal, or negotiating for them in the future.

Further, we are concerned that **Section 202** of the bill will make it much more difficult for consumers to obtain relief through the Federal Communications Commission from improper rate charges.

Finally we object to the bill's preemption of local government taxing authority over provision of direct broadcast satellite (DBS) services and to the grant to the Federal Communications Commission of the authority to preempt basic local zoning authority as it relates to the regulation of DBS antennas. These provisions strike to the heart of local government authority over revenue collection and land use.

We believe agreements can be reached on these issues and hope that the subcommittee members and staff will meet with NACo staff to develop the necessary changes to H.R. 1555.

This concludes my statement. I want to thank the subcommittee for allowing me to testify and I would be pleased to answer any questions members may have.

Mr. SCHAEFER. Thank you very much. I turn now to the ranking member, our good friend from Massachusetts, Mr. Markey.

Mr. MARKEY. I thank the Chair very much.

Ms. Rosenblum, on pages 7 and 8 of your testimony, you lay out the State utility commission's concerns about allowing multi-state utilities, utilities that cross from one State into another rather than just being in a single State. Their ability to diversity into telecommunications services without having potentially consumers choosing from another State—subsidizing telecommunications equipment which is going to be built in the second State, which would be complete unfair to the electricity consumers of the second State.

You expressed concern about the ability of the States to protect captive utility rate payers from potential abuses. You suggest that consideration of this issue be deferred to a larger debate, which is pending regarding a broader legislative and regulatory consideration of this whole issue of how we deal with electric utilities that cross State lines, so that we can reform it in a larger context, looking at their future.

As you know, Arthur Levitt, who is the chairman of the Securities Exchange Commission, has made a similar recommendation to the subcommittee. Could you articulate for the subcommittee the problems that would be created if these various State public utility commissions had to deal with such a complex issue as the cross-subsidization of electricity rates for telecommunications infrastructure construction across State lines, where the original State consumers would not be getting the benefits from that investment?

Ms. ROSENBLUM. Right. This is a very interesting issue that, in a sense, has been influenced by the developments in the electric industry.

Last year, NARUC was of the position that this type of amendment could move forward—although we fought hard for more stringent protections for rate payers. Those go to the issues you raised, congressman, which is that it's very difficult for a single-state commission, that has jurisdiction over the companies in its State region, to deal with interaffiliate transactions across State lines. That's a very difficult challenge for us. It's hard enough for us to deal with them within our States.

What has happened, though, is the electric industry is undergoing very much what the telecommunications industry went through a couple of years ago; and that is, a dramatic change in restructuring. In that context, that makes sense to the States and to NARUC, that this issue should be set aside and examined in the context of that debate, which I understand that Congress is going to take up, and which the SEC is also looking at at this moment.

Mr. MARKEY. Well, isn't it true that for a PUHCA exempt utility? The State PUC currently has the authority to take action to protect utility rate payers from cross-subsidization, as companies would diversify into telecommunications.

Do you think that an individual State PUC really would be capable of dealing with this issue of cross-subsidization of a multi-state electric utility, so that rate payers in Arkansas aren't picking up the cost of registered utilities setting up a cable TV enterprise in Louisiana?

92-967 O - 95 - 11

Do you consider the safeguards that are built into the Gillmor-Boucher Bill to be sufficient in order to give those protections to the electric rate payer?

Ms. ROSENBLUM. I think it's the view of NARUC that we feel there should be enhanced protections that again the issue that's complicated from the State perspective is the fact that these transactions will cross State lines and it will be hard for us to track the subsidies that flow from different revenue sources.

So, again, we urge that this be put in the context of the debate over electric——

Mr. MARKEY. And what happens if the various States use different standards? How do we resolve that in terms of the protection for the electric rate payer? What's the mechanism we would use apart from having to file suits, going into court and causing again a terrible set of lawsuits, rather than having some structure that resolves these issues in a rational way.

Ms. ROSENBLUM. Well, again, it's a difficult issue. Of course, States often communicate with each other and work out these things under the umbrella of NARUC in a mutual way. But still, it seems to us that given the dramatic changes that are occurring or are about to occur in the electric industry, that this should be placed in the context of that debate.

Mr. MARKEY. Okay, I thank you.

Thank you, Mr. Chairman.

Mr. SCHAEFER. The Chair thanks the gentleman.

I would just recommend to the panel—it's been a very hectic day back and forth to the floor voting, and we apologize for switching around up here.

I'd like to, first of all, welcome the panel; and particularly Mr. Binz, from my own State of Colorado, for being here. I'd like to start off with you, Mr. Binz.

The pricing flexibility language—what we have is intended to be somewhat anticipatory of full competitive conditions. Because keeping the incumbent telephone company fully shackled until a market is fully competitive would be unfair, we think, to the incumbents. The most desirable customers would be certainly long gone.

How would you respond to that?

Mr. BINZ. Congressman Schaefer, I distinguished in my written testimony the ability to respond to competitive entry by downward flexibility in pricing. I distinguished that from upward pricing flexibility for services which are not yet competitive.

Right now there's a notion kind of sweeping the industry. It travels under the euphemism of rebalancing. We need to get residential and business rates—excuse me, residential and real rates up so we can discount in areas where competition is coming in.

We have a different take on that. We think that these companies, as they begin to become competitive, can focus their efficiencies on the areas where competition is occurring to actually lower prices there, without raising them on customers who are still under monopoly.

So, I distinguish in there. I say that pricing flexibility, as you've done in the bill, needs to be tied to the level of competition. But, pricing flexibility—the bill is not real clear on where this is all headed. The FCC has got a role in setting up the indicia of that.

What we are suggesting is the bill ought to be clear, that we're not talking about flexibility upward for prices which are still not competitive as a response to areas where there is competition.

So, I agree with the thrust of your question that it should not be regulators role to hold these companies still while others come into their markets. I certainly agree with the thrust of your question. It's the flip side that we're concerned about.

Mr. SCHAEFER. Okay. I understand.

You also expressed concern about linking abolition of the rate of return to openness, yet—really, isn't that exactly the sort of negotiation that's occurring in the States at the present time?

Mr. BINZ. Rate of return regulation is being modified or eliminated in States, typically in the context of a negotiation. You're correct, Representative Schaefer.

I've made this point elsewhere. One of the tools that State regulators have for getting the markets open is in fact the promise of a very valuable form of regulation called price-cap regulation.

Our concern in this bill is that you're removing that leverage from the States where it's being used and implemented right now. But, further, as I said in my opening remarks, the abolition of the rate of return and the way it's done here is not just removing a style of regulation. I want to emphasize this. It's not just removing a style of regulation, it's going right to the core of regulating noncompetitive companies.

Even if you use price-cap regulation, as the FCC has done for 4 years now, you still want to measure its effectiveness and its value by looking at how much these companies are earning. This is real important. You don't have to do—you don't have to do rate of return regulation to need to look at rate of return.

So, the bill I think needs to be more subtle on this issue. We'd be certainly willing to work with committee staff to see if we can fix the problem that we've got with that section.

Mr. SCHAEFER. Would you care to respond, also, Ms. Rosenblum?

Ms. ROSENBLUM. I certainly concur in what Mr. Binz has just said.

In terms of shaping these plans, Mr. Binz is absolutely right, if States rely on the removal of rate of return regulation to induce companies to shape plans that are in the public interest.

For instance, the NYNEX and Rochester plan have a universal service component, it had stiff service quality standards, it had a commitment to technology diffusion, and it had a commitment to unbundle the local loop. All those things were obtained for consumers in those service territories in return for the listing of rate of return.

So, again, we join with PUCA in urging you to tailor that provision to give the States latitude to shape these very pro-consumer rate plans. Thank you.

Mr. SCHAEFER. In the bill—and I don't know if you all have copies of the bill—on page 12, line 16 through 25, we're talking about construction permits, and I'd like to direct this to the cities, because some of the things that have been brought up here dealing with your obligation, it says "Subsection, paren A, should not be construed to prohibit a local government from requiring a person or carrier to obtain ordinary and unusual construction or similar

permits for its operations if, one, such permit is required without regard to the nature of the business; and two, requiring such permit does not effectively prohibit any person or carrier from providing any interstate or antitrust State telecommunications service or information service."

Does this take care of our problems with the city?

Ms. SPECTER. In terms of—yes. That was in our testimony.

Ms. SCULLY. I'd like to speak to that.

Mr. SCHAEFER. Go ahead.

Ms. SCULLY. I think one of our concerns is that the notion of construction permits is used in a varied way across the country. There's no consistent use. It is not defined in this piece of legislation.

I have some qualms about it in terms of knowing whether it means we simply have to sign a little paper for anybody who comes in, or whether it means we still have the right to control the timing, the coordination, the placement—what does a construction permit mean?

Mr. SCHAEFER. Well, how would you define it?

Ms. SCULLY. I'd like it to mean all the latter things, that it would continue to be a permit that is representative of an agreement between the company coming in and the city as to the best, most convenient, most safe way for them to introduce their services.

Ms. SPECTER. I'd like to add, Mr. Chairman, the installation of a system to a county is a complicated matter. It's more than just issuing and okaying a permit. That's why I feel it's not adequate protection to the local governments.

It's more than just giving a permit.

Mr. SCHAEFER. My time has expired. The Chair is back now, and I'll turn it back over to him.

Mr. FIELDS [presiding]. If the ranking minority member is prepared, the Chair is ready to recognize the gentleman from Michigan, Mr. Dingell.

[Pause.]

Mr. FIELDS. The Chair recognizes the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, and welcome to all of the participants of the panel. It's wonderful to have representation from local government, which is where I came from. I have to tell you, I don't think there's any better preparation for service in the Congress than coming from local government. So, I especially appreciate the comments that you've made.

I have heard from many of my cities on some of the issues that you touched on. If I ask a question that you feel that you've already covered in your comments, please bear with me, because I got up to go and vote. So, I know that I missed at least all of one testimony and part of Councilmember Scully's.

On the issue of construction, if you could elaborate on that just a little. As you say, this is not simply a permit. Tell us what else there is?

Perhaps you can tell us what the financial implications are for local government? I think that people are not so apt to cling to things—and I say that in a positive way—if they are not in fact pushed financially. There is a crunch all over.

In my view, when the 104th Congress finishes with budgets and lots of other things, that it's not even going to move to States, it's going to come right into your laps. It always has, as long as I was there. So, on the issue of construction, permits and revenues, and also Councilmember Scully, if you could elaborate a little on what the revenues mean to the cities, relative to cable, I would appreciate that.

Thank you.

Ms. SPECTER. If I may, in terms of the locals, they would need to be involved with the construction process. Not just at the end, which is the actually granting of the permit. Plans would have to be submitted and there are other responsibilities that we have for those right-of-ways dealing with utilities, dealing with emergency services, the wiring that would maybe interrupting a plan that we have down the road, maybe we have a plan 6 months from the time this permit is requested to do some major changes in that road system.

So, it isn't just the permit, the construction and the planning of it needs to be worked through with our planning department. I have a deputy director of planning and we take, maybe, 5 years of long range plans for a main area of our city. In this process, it really would fail us, that we would not be able to take into consideration what we've planned down the road for that particular area.

That causes me a great deal——

Ms. ESHOO. It would circumvent that?

Ms. SPECTER. Yes.

We have certain areas in the city that have seasonal promotions, like Pimlico Race Track in my district, for instance. During the 180 days of racing, we would not want main arterials interrupted, because it would be a terrible problem with traffic.

So, for that 180-day period while we have racing at the race track, that would be a—we would be hard-pressed to give a permit for any interruption to the major traffic flow.

I would like Councilmember Scully to discuss the financial part. I know that it costs us $130 million a year to maintain our roads in Baltimore City.

Ms. SCULLY. I'd like to speak first, if I may, councilwoman, to this whole issue of the construction permits.

I think one of the things that worries us is that we're not clear as to who decides on the qualifications of these people. Are they going to be licensed? Are we going to require that under the construction permits? Are they bonded? Are they experienced? What happens if a project goes bust in the middle of things and we have to take up the slack on that?

It's not impossible when you're considering these new, startup companies that are entrepreneurial by nature. So, that would be another concern I would certainly have in terms of defining what the construction permits or like arrangements would be.

My city sits in the middle of—for those of you who don't know Virginia—the intersection of Route 7 and Route 29. It's a major thoroughfare, and most every trunk line of most everything likes to go through there.

I am troubled by the fact that my businesses have been torn up, you know, every other year. We have to meet with them regularly

and try and tell them what's going to happen. If we haven't got the control to say, "We can guarantee you, in this length of time, you will have an entrance to your business, and you won't go broke." That's very important.

Ms. ESHOO. I think my time has expired, and I regret that. But, we'll get some more from the League of Cities and from your testimony.

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

Mr. FIELDS. Thank you. The Chair will recognize himself. Again, I apologize for having to run out for the vote.

Ms. Rosenblum, I want to tell you how much we appreciate the very strong—what we took as a strong endorsement from the States, as to the general thrust of the legislation. We also take into account that you have some very constructive suggestions—as do all of you. We appreciate that.

I was going to ask you, though, if I could, with regard to pricing flexibility, are you proposing that the States set the criteria for intrastate communications? Was that what you were basically saying to us?

Ms. ROSENBLUM. That's correct. The way I understand the bill, not only would the States be subject to the criteria for determining whether a given service is competitive, but they would then also be subject to specific procedures that the FCC has developed.

Both aspects of this provision give us cause for concern. Because already, for instance in New York, we were the first State to undertake a co-location regime; and the first State to allow NYNEX pricing flexibility in co-located offices.

Why should we be hamstrung by FCC action, which may take up to a couple of years? States across the country are doing this as well.

Mr. FIELDS. And, by the way, it is acknowledged. You've been very aggressive in New York in opening the loop. I think we share that with the States and the communities in wanting to see that loop opened.

What about States that perhaps are not as aggressive as New York? Should the Federal Government at that point, at least provide in the language where the Federal Government can set a standard?

Ms. ROSENBLUM. Yes, I think there is a legitimate Federal role in insuring that a national policy is implemented. States that are not acting consistently with that national policy should be spurred into action.

So, we would not have a problem with a provision that in effect excepted States that were complying with the overall objectives of the bill, and differentiating between those States and States that perhaps are lagging behind.

Mr. FIELDS. Let me ask you a general question, because in coming up with the checklist that we have in the legislation, you know, there are some very laudable goals. If the loop opened, and the carrot to the loop being opened, of course, is some people being eligible for some long-distance competition that heretofore was closed. Also, we hope to see, you know, more activity in the local telephone exchange and so forth and so on.

But, we felt it was very important that the States have a role. We've tried to recognize the role of the States that what might be good for New York may not be good for Texas and vice versa.

The way the checklist is drafted, do you feel that your State and the States that are represented through your association, do you feel confident to go through that checklist to verify that the loop is open, based on the conditions in the checklist?

Ms. ROSENBLUM. Not only do we feel confident, in fact, States every day—state commissions—are working out the arrangements that are contained in that checklist. That is really the bulk of regulatory work today, to work out and facilitate the intercarrier arrangements between generally the incumbent and the new competitors.

So, we are close to the market. We are working on those arrangements, and we really do applaud the committee for including State certification in the bill. We think it's a major step forward.

Mr. FIELDS. Well, thank you.

Mr. Binz, you were shaking your head. Do you agree?

Mr. BINZ. Yes, I do. I think it is appropriate to have the States verify this. They're doing it anyway, I think is the point.

Your question earlier, what about States that are lagging behind? I think it's becoming clear the States don't have the luxury to lag behind much longer.

Colorado pushed through in a matter of 5 weeks legislation, which is going to be signed by the governor this week to open the local loop and prescribe many of the same issues that are on this checklist to be adopted as rules by the Public Utilities Commission. There's a negotiation which precedes that. We hope to have that done.

The strongest argument being made is, for investment to come to Colorado from these varied carriers, we need to do this. So, I think you're going to see that progressively, there's a wave of that State legislation this year, there's going to be a second wave of that next year.

Mr. FIELDS. Well, thank you very much.

Mr. BINZ. I think it's appropriated.

Mr. FIELDS. The Chair's time has expired. The gentlemen from Michigan, the ranking minority member.

Mr. DINGELL. Thank you, Mr. Chairman. Welcome to the panel, ladies and gentleman. I think I want to address this question to, principally, Ms. Rosenblum, if I may please.

I have here a letter from the NARUC, Incorporated, to members of the Committee on Commerce. "Dear Commerce Committee Member, I'm writing on behalf of the National Association of Regulatory Utility Commissioners, NARUC, concerning the Communications Act of 1995, H.R. 1555." It is my understanding that an amendment will be offered—I'm not quoting exactly—to amend the Public Utility Holding Company Act, PUHCA, enabling registered utility holding companies to diversify into telecommunications services.

Then the next quote appears, "NARUC is not opposed to a PUHCA exemption, which allows registered utility holding companies to diversify into the telecommunications market. However, the NARUC has supported provisions to insure that such exemptions, provided States will not be precluded from providing electrical util-

ity rate payers with adequate consumer protections from potential abuses. NARUC believes that provisions contained in H.R. 912 need to be strengthened to provide this assurance."

Do you agree with that?

Ms. ROSENBLUM. Well, as I'm here representing NARUC, yes. We feel strongly——

Mr. DINGELL. I don't want you to be defensive in saying so. I want you to be frank.

Ms. ROSENBLUM. Well, I'll tell you very frankly, we feel strongly that in the end all players should be invited in and should compete vigorously and robustly in the telecommunications market. That will be in the best interest of American rate payers.

However, at this juncture, it seems likes there's so much restructuring going on in the electric industry, it makes sense to take up that issue of PUHCA reform and the question of what diversified holding companies can do in terms of entering other utility businesses in the context of that debate. That's the consensus of the association.

Mr. DINGELL. See, I enjoyed reading it so much because I agree with it.

Ms. ROSENBLUM. Oh, okay.

Mr. DINGELL. My concern here is that you should proceed very carefully where you attempt to address statutes that have stood as long as PUHCA.

Now, you suggested NARUC believes that the provisions contained in H.R. 912 need to be strengthened to provide this assurance. What can you tell me about how those should be strengthened? Do you want to make some suggestions to us on this? Or, perhaps, Mr. Binz, you want to make some comments on this at this time as to what should be the strengthenings which should be achieved to accomplish the purposes of providing the safeguards? Or, should we perhaps wait until some happier time when we can address the matter in a more solemn and careful fashion?

Ms. ROSENBLUM. Just briefly I'll say, I do believe we've crafted some language which I'll be happy to submit to you on this. I think the States are concerned that, in addition to the qualifying State authority over these interaffiliate transactions, that also there's an issue at the Federal level in terms of FERC jurisdiction that needs to be clarified; and we hope that the legislation will address that as well.

Mr. DINGELL. Now, the clock is very cruel here, but I'd like to have you give us some additional comments on this for the record. If you would do the same for us, Mr. Binz, I believe it would be of assistance.

What I would observe is, in some instances utilities would be treated differently amongst different categories of utilities, providing different services, by the State regulators simply because the State regulators could not because of the structure of their regulatory responsibility and the structure of the marketplace. Is that a correct statement?

Mr. BINZ. Mr. Dingell, our association, the National Association of State Utility Consumer Advocates has concerns about registered holding companies diversifying beyond their core business. That's what PUHCA was set up to do.

Mr. DINGELL. That's part of a rather excellent summary of misfortunes that utilities have had, going into a wide diversity of businesses, some of which were in fact telecommunications businesses.

But, I want to try and focus as narrowly as I can on the structural difference of the marketplace that would require, particularly categories of utilities to be treated one way, and another category to be treated differently by the State regulators; and a similar situation as between different categories of utilities at the Federal level, but also differences between utilities on the Federal and the State level.

I know my time is up, so I can't get it, but can you give us some comments? That seems to be somewhat unfair and perhaps unwise.

Mr. BINZ. I would say that, I think you can square the following three propositions that, telecommunications ought to be competitive; that you ought to get as many players in as possible. Electric utilities are different, because they still have a monopoly base. They're different than any other entrant in telecommunications and registered holding companies are different again——

Mr. DINGELL. Now, you're——

Mr. BINZ. [continuing] because of the interstate.

Mr. DINGELL. [continuing] expressing a concern which lies in a totally different area, and that is the possibility, for example, of using sheltered regulated assets for the purposes of achieving competitive advantage in the marketplace. Is that a concern? You have the tools to address that?

Mr. BINZ. We think that with respect to electric utilities, who are not among the regional holding companies—states do this all the time as they get into various businesses, to insure that you don't get that result. It's more complicated when you're in telecommunications, because you've got a relatively—you've got a monopoly in one area using many of the same assets to get into a competitive area.

I think the tools are there, but with respect to 912, our association has not taken a position. But our resolve position is that if you permit the registereds in, there needs to be very comprehensive consumer protections. We're certainly prepared to respond in writing with more detail on that, congressman.

Mr. DINGELL. Mr. Chairman, I thank you. My time's expired. Thank you.

Mr. FIELDS. I thank the gentleman.

The gentleman from Ohio, Mr. Gillmor.

Mr. GILLMOR. Thank you, Mr. Chairman.

Actually, the ranking member touched on a lot of the things that I was going to touch on, although I come from a slightly different point of view. I think 912's the greatest thing since sliced bread.

But, I wanted to follow up and make sure I understand your position on this. You are not opposed, I take it, to 912 if there's adequate protection against the rate payers having to pay. Is that fair?

Ms. ROSENBLUM. We are not opposed, eventually, to allowing all players into the telecommunications market, including electric utilities.

However, we do feel strongly that because of the restructuring in the electric utility industry that is underway, and becoming in-

creasingly more complex, those issues should be focused on in that context.

Mr. GILLMOR. What great, mysterious complexity is there regarding a utility offering telephone service as long as they can't put it on the rate payers that we're going to learn about if we have 6 months of hearings? What great new thing is out there that we don't know about now?

Ms. ROSENBLUM. Well, as I understand it—and we can get you more information on this if you like—Congress is thinking about looking at the whole area of exceptions from PUHCA, and also the FCC is studying it at this time. I really can't at this juncture envision how the electric industry will change, but I'm pretty sure it will change, and perhaps it's better to consider it in that light.

The other alternative, I agree, is to move forward, but with very constringent consumer protections.

Mr. GILLMOR. The one problem I have with your approach is, if we followed that approach in most of what we do, we'd never do anything because there will always be more complexities in the future.

But, specifically, the bill does require the company to have a separate affiliate, and separate books, and State regulatory authorities have the right for an annual audit. I guess what I'm saying is, we ought not wait forever or we'll never get anything done. It's important we get another player.

But, in that process, if you can be specific in terms of language that provides the protection you want, which is a protection I agree with, I'd be happy to look at that.

Ms. ROSENBLUM. We will be happy to provide language.

Mr. GILLMOR. I also wanted to follow up with Mr. Binz about the idea that a utility ought not be able to go out of its core business because its a monopoly in that core business. I just want your comments because it seems to me there are many situations where you could make that same argument about other companies.

Take Time Warner, for example. We have a lot of testimony that considers cable service to be similar to a monopoly, in it's current form. Even the region of Bells, at the local loop, has a monopoly.

However, we don't say to them, we're going to limit competition by letting you get out of your core business. What is so magical about an electric utility compared to a telephone monopoly?

Mr. BINZ. Congressman Stearns, I was——

Mr. GILLMOR. Gillmor.

Mr. BINZ. I was referring here to the——

Mr. GILLMOR. It's Gillmor. I'm sitting behind Mr. Stearns' sign.

Mr. BINZ. Congressman Gillmor, I was referring here to the registered companies. I was really saying that we do not have a—we endorse the basic theory of the PUHCA restrictions. That's what I was really saying.

The Public Service of Colorado is not a registered holding company. We expect them to do telecommunications in Denver, and I think the Colorado Public Utilities Commission will set the rules that will allow that to happen.

American Electric Power is an entirely different creature. It is a multi-state company. Those sorts of companies are very difficult for State commissions and for the FERC to regulate adequately so that

these diversifications don't interrupt their attention to their core business.

So, I was referring there really to the registereds. We think that that principle, which is in PUHCA, is correct. Now, we also recognize that PUHCA is most likely to be amended; and we think that the question of diversification—which is really the issue here with PUHCA—ought to include an examination of the telecommunications diversification at that time, as opposed to bringing it into the telecommunications law.

Mr. GILLMOR. Thank you very much.

Ms. SPECTER. Mr. Chairman?

Mr. FIELDS. Yes.

Ms. SPECTER. I just wanted to, as representing Baltimore City, NACO and the U.S. Conference of Mayors, I just would like to suggest that like in the Senate bill there be explicit language that would protect local governments by not being preempted in the management and receiving compensation for their right-of-ways.

That's really the basic reason why I'm here today.

Ms. SCULLY. Mr. Chairman?

Mr. FIELDS. We appreciate that very much. Yes, Ms. Scully.

Ms. SCULLY. I'd like to sign on to that as well. I think we're not trying to do anything new here. We're simply trying to continue what we have had the rights to do before and has worked well in the past.

Mr. FIELDS. We appreciate that. I was going to say to you, also, Ms. Scully, my wife is on the school board back in our little town in Texas. She shares some of your sentiments. She was recently at the convention in San Francisco.

Ms. SCULLY. Good.

Mr. FIELDS. She went to a meeting on some of the services that are being provided by companies. As an example, cable in the classroom, some services that are being offered by the cellular telephone industry. So, there are some private sector opportunities, you know, for educators and school board members like yourself. You may want to explore some of those, and we'd be glad to make some suggestions.

But, let me say to all the panel, we appreciate your indulgence, your patience. We appreciate the help that you're giving us as we're drafting this historic piece of legislation.

Thank you very much.

Ms. SPECTER. Please heed us.

Mr. FIELDS. Okay. If we could please have Mr. Stillman, Ms. Carroll, Mr. Harrold, Ms. Easterling and Mr. Sonnenstrahl.

We're going to begin our fourth panel. We have Ms. Julie Carroll, Director of Governmental Affairs, the American Council for the Blind; Ms. Barbara Easterling, Secretary-Treasurer, Communications Workers of America; Mr. Bradley Stillman, Telecommunications Policy Director for the Consumer Federation of America; Mr. Robert Harrold, Manager, Strategic Programs, the ARI Network Services; and Mr. Alfred Sonnenstrahl, Executive Director, Telecommunications for the Deaf.

Ms. Carroll, we'll begin with you, Ms. Julie Carroll, Director Governmental Affairs. Again, we will ask that you keep your remarks to 5 minutes. At the end of 5 minutes, I'll ask you to summarize.

STATEMENTS OF JULIE H. CARROLL, DIRECTOR OF GOVERNMENTAL AFFAIRS, THE AMERICAN COUNCIL OF THE BLIND; BARBARA J. EASTERLING, SECRETARY-TREASURER, COMMUNICATIONS WORKERS OF AMERICA; BRADLEY STILLMAN, TELECOMMUNICATIONS POLICY DIRECTOR, CONSUMER FEDERATION OF AMERICA; ROBERT E. HARROLD, MANAGER, STRATEGIC PROGRAMS, ARI NETWORK SERVICES, INC.; AND ALFRED SONNENSTRAHL, EXECUTIVE DIRECTOR, TELECOMMUNICATIONS FOR THE DEAF, INC.

Ms. CARROLL. Good afternoon. I'm also testifying today on behalf of the Telecommunications Task Force of the Consortium of Citizens with Disabilities. This is a coalition of organizations that represent a wide range of individuals with disabilities and their families, such disabilities such as speech impairments, motor impairments, hearing loss, vision loss, as well as cognitive impairments.

We thank you for the opportunity to testify today. Our task force notes and much appreciates the efforts of this committee to promote access to telecommunications for individuals with disabilities. We're very excited about the revolution in the telecommunications industry. Access to telecommunications for individuals with disabilities is critical.

For many individuals with disabilities, many who do not drive, who are handicapped and who have communications deficits, telecommunications may be the only access for a large variety and quantity of information. Now, right from your home or office, people can access library services, conduct research, home shopping, do banking, pay their taxes, received files, electronically—these are all activities that without telecommunications can be inconvenient at best for individuals with disabilities, and at worse, very difficult or impossible.

Interacting with telecommunications has also become an essential job function for many jobs. Where telecommunications services and products are accessible, this greatly enhances the job opportunities of individuals with disabilities.

We are concerned, however, about some of the barriers to telecommunications services. There are many barriers that we are noting. For example, there's a great use of information menus that are voice driven, excluding people with speech impairments. Users of augmentative communication devices have difficulty accessing voice systems, as well as services such as 911 and 411.

Television programming, also, is still partially inaccessible to persons who are deaf and blind. Our telecommunications task force commends this committee for its promotion of closed captioning in H.R. 1555. We would like to see language that strengthens the promotion of video descriptions for individuals who are blind, to see progress in that area as well.

Another area where we have found many barriers are in computerized services that are moving to graphical user interfaces. These systems are inaccessible to persons who are blind and using speech synthesized systems, as well as to people with motor impairments. The mouse, for example, is the only mechanism for inputting into the system.

We're also concerned about barriers to telecommunications products. H.R. 1555 doesn't address access issues for telecommuni-

cations products. There are many barriers in that area as well. For example, telephones that have visual displays and only display information visually are inaccessible to persons who are blind; telephones that don't have volume controls are unusable by many who are hard of hearing.

We're also encountering a number of devices that are heat and touch sensitive. These are inaccessible often to people who are vision impaired and to people who have motor impairments.

Products are the interface between the user and the services. We would like to see telecommunications products also brought into H.R. 1555 and made accessible to persons with disabilities so that the services that are accessible—be used as a kind of a barrier to the services that accessible through the products that are inaccessible.

The nature of the market forces for persons with disabilities in conjunction with the rapid advancements in this industry have meant that many people with disabilities are shut out from telecommunications services.

The access has been dependent largely upon small entrepreneurs, who often work feverishly to try and catch up with the telecommunications industry to develop the products that are accessible. This usually requires expensive, adaptive equipment. Because what they're doing is retrofitting and redesigning systems as opposed to designing at the inception of he product or service. This mechanism of achieving access is inefficient, and it's more costly than it needs to be.

Our task force urges the committee to urge industry to address access issues at the design, development and fabrication stages of all its products and services.

To conclude, we also urge the Congress to apply disability access requirements to all telecommunications providers of services and manufacturers of products. We also recommend that standard setting mechanisms be established that require input from persons with disabilities, as well as representatives from industry.

I'd like to submit a more complete statement for the record, and again, we thank you for the opportunity to testify and I'll be happy to answer any questions.

[The prepared statement of Julie H. Carroll follows:]

Prepared Statement of Julie H. Carrol, Director, Governmental Affairs, American Council for the Blind

INTRODUCTION

Good morning Mr. Chair, members of the Subcommittee, my name is Julie Carroll; I am the Director of Governmental Affairs for the American Council of the Blind. The American Council of the Blind is a national organization of blind men and women who seek to improve opportunities for people who are blind or visually impaired. My testimony is also submitted on behalf of the Telecommunications Task Force of the Consortium for Citizens with Disabilities (CCD)—a coalition of organizations which represent a wide range of individuals with disabilities and their families, including individuals with speech, motor, hearing, vision, and cognitive impairments. We want to thank you for giving us the opportunity to include the interests of Americans with disabilities in this legislative effort. We are most appreciative of your efforts to consider the access needs of persons with disabilities to telecommunication services.

IMPORTANCE OF TELECOMMUNICATIONS FOR PEOPLE WITH DISABILITIES

Advancements in communications technology, networks, and services have dramatically improved opportunities for independence, productivity and integration for people with disabilities. The convergence of telecommunications technology and high speed networks could lead to enormous new opportunities for full and equal participation by citizens with disabilities in employment, commerce, education, health care, entertainment and democratic government. Additionally, it offers alternative methods for handling some health care and personal assistance needs for individuals with disabilities. Yet, the emerging information infrastructure offers a paradox to all Americans, especially the nearly 50 million Americans with disabilities; on one hand, there is tremendous promise and potential for benefit; on the other hand, if a telecommunications system evolves which is inaccessible to persons with disabilities, the result will be isolation and disenfranchisement. Telecommunications technologies can bring increased independence in access to and use of a tremendous variety of information.

Access to the nation's telecommunications system is perhaps more critical for Americans with disabilities than for others. Access to telecommunications services and products has become an essential function of many jobs. For that reason we are particularly pleased that H. R. 1555 addresses access issues for persons with disabilities.

Electronic information has become the information pipeline for many with disabilities. When captured in a digital format a newspaper, letter, book— virtually any piece of information—can readily be made accessible to and usable by individuals with disabilities and transmitted immediately over tremendous distance, at high speed and in immense volume over telephone and other lines. For individuals with disabilities, the nation's telecommunications system may be the only way to obtain access to a great quantity of information and services, while for others electronic access will continue to be an alternative to other, more traditional forms of distribution. For example, I cannot "read" a standard newspaper. But with a proper electronic interface, I can "read" a newspaper in digital format. With a proper electronic interface, an individual with a speech disability can communicate and get equal services. Other barriers also exist which cause individuals with disabilities to require enhanced and more immediate access to the information infrastructure.

Home shopping has become the basis for changes now taking place in the telecommunications industry. No doubt, home shopping will soon be offered ubiquitously. Individuals with disabilities, who have never been able to freely browse, examine and compare prices and promotional material are now happily using online services for shopping because these services offer a degree of independence not available before. We must preserve and enhance that independence through policies that promote universal service for people with disabilities.

IDENTIFYING THE BARRIERS TO TELECOMMUNICATIONS

Market forces and expanding technological capability have traditionally failed to ensure the design and manufacture of products and services which are fully accessible to and usable by people with disabilities. Information appliances, storage methods and networks are being developed in a way which excludes millions of Americans with disabilities.

For far too long, access to information for individuals with disabilities has depended largely upon the availability of expensive, adaptive equipment. Deaf individuals have needed text telephones. Individuals with speech impairments must use electronic augmentative communication devices to access existing voice-based networks. Those with visual impairments often use speech synthesis hardware and software interfaces necessary to operate visual display computers. Most adaptive devices or software have been developed by small entrepreneurs working feverishly to catch up with developments in the technology. There is often significant lag time between when technology is available to the public and when such adaptive devices make the technology available to persons with disabilities. This "separate and unequal" system of access to important technology and services for people with disabilities is inefficient and costly. It is much more cost-effective to design access at the inception of a product or service than to add access on later through retrofits and redesigns; that is why we are so committed to ensuring that the telecommunications industry address the access needs of individuals with disabilities when it develops, designs or fabricates telecommunications equipment and services. Through the use of universal designs, the needs of those with disabilities will be incorporated at every stage of design, development, and fabrication.

Barriers to Telecommunication Services

Many telecommunications services are inaccessible to persons with disabilities. For example, today, the ever-expanding use of graphical user interfaces and image-based information storage are taking the power of electronic information networks out of the hands of people who are blind, as well as individuals with certain motor disabilities and those with some learning disabilities. This will cost thousands of disabled individuals their jobs when they are no longer able to access the database of their employers, perform on-line research, or receive and send electronic job-related files. Even the Internet, which had been extremely usable by individuals with various disabling conditions, is increasingly being dominated by an interface called Mosaic which is only partially accessible to many users with disabilities. (Mosaic was developed by the National Center for Supercomputing Applications). (For additional information, see attachment "Assuring Access for the Disabled," from the Chronicle of Higher Education, May 4, 1994.) Examples of how services are made inaccessible to persons with disabilities: the exploding use of information menus that require voice responses shuts out millions with speech disabilities; 2. users of electronic augmentative communication devices can't get recognition on many existing voice networks; 3. audio text systems which are becoming so common are virtually unusable by people who are deaf; 4. Television programming is partially inaccessible to individuals who are blind or deaf. The CCD Telecommunications Task Force supports requiring all video programming providers or owners to provide closed captioning. Similarly, the CCD Telecommunications Task Force urges strengthening the requirements for studying video description services that will make television programming fully accessible to individuals with visual impairments. Section 204 of H. R. 1555 should be revised to ensure that progress is made in this area within one year.

Barriers to Telecommunications Products

Many telecommunications products are inaccessible to persons with disabilities. Telecommunications products are the interface between telecommunications services and the user. The products must be accessible to and usable by persons with disabilities in order for disabled users to take advantage of accessible telecommunications services.

For example, heat or touch sensitive input devices, now commonplace in many information devices, are often virtually unusable (as currently implemented) by individuals with visual or motor disabilities. Telephones with visual screen displays are inaccessible to persons with visual impairments.

COMPREHENSIVE ACCESS TO TELECOMMUNICATIONS

We urge Congress to apply the disability access requirement of The Communications Act of 1995 across the telecommunications industry. All telecommunications services and products should be accessible to persons with disabilities. Access to telecommunications will increasingly depend upon a hybrid of services accessed through multi-purpose appliances. For example, currently, many Cable-TV boxes can now be used not only to select television programming, but are interactive—permitting the user to make purchases, access local news and events information, etc. These devices are not fully usable by, or accessible to, individuals with disabilities. This situation is only likely to worsen. Expanding the coverage of the access requirements to all relevant industries and providers would enhance equality for people with disabilities and establish parity within the telecommunications industry with respect to ensuring access.

Accordingly, we urge that Section 248(c)(1) of Title II of H. R. 1555 be revised to apply to all providers of telecommunications services and manufacturers of telecommunications products.

ACCESSIBILITY STANDARDS

Standard setting mechanisms must be established to include input from representatives of the disability community and the telecommunications industry. Standards must be developed in the form of *functional requirements* so that accessibility features can evolve to keep pace with fast-changing technology and services. It is critical that both telecommunication networks and equipment offer the potential for multiple outputs including audio, visual, and tactile and multiple inputs including speech, key pads, and other activation mechanisms usable by individuals with motor disabilities.

Accordingly, Section 248(b)(2)(B) of Title II of H. R. 1555, The Communications Act of 1995, should be amended to require input by representatives from the dis-

abled community to ensure that products and services are accessible to and usable by individuals with disabilities.

CONCLUSION

The revolution in communications, the production and distribution of information and entertainment now underway offers Americans with disabilities unparalleled opportunities for equality and advancement. Telecommunications systems will transform the content and conduct of work locally, regionally, nationally, and globally enhancing opportunities for employment for individuals with disabilities as well as offering greater benefits from the increased productivity that these technologies make possible. Interactive communication offers tremendous potential for the delivery of efficient and effective education, health care, and possibly even personal assistance services for individuals across the age and disability spectrum.

Those who have the ability to obtain and use information have the power to make choices and enhance opportunities for independence, productivity, and self-sufficiency. That is why the Consortium for Citizens with Disabilities believes it is so important for telecommunications legislation to accelerate the process of systematically ensuring that the communication accessibility needs of individuals with the full range of functional disabilities are advanced right along with advances for all Americans. There is an important and legitimate federal role to ensure that both the private and public sectors, in partnership with representatives of the disabled community, design a telecommunications system which is usable by and accessible to all individuals.

APPENDIX A—SUMMARY OF RECOMMENDED REVISIONS

Amendment 1.—Amend Sec. 248(c) to read as follows:

(c) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.—

(1) ACCESSIBILITY.—Within 1 year after the date of enactment of this ection, the Commission shall prescribe such regulations as are necessary to ensure that

(A) Manufacturing—telecommunications equipment and customer premises equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, . . .

(B) Telecommunications Services—telecommunications services are accessible to and usable by individuals with disabilities, including individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, . . . Such regulations shall seek to permit the use of both standard and special equipment, and seek to minimize the need of individuals to acquire additional devices beyond those used by the general public to obtain such access.

(2) Throughout the process of developing such regulations, the Commission shall coordinate and consult with representatives of individuals with disabilities and interested equipment and service providers to ensure their concerns and interests are given full consideration in such process.

(3) COMPATIBILITY.—Such regulations shall require that . . . the telecommunications equipment manufacturer or service provider shall ensure that the equipment or service in question is compatible with existing peripheral devices or specialized customer premises equipment commonly used by persons with disabilities to achieve access, . . .

Amendment 2. Universal Service.—Amend Sec. 246(b)(2) by inserting "including access by people with disabilities" after "capabilities". (see text)

(2) DEFINITIONS OF INCLUDED SERVICES; COMPARABILITY IN URBAN AND RURAL AREAS.—Such plan should recommend a definition of the nature and extent of the services encompassed within carriers' universal service obligations. Such plan should seek to promote access to advanced telecommunications services and capabilities, INCLUDING ACCESS BY PEOPLE WITH DISABILITIES, and to promote reasonably comparable services for the general public in urban and rural areas, while maintaining just and reasonable rates.

Amendment 3.—Amend Sec. 204(f) by deleting "Within 6 months after the date of enactment of this Act, the Commission shall commence" and insert "Within 1 year after the date of enactment of this Act, the Commission shall complete." (See text below.)

(f) VIDEO DESCRIPTIONS INQUIRY.—Within 1 year after the date of enactment of this Act, the Commission shall complete an inquiry to examine the use

of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate. Following the completion of such inquiry, the Commission may adopt regulation it deems necessary to promote the accessibility of video programming to persons with visual impairments.

Mr. FIELDS. Thank you very much, Ms. Carroll.

Ms. Easterling.

STATEMENT OF BARBARA J. EASTERLING

Ms. EASTERLING. Thank you.

On behalf of the 550,000 workers represented by the Communications Workers of America, I appreciate the opportunity to present our views on H.R. 1555. CWA has long been involved in the development of telecommunications reform legislation and we welcome this new attempt by Congress to adopt a telecomm reform bill.

We evaluate our support for legislation based on two principles. First, job creation. I'm here representing the workers who built the best telecommunications system in the world, and have a vested interest in making certain that the industry continues to create high wage, high skilled jobs.

Second, I'm also here as a consumer and as a user of the new information services.

Mr. FIELDS. Ms. Easterling. I apologize for interrupting you. I'm down to 2 minutes before the vote. I'm going to suspend at this time, and as soon as we have one of our members come back, we'll reconvene.

Thank you very much.

[Brief recess.]

Mr. GILLMOR [presiding]. We will come to order. Ms. Easterling, you were interrupted by the congressional schedule, so we'll go back to you.

Proceed.

Ms. EASTERLING. Thank you.

As I said, we evaluate our support for legislation based on two principles. First, the job creation. I'm here representing the workers who built the best telecommunications systems in the world, who have a vested interest in making certain that the industry continues to create high-wage, high-skilled jobs.

Second, I'm also here as a consumer and as a user of the new information services. On behalf of all consumers, we want to protect the concept of universal and affordable service, particularly as we deploy the information super highway.

As the industry is now developing, we believe that both of these principles—job creation and universal service—are under threat. Hundreds of thousands of good-paying jobs in the industry have been lost, while most new jobs pay low wages with few benefits. We have already seen the deterioration of telephone service in many States, as companies invest their capital in more profitable parts of the business.

We encourage you to continue working to develop a workable policy for telecommunications reform that will be fair to consumers, providers, users and workers. Today, competition is a fact of life in the telecommunications industry. About 500 providers offer long distance services. Many local exchange areas now have more than a single provider either currently in business or planned for the future.

Local telephone companies are now permitted to offer video services. Long distance companies are moving into local exchanges. At the same time, new technologies such as cellular, wireless and direct satellite communications are opening additional opportunities for entry into the telecommunications market by new competitors.

But, competition today is often uneven and is frequently skewed to favor one side at the expense of the other. Hardly a day goes by without some new announcement by the courts, the FCC, or State and local public service commissions that rewrites the industry's rules.

H.R. 1555 goes a long way toward providing direction to the FCC to develop a single set of rules and to introduce those rules in a predictable manner that will phase in competition over a sensible period of time. CWA supports lifting restrictions on AT&T and the Bell Operating Companies imposed by the modified final judgment.

We also support lifting the 1983 consent decree that is still imposed on the GTE Corporation. We also endorse the bill's provisions that allow both Federal and State enforcement.

There are several areas of importance to our members and consumers that I want to bring to your attention. The first area being universal services. We urge that all providers be required to pay into the universal telephone service fund in sufficient amounts to insure that all Americans have access to basic telephone service today and information services in the future.

The fund also could be used to help wire schools and libraries to service community hubs to access the information super highway. We should structure the fund to remove it from the taxation appropriations procedures of Congress.

The next area, separate subsidiary versus accounting mechanisms for BOC offerings of competitive services. For several years the FCC has successfully regulated some of the BOC offerings through accounting and CWA has long contended that requiring a structural separation before the Bell companies could offer new services would raise transition costs to such a level that the companies would be discouraged from going into new businesses. The Bells' competitors face no comparable requirement, and we believe there should be a single set of rules for everyone.

Another area, State authority. The bill addressed retaining State and local authority over telecommunications, and we urge the committee to maintain Federal preemption to the minimum necessary.

The privacy area is important. CWA supports the provisions to protect customer privacy, but you've left out a significant group of telecommunications users and that's the workers in the industry and we urge including employee privacy protections in the bill.

The final area is foreign ownership restrictions. CWA opposes any relaxation of foreign ownership restrictions in Section 310 of the Act. We should not lift this restriction without first obtaining

reciprocity to insure the fair treatment of U.S.-based telecomm providers who want to enter foreign markets.

I want you to know that CWA welcomes the opportunity once again to work with Congress in shaping new telecommunications policy. We believe that for too long the courts have had excessive influence in the development of the telecommunications industry. We also fear that Congress can be bypassed in this debate as events move rapidly forward.

You represent the people's voice; so, we urge you to make the people's voice heard in telecommunications reform. Thank you.

[The prepared statement of Barbara J. Easterling follows:]

STATEMENT OF BARBARA J. EASTERLING, SECRETARY-TREASURER, COMMUNICATIONS WORKERS OF AMERICA

A dozen years ago, while the Bell System was in the process of being broken up, only a few visionaries would have predicted the shape of our telecommunications industry and the high degree of competition now existing. H.R. 1555 takes a new approach toward extending the forces of competition, differing from all earlier legislative attempts.

On behalf of the Communications Workers of America, I appreciate being invited to appear here today to express the union's encouragement toward enacting a workable policy on competition that will be fair to consumers, providers, users of all sizes and workers.

We long have believed the 1982 AT&T consent decree, the "MFJ," has served a good purpose, but now favor changes of policy in view of today's competitive climate. In 1984, significant competition did not exist in long distance, local exchange service and cable TV. Thus it was necessary for government to exert strong enforcement.

Today, about 500 providers are offering long-distance services; many local exchange areas now have more than a single provider, in existence or planned. With new technologies, long-distance and cable TV companies and cellular providers are moving into lucrative niches in offering what had been considered ordinary local telephone services.

H.R. 1555 would give some major new direction to the Federal Communications Commission to achieve a single set of rules for competition. Currently, we have at best a form of skewed, asymmetrical competition which can only favor one side at the expense of the other. We believe the time has arrived to remove the Federal courts from telecommunications to the greatest possible extent; therefore, we would support your bill's provisions lifting restrictions set by the AT&T-Bell MFJ, along with the 1983 consent decree still imposed on GTE Corporation. The bill allows both Federal and State enforcement.

In enacting telecommunications policy legislation, we ask the Committee to consider several issues of key importance to CWA.

—Separate subsidiary vs. accounting mechanisms for BOC's offerings of competitive services. For several years, the FCC has successfully regulated some of the BOC's offerings by accounting. For years, CWA has contended the structural separation would become an anti-competitive device increasing the "transaction costs" to the level that a Bell company will be repelled from a legitimate enterprise. The Bells' competitors face no comparable requirement. We believe a single set of rules is called for.

—Universal service. We urge that all providers be required to pay into the fund, and that moneys in the fund should be used to help wire neighborhood libraries and schools for access to the benefits of the National Information Infrastructure, on guidance from the FCC. The fund needs to be structured to avoid becoming a taxation and appropriations measure.

—State authority. Your bill addresses retention of State and local authority over telecommunications. We urge the Committee to hold Federal preemption to the minimum necessary.

—Cable regulation. CWA urges the Committee not to repeal the cable TV regulation adopted in 1992; the overwhelming vote in Congress to override the 1992 veto showed strong support for measures to protect consumers who otherwise have little recourse.

—Open entry to markets. Since the old "boundaries" of local exchange, long distance and cable TV have become so indistinct as to have taken on an arbitrary quality, we believe the old restrictions should be lifted. To CWA, the clear trend is to-

ward a logic of letting each segment into the others' customary lines of business. The Bell Operating Companies should be permitted to offer long-distance services in areas in which the local networks have been opened for competition. But we do not believe the measurement of that competition should be any requirement that the telephone company must first lose any share of its local service market.

—Utility company entry. Conditions and terms allowing gas and electric utilities to offer telecommunications on their existing under-used and already paid-for internal communications systems require careful crafting. Since the utility ratepayers have already paid the costs of such systems in connection with their gas and electric service, an expanded and new usage of such telecom facilities must be done via a fully compensatory system. These matters are issues in H.R. 912.

—Pricing. To compete, the carriers should have flexibility to stay viable. Since ordinary local exchange service seems not suited to competition, the regulatory system must ensure fair consumer prices, monitoring conduct in the market to prevent collusive practices.

—Manufacturing and information services. We believe the Bell companies should no longer have the stringent MFJ rules. We have not abandoned our position that any equipment manufacturing should be done in the United States.

—Privacy. CWA supports measures in H.R. 1555 to protect customer privacy; we would urge inclusion of employee privacy protections.

—Foreign ownership restrictions. CWA opposes any relaxation of foreign ownership restrictions in section 310 of the Communications Act, without genuinely practiced reciprocity, to ensure fair treatment of U.S.-based telecom providers wishing to enter foreign markets. We also see these issues included in H.R. 514, which we oppose in its present form.

We are asked to comment on several other bills. We address the issues of H.R. 514, on foreign ownership, and H.R. 912, on utility company entry into the telecommunications business, in our written statement. We would oppose H.R. 1556, increasing the limits and thus adding to concentration of broadcast station ownership.

CWA welcomes the opportunity to work with the Committee in shaping new telecommunications policy. Many of the hardships visited on our members over the last two decades, in our view, have been due in part to the "oil and water" nature of mixing competition and regulation in the same vessel. In our view, your bill seems to "abandon the cosmos" and bring everything back down to earth. We believe a major reason no legislation has passed in the last 20 years is the effort to include a too-wide agenda.

Mr. GILLMOR. Thank you very much.

Mr. Bradley Stillman, Telecommunications Policy Director, Consumer Federation.

STATEMENT OF BRADLEY STILLMAN

Mr. STILLMAN. Thank you and good afternoon, Mr. Chairman. I appreciate the opportunity to appear before you today.

The Consumer Federation of America is the Nation's largest consumer advocacy organization. We represent the people who paid to build this excellent telecommunications network.

This subcommittee has often taken the lead role in protecting consumers of telecommunication services from all types of abuses; and has been among the strongest proponents of introducing competition to all telecommunications markets.

In reviewing H.R. 1555, however, CFA is concerned that in its current form, the bill will leave consumers exposed to cable, telephone and utility rates that are far higher than they should be, or would be, without delivering greater competition.

Let me get immediately to the heart of CFA's concerns, as the hour is getting ever later.

In 1992, after years of unrestrained rate gouging by the cable industry, the Cable Act was passed in an effort to reduce rates for consumers and to spur competition. The logical question to ask, then is, what has been the result? Although the FCC had a very difficult task, coming up with a regulatory scheme for this $20 bil-

lion industry, which would work across the entire country, consumers have received significant savings under the Act.

Programming rates are down some $404 million, and equipment rates are down $827 million. There was also a rate freeze, which put an end to the three times inflation rate increases, which were the norm in the industry, saving consumers an additional $1.7 billion. According to the consumer price index for cable, the 1992 Cable Act has saved consumers over $2.5 billion so far.

Well, the savings should have been greater, around $6 billion; and 65 percent of consumers believe their rates are still too high. Consumers are far better off than they otherwise would have been without the Act. Indeed, 67 percent of consumers support continued cable rate regulation, with only 22 percent opposed.

Under regulation, the cable industry continues to prosper. According to Paul Cage & Associates, the industry is growing. It's passing more homes, adding more subscribers and revenues are up from virtually every source, including the expanded basic tier. Operators are free to respond to competition without any prior approval from regulators. They can repackage programming, reduce prices, improve service, add new channels, virtually anything to respond to competition, except raise consumers prices.

There is virtually no competition to cable today, not from DBS or from phone companies, not from anyone. Congress had the foresight to include a sunset provision in the 1992 Act, so that when competition does finally arrive and consumers hope it's very soon, nothing needs to be changed for cable rate regulation to automatically disappear.

With respect to local telephone rates, States have been doing a pretty good job of making sure that they remain affordable. CFA believes mandating a specific form of telephone regulation unnecessarily ties the hands of regulators and puts tens of billions of dollars of consumers money at risk.

The fact that the use of the network is increasing, and telecommunications is a declining cost business, makes the deregulation of telephone company profits especially dangerous for captive rate payers. If costs continue to decline simply along the historical trends—and it's virtually certain that they will fall more rapidly—then basic telephone rate payers are facing potential overcharges of $5 to $10 per month by the end of the century.

We believe the regulatory flexibility section of this bill would open the door to massive overcharges of captive telephone rate payers.

The last area I'd like to touch on is the cable telco buyout provision. The buyout provisions of this bill would permit the two wires that are in the best position to compete with each other to collaborate instead. We can't see how this promotes competition.

Out of the nearly 92 million households in the country—according to the 1990 census—21.9 million of them, that's 24 percent, would fall under the bill's definition of rural. Another 5.6 million households are in communities of less than 10,000 and outside urban areas, and they too would be covered by the exception, 5.2 million additional households are in places outside urban areas and have a population between 10,000 and 50,000. They could also be covered. Finally, there are 29.1 million households in what the cen-

sus refers to as the "urban fringe." Some percentage of these areas would fall under the exception in the bill as well.

The bottom line is, at least 32 million households or 35 percent of all households in the country, would definitely fall under the exception as written. When you add some portion of those 29 million urban fringe households, CFA estimates that as many as 50 percent of the households in this country could be subject to a one-wire world under this bill.

But that's only half the story. The prospects for competition actually get even worse. The telephone company, after buying up half the systems in the region, could also own up to a 49 percent interest in those other systems, which it couldn't buy outright. There is no way that any telephone company will get into a price war with a cable company that it partially owns. This simply will not promote competition.

In conclusion, this legislation should not just be viewed as a battle among industry Goliaths. The Davids of this country—American consumers—should not have to take a $3 billion hit on their cable bill, tens of billions on their telephone bills, and see any chance for real competition wiped out. We believe the bill can be much better.

Thank you.

[The prepared statement of Bradley Stillman follows:]

PREPARED STATEMENT OF BRADLEY STILLMAN, TELECOMMUNICATIONS POLICY DIRECTOR, CONSUMER FEDERATION OF AMERICA

I. INTRODUCTION

Good morning Chairman Fields, Representative Markey and Members of the Committee. My name is Bradley Stillman. I am the Telecommunications Policy Director for the Consumer Federation of America (CFA). I thank you for the opportunity to appear before you today. CFA is the nation's largest consumer advocacy organization, composed of some 250 pro-consumer organizations representing more than 50 million consumers nationwide.

As you know, CFA has been extremely active at both the federal and state levels on telecommunications policy matters for more than a decade. Aside from our work before Congress, the Federal Communications Commission (FCC) and the Department of Justice (DOJ), CFA has provided significant support to local groups on telecommunication matters in many states and has produced extensive empirical analysis on the status of the telecommunications network.

For some time, CFA has been calling on Congress to overhaul the 1934 Communications Act. To that end, CFA has outlined 20 principles which we believe should be the basis for any comprehensive telecommunications legislation. (Attachment 1) The premise of these principles is that legislation should ensure the affordability of basic telecommunications services; expand the definition of basic service over time; promote open networks and effective competition; enhance consumer privacy; and provide for effective regulation during the period of transition from monopoly to competition.

Since the time it became apparent that telephone and video services were not natural monopolies, CFA has been urging Congress to end government sanctioned monopolies in telephone and cable services. CFA is a strong believer that fair competition is good for consumers and their pocketbooks.

II. ONLY EFFECTIVE COMPETITION WILL LOWER RATES AND INCREASE CHOICE FOR CONSUMERS

In our desire for competition, we cannot escape the reality that there is no competition for basic residential telephone service or cable television service today. Indeed, there is virtually no competition for local telephone service for business customers either. The local telephone competition that does exist today is primarily to provide access to long distance carriers for large companies in a handful of the nation's largest cities, not local service. The fact is, when it comes to local basic tele-

phone service, even these companies generally use the only available provider, the local telephone monopoly.

The benefits of competition which are most often cited include lower rates for consumers, increased innovation and more responsive service. These benefits simply will not flow to consumers so long as a monopoly or excessive market power persists. One need only look to the recent history of the cable industry to prove this point.

In 1984, the cable industry came to Congress and asked to be deregulated. At the time, the industry claimed that although it was a monopoly, serious competition was looming from satellite services, wireless microwave providers and others. Consumer advocates were concerned about the potential dangers of deregulation before competition actually develops. However, based in large part on the rosy scenarios provided by the industry, cable was deregulated, effective 1986.

It quickly became apparent that consumers' worst fears were being realized. The monopoly cable industry took steps to stifle competition before it ever really started. Service was notoriously bad and in too many places remains that way. Consumers were hit with the biggest rate increases in cable history. Rates skyrocketed at roughly three-times the rate of inflation.[1] By 1992 when the industry was finally re-regulated, CFA found that cable rates were 28 percent above competitive market levels and consumers were being overcharged by $6 billion.

When the FCC collected data from the industry pursuant to the 1992 Cable Act, it indicated that rates in the handful of communities with two cable companies competing head-to-head were 28 percent lower than in the monopoly markets.[2] We know the risks to consumers and the anti-competitive effects of premature deregulation of this $20 billion industry. This pales in comparison to what is at risk for consumers from premature deregulation of both the cable industry and the local monopoly telephone industry which is many times larger.

Consumers are generally supportive of efforts to bring greater competition to monopoly markets. But this support stems from the promise of lower rates and new services and consumers do not support competition at any price. Indeed, consumers are unwilling to make the transition from regulated monopoly to competition if it is done in a way which results in increased telephone and cable rates. Consumers urge Congress to remember what it says in the Hippocratic Oath, "First, do no harm."

III. LEGISLATION SHOULD PROVIDE AN ORDERLY TRANSITION FROM MONOPOLY TO COMPETITION

CFA strongly believes the transition from monopoly to competition can be managed in a way which allows consumers to share in the benefits of the ever decreasing costs in the telecommunications industry while at the same time creating effective competition in many markets. To do so, however, we believe the legislation must look beyond ivory tower economic theory and take into account today's marketplace realities. The reality is that there is virtually no local telephone or cable competition today.

Legislation cannot simply wish away the effects of nearly a century of public policy based on the theory that competition for local telephone service is not possible. CFA also believes that legislation should also recognize that it took more than 75 years to build the current ubiquitous telecommunications networks across the country. These networks will not be able to be replicated overnight, even taking into account technological advances.

The anti-consumer and anti-competitive dangers to consumers will increase as the monopoly LEC's and cable operators become integrated telecommunications firms. If deregulation and/or entry into competitive businesses precedes the presence of actual competition for traditional monopoly services, the incumbent firms will commingle hardware (such as facilities) and software (such as expertise and resources) between regulated and competitive services. Because there will be significant joint and common costs, there is also an incentive to cross-subsidize. CFA is concerned that this bill, in its current form, fails to adequately protect against this conduct.

Claims by industry that price cap regulation, such as is mandated under this bill, will prevent cross-subsidy are overblown. The fact is, there are many examples of price caps, none of which regulate rates as effectively as traditional rate of return. Judging from consumers' experiences with price caps at the FCC and elsewhere, it

---

[1] 1991 Survey of Cable Television Rates and Services; General Accounting Office, July, 1991. See also, Bureau of Labor Statistics-Consumer Price Index.

[2] MM Dkt. 92-266; First Report and Order and Further Notice of Proposed Rulemaking; Adopted April 1, 1993, Released May 3, 1993 at Appendix E page 12-13.

is highly unlikely that rates under a price cap scheme will accurately reflect competitive market rates.

To make certain captive ratepayers share the benefits from the facilities they paid to build, CFA's "user pays" principle should be adopted as part of this bill. The user pays principle will keep the price of basic telecommunications services as low as possible, improving penetration levels, by reflecting the ever declining costs of providing basic service. The principle is simple. Any service that uses the network should pay a reasonable share of the joint and common costs based on the demand such service places on the network. Demand can be judged based on the amount of capacity used, amount of time on the network or some other reasonable means.

If this principle is followed, as the use of the network increases, consumers should be able to get more services at lower prices. Minimizing the burden of joint and common costs on captive ratepayers serves to protect both consumers and competition. An express anti-cross subsidy provision and the user pays principle should be added to the Universal Service section of H.R. 1555.

IV. NO ENTRY INTO COMPETITIVE MARKETS UNTIL THE LOCAL MONOPOLY IS ACTUALLY ELIMINATED

A policy which would allow current monopoly providers of local telephone service to enter competitive markets before there is a real alternative will significantly slow down the onset of competition. The legislation seems to recognize this principle under the long distance section, but then backs away from it with an exception that swallows the rule. It is critically important that either effective competition or effective regulation be in place to protect consumers of basic telephone services and monopoly cable services from excessive rates and other monopoly abuses.

It is extremely important to remember that simply because competition is legal does not mean it exists. In fact, even when a few "competitors" have announced their intention to enter the field or have actually done so, it does not mean competition is "effective". The real test from the consumer perspective is whether prices are being constrained by the presence of an alternative service.

To determine if competition is "effective," there must be an equivalent service available to a substantial majority of subscribers in a market and a significant portion of those subscribers must actually take the alternative service.[3] If these two elements are not met, there is nothing other than continued regulation to constrain rates for consumers and keep incumbent monopolists from leveraging their market power to the detriment of potential competitors.

Deregulation must also be implemented only for specific services in discrete geographical areas. We know competition will go to the most lucrative markets first. This means that business services and highly commercial, urban areas will be the first beneficiaries of competition.[4]

The residential and small business users are likely to be among the last to see competition. While there is significant profit to be made in these markets, the margins are greater in commercial centers. As a result, legislation must make certain that competition for a specific service does not lead to deregulation of other, non-competitive services. In addition, if there is some competition in downtown Houston, Texas, for example, that service should not also be deregulated in Wichita Falls, Texas. Just as the presence of an alternative provider in downtown Boston, Massachusetts should not lead to deregulation in Great Barrington, Massachusetts.

Lifting all the barriers to competition at once does not level the playing field. Actually, it keeps it from becoming level. It actually sets back the development of competition in monopoly markets because such a policy ignores or dismisses the massive advantages enjoyed by the incumbent. Nobody has a crystal ball. We don't know when, or if, competition will come and where it will come to, so regulation must be flexible to be truly effective.

Premature deregulation of the LEC's and cable operators will allow these companies to exploit their monopoly base for profitability while making strategic and pricing moves to disadvantage competitors and prevent others from entering the field. As history demonstrates, these monopoly companies are not shy about using their market power to unfairly disadvantage others at the expense of their captive customers.

---

[3] This competition test is by no means too rigorous. In fact, much of the economic literature says that effective competition only exists where you have five or six equal sized firms competing in a market.

[4] 4 This has been the case with the development of the competitive access providers and other services.

V. CONSUMER CONCERNS ABOUT H.R. 1555

In many places throughout the legislation, a pro-consumer, pro-competitive rule is laid out, but there are significant exceptions which nearly gut the original proposal. When you peel away the layers, it appears that the legislation would deregulate cable prices, deregulate telephone prices and allow potential competition to be thwarted through acquisition and collaboration. In addition to those issues outlined above, CFA has serious concerns about a number of provisions in H.R. 1555, which if not adequately dealt with, would prevent us from supporting passage of this legislation.

A. The Cable Monopoly Would be Effectively Deregulated

Many in the cable industry have portrayed attempts to limit rate regulation to the basic service tier, deregulate equipment or to make changes to the "effective competition" standard as nothing more than fine tuning of the 1992 Cable Act. Nothing could be further from the truth. The proposed changes will initially eliminate regulation of all popular cable programming and virtually all equipment while the cable monopoly persists. Ultimately, all rate regulation would disappear regardless of whether there was a comparable alternative in the market. The result for cable customers would almost certainly be significant rate increases which CFA estimates, based on historical trends, would amount to at least $2.5-$3 billion.

The fact is, consumers support rate regulation and believe it continues to be necessary. CFA commissioned a national survey designed to measure consumers' attitudes toward their cable rates and rate regulation in general. Specifically we asked whether current cable subscribers believe their rates are too high and whether they supported continued regulation of rates. 65% of consumers surveyed believed their current rates are too high, and none believed they were to low. 67% of consumers surveyed support the continued regulation of cable rates and only 22% do not. The results of the survey are attached to my testimony. (Attachment 2)

In deference to the industry's First Amendment rights, the Cable Act only requires that broadcast and public access channels be offered on the basic tier, although the operator has the flexibility to include anything else as well. If regulation were limited to basic cable, cable operators would have an overwhelming financial incentive to move all popular satellite-delivered cable channels to an unregulated, higher-priced tier. Indeed, this bill expressly sanctions such moves.

Currently, approximately 90% of cable consumers subscribe to a service which includes some satellite delivered programming such as CNN, ESPN, TNT, MTV, Discovery, Arts and Entertainment etc. Under the proposal in this bill, consumers who wish to receive the programming they have today, will have to purchase an unregulated tier of service at a much higher price in addition to unregulated cable equipment like set-top boxes and remote controls.

Cable programming services like those listed above are the ones which drive the purchase decision for most cable consumers. In other words, cable companies want the freedom to raise rates on the most popular cable programming because that is precisely where they can get away with it while the monopoly persists. CFA believes one of the cornerstones of the Cable Act was to regulate all tiers of service under the same formula to prevent "gaming" of the regulatory system and to discourage the operators from stripping popular programming out of the lower priced basic tier. This proposal virtually guarantees these abuses will occur and rates will go up.

Along with the unwarranted deregulation of cable rates, the legislation would make it extremely difficult for consumers to challenge the pricing practices of the monopoly cable company under what's left of the law. Currently, a complaint by a consumer or franchising authority triggers a rate review. Under the proposed legislation, 5 percent of subscribers would have to file individual complaints to force the FCC to determine if the cable company is complying with the law. This change does not limit itself to new complaints filed. This new requirement would be retroactive to the thousands of complaints currently on file but not yet processed by the FCC.

This change to the complaint process would effectively eliminate rate regulation. Since passage of the 1992 Cable Act, the franchising authorities have played a significant role in challenging rates and protecting consumers. The franchising authorities are better equipped and have the expertise to file and monitor a complaint. Under the proposed change, the local authorities could no longer play this important role. There are no proposals to require notification of consumers about the changes to the complaint process. Consumers may not know where to get the forms let alone that hundreds, perhaps thousands, of complaints will be necessary before the FCC can review the rates in their system. This is an unwarranted restriction of consumers rights which will permit the cable operators to jack up rates.

Cable industry claims that competition has arrived or that it is feeling competitive pressure from Direct Broadcast Satellite (DBS), microwave wireless cable and others are totally unsubstantiated.[5] Other than those few companies that faced head-to-head competition before passage of the Act, cable operators have not demonstrated to the Commission that a competitor or competitors are serving 15 percent of their market.

The effective competition test in the 1992 Cable Act is simple, straight forward, and easy for the Commission to administer. The cable operator and it's competitors are required to provide data on penetration levels and services areas. The DBS industry, which many believe is cable's most likely, near-term competitor, has developed a measurement of subscribers on a zip code basis. This will be made available to the Commission. It will not be difficult to determine when alternative providers of video services are available to 50% of the market and 15% of the consumers in the community actually subscribe to the alternative service.[6]

The idea embodied by the 1992 Cable Act is simple: once competition arrives, rate regulation is no longer necessary. The cable industry wants to change or eliminate this test in an attempt to preserve its local monopoly or at least permit price gouging until there is actual competition. In essence, the industry is asking Congress to permit it to operate as a virtually unregulated monopoly for as long as it can. CFA believes the cable industry proposals which are part of this bill and are currently in the Senate companion legislation would cost consumers billions of dollars in excess cable rates and should be dropped.

Although Congress took important steps designed to help spur competition to cable in the 1992 Act, a review of the market shows that competition is growing very slowly. Even the introduction of DBS, which the cable industry points to as the most serious competitor, has only attracted at best, 400,000 to 500,000 customers. This represents less than one-half of one percent of the cable industry's market penetration. In addition, DBS requires at least a $700 up-front investment in a satellite dish in addition to the monthly service fees, and it does not deliver local broadcast or public access, educational and governmental channels.[7]

Telephone company entry into the video business remains only a theoretical threat. There is not a single commercial video dialtone system operational today, so there is no actual competition from the local telephone companies. It is unclear when or if it will begin to appear. In fact, the telephone company that was farthest along in the video market, Bell Atlantic, has recently asked the FCC to suspend any action on their pending video dialtone petitions.

While competition from a variety of sources may be on the horizon, it has not yet arrived. Until effective competition develops, the Cable Act allows cable operators to respond as any reasonable business would to threats of competition. Practically the only thing a cable operator cannot do under the Cable Act to respond to competition is raise rates, which no company in its right mind would choose to do.

B. Cable-Telco Buy-outs

H.R. 1555 is premised on the notion that competition is better than regulation. The bill contains a provision which generally prohibits in-region buy-outs of a cable monopoly by a local telephone monopoly. This is good, pro-consumer, pro-competition policy because virtually everyone agrees that the local telephone and cable companies are the most likely competitors to one another. Unfortunately, the legislation goes on to outline a number of exceptions to this rule which almost certainly guarantee that buy-outs, mergers, joint ventures and other alliances will take place in many communities across the country. For consumers, this means they will not reap the benefits of competition for video and telecommunications services.

The buy-out, joint venture and merger policy in this legislation is too liberal and should be substantially narrowed. It appears that a local telephone monopoly could buy any cable company in a non-urbanized community of 10,000 or less. In addition, it could buy outright cable operators in communities of 35,000 to 50,000 serving, in the aggregate, no more than 10 percent of their total telephone service area. On top of this, the local telephone monopoly could own up to 49 percent of the remaining cable operators in its region. Permitting buy-outs and joint ventures in communities of this size would virtually eliminate the prospects for competition between the two

---

[5] Several of the largest cable companies own Primestar Partners, one of the larger DBS providers. These companies will not compete against themselves.

[6] A cable company does not have to lose any market share under the effective competition test. The 15 percent of a community that must subscribe to an alternative service is measured by looking at the entire franchise area. Since cable has an average penetration rate of 60 percent, it would be possible for a cable company to be deregulated without losing any current customers.

[7] Only about 1.2 million 18 inch satellite dishes will have been manufactured by the end of 1995. There are approximately 62 million cable households in the country.

most likely competitors who already have facilities in place. In essence, this policy would effectively sanction turning two monopoly wires into two collaborative ventures rather than head-to-head competitors.

The local telephone and cable monopolists favor a liberal buy-out policy. It allows them to buy-out or neutralize the potential competition instead of competing it away to the benefit of consumers. It permits the company which is being bought out to extract an excessive price for its facilities. This artificially enriches one monopoly at the expense of the consumer. However, the consumer actually loses twice, once by being forced to finance the buy-out at excessive rates and again when the continuing local monopoly leads to higher rates and greater inefficiency.

The goal of facilities based local competition, wherever economically viable, is a moving target. Telecommunications has traditionally been a declining cost business. As the costs of providing service decline, areas which were previously thought to be unable to support local competition may be able to support it. In-region buy-outs should be a rare exception available only to truly rural communities where the companies can demonstrate that facilities based competition is not economically viable and there is no alternative buyer. In those areas where a buy-out or joint venture is permitted, the systems should have to be operated on a common carrier basis. A policy which permits an ever expanding monopoly over telecommunications and cable services will lead to less innovation, less network investment and higher prices to consumers.

The dangers of increased concentration instead of competition are not limited to telephone and cable companies. H.R. 1912 places similar cross-subsidy risks on captive electric utility ratepayers as those outlined above. At the same time, H.R. 1556 would permit significant increases in the concentration of ownership of broadcast facilities.

C. Mandatory Price Caps and Other State Pre-emption Hurts Consumers and Unnecessarily Ties the Hands of State Regulators

H.R. 1555 would unnecessarily restrict the ability of state legislators and regulators to choose the form of regulation for intrastate services that best protects the consumers in their state. At a time when calls are being made to shift more and more power to the states, this legislation would unnecessarily tie the hands of state regulators by restricting their ability to look at the profits of the monopoly telephone company.

By and large, the states have done a good job of making sure local telephone service remains affordable. 41 states do so by looking at the profits of the companies. 22 states continue to use traditional rate of return regulation while 19 use some form of incentive regulation. 10 states have deregulated profits and apply what is known as pure price cap regulation, the type which would be mandated under this legislation.

The diverse regulatory models in the states provide us with a good deal of data to assist in evaluating alternative forms of regulation. Unfortunately, the picture that emerges is not a pretty one for captive telephone ratepayers.

The theory often put forth that alternative regulation spurs deployment of advanced technologies appears to be baseless. When one reviews the network investment commitments by the telephone companies, the amounts are generally no more than what was historically invested in the network. Claims of improved productivity under alternative regulation are also not supportable. Recent studies have found that productivity has increased annually in the 5 to 7 percent range over the past several years regardless of the form of regulation. Perhaps most importantly, claims that alternative regulation leads to lower prices than traditional rate of return has also proven to be false.

We are at a crossroads in telecommunications. While usage of the network for myriad services is increasing swiftly, the industry is also experiencing major cost-reducing technological advancements. If we deregulate profits while we wait for competition to arrive in the local market, then prices will be too high and profits excessive.

If costs continue along their historical trend and fall by just 5 percent annually and revenue opportunities continue to expand on the digital network as the companies claim, the prospects for basic service ratepayers are overcharges of five to ten dollars per month by the end of the century. This amounts to tens of billions of dollars out of the consumers pocketbook. The abolition of rate of return regulation, along with the other anti-competitive provisions in this bill, will leave consumers with neither effective competition nor effective regulation to discipline the massive market power of these monopoly companies.

D Structural Safeguards Should Apply to All Competitive Lines of Business

The legislation recognizes the important need for separate subsidiaries and other competitive safeguards. However, there are currently different safeguards depending upon the line of business. CFA believes there should be a single set of structural and non-structural safeguards applied to all competitive businesses of the monopoly telephone companies, cable companies and electric utilities. The dangers to consumers and competition are the same regardless of the monopoly company or line of business involved.

A reasonable model for a comprehensive set of safeguards, including a fully separate subsidiary, is already in the bill under the electronic publishing section. The sunset provision, however, should be eliminated. Instead, the safeguard requirements should remain in place until there is full and effective competition in the local monopoly service.

There are also several important safeguards which are not currently in the bill but should be added. Provisions should be added to protect against self-dealing by requiring least cost/competitive bidding for the monopoly companies. The bill should also require that any transfer of assets from the monopoly company to it's affiliate be valued at the greater of net book cost or fair market value and transfer of assets from the affiliate to the monopoly be valued at the lesser of net book cost or fair market value. These requirements are necessary to ensure that the captive customers of the monopoly companies do not pay too much or receive too little for any assets, goods or services which may be exchanged.

One separate subsidiary for all competitive businesses with a single set of strong safeguards is the most efficient way to protect consumers and encourage vibrant competition. As companies begin to offer a variety of services, it will be much easier to comply with a single set safeguards than a multitude of different requirements depending on the service at issue. Furthermore, in these budget conscious times, it would be far less costly and less time consuming for the FCC or state regulators to monitor a single set of safeguards across an entire company.

E. Role for Justice Department

Just as CFA believes the legislation should recognize and make use of the expertise of the states, the same holds true for the Department of Justice (DOJ). The DOJ has a great deal of expertise in determining the level of competition in a market, questions of market power and the effects of new entrants—especially those companies with market power—on a competitive market. If the telecommunications industry is to be as competitive as possible, then the DOJ must be permitted to examine and address these issues before a monopoly company is permitted to enter a competitive business.

VI. CONCLUSION

CFA strongly supports efforts to make the telecommunications industry more competitive. We believe, however, that H.R. 1555, in its current form, does not adequately protect consumers or go far enough to encourage the development of competition. We urge the Committee to adopt the improvements outlined above which will protect consumers' pocketbooks and maximize competition. Without significant changes, CFA would be forced to oppose passage of this legislation.

ATTACHMENT 1

TWENTY PRINCIPLES FOR PROVIDING BASIC SERVICE AND PROTECTING CONSUMERS IN THE INFORMATION AGE

I. ENSURE AFFORDABILITY OF BASIC SERVICE

1. Just and reasonable rates that yield only reasonable profits.
2. User pays – all users of the network should pay in proportion to the nature of the demand placed on the network.
3. Minimizing the burden on basic rates – as video and information uses of the network expand, those revenues should be used to lower basic service rates.
4. Lifeline for low income people.
5. Accessibility for Americans with disabilities.
6. Commitment to modem service in rural areas.

II. EXPAND THE DEFINITION OF BASIC SERVICE

7. Availability of access to end-to-end digital service subject to limits of efficiency and affordability.
8. New elements of basic service must not raise and ultimately should lower rates for basic service.
9. To be included in basic service, new elements must be communications services which connect each to all and possess characteristics of telecommunications public goods.
10. The needs and preferences of all users must be considered in open, public forums.

III. PROMOTE OPEN NETWORKS AND EFFECTIVE COMPETITION

11. Interconnect all networks ensuring open communications of each-to-each and any-to-all (the functional equivalent of common carriage).
12. Competition must exist before deregulation – it does not exist today.
13. Competition must be promoted through the elimination of advantages enjoyed by continuing market power over the local network.
14. Competition means multiple suppliers for significant numbers of subscribers with significant numbers of subscribers having taken alternative service.
15. Entry into telecommunications network related lines of business (video, information services, manufacturing and long distance) by local telephone comanies requires mitigation of market power and effective regulation of affiliates prior to entry.

IV. ENHANCE CONSUMER PRIVACY

16. Customer information, i.e. telephone number and usage patterns must be private.
17. Use of private customer information for non-franchise purposes requires the affirmative authorization of the subscriber and marketing of non-basic services must be subject to strict regulation to protect privacy.

V. PROVIDE FOR EFFECTIVE REGULATION

18. Strong structural safeguards including completely separate subsidiaries, strict rules governing affiliate transactions, and limits on ownership must be imposed for all major lines of business (information services, video, manufacturing, and long distance).
19. Adequate regulatory authority must be ensured at the state and federal levels including access to books and records, penalties for anti-consumer and anti-competitive behavior, and adequate funding for regulatory staff and consumer intervenors.
20. States must be given flexibility in managing the transition to competition.

ATTACHMENT 2

CONSUMERS' ATTITUDES TOWARD CABLE TV RATES

SURVEY QESTIONS AND RESULTS

Do you consider your cable rates . . .

24%, Much too high; 41%, Somewhat too high; 32%, About right; 0%, Somewhat too low; 0%, Much too low; 3%, Don't know.

Do you support the regulation of cable television rates?

67%, Yes; 22%, No; 11%, Don't know.

Mr. GILLMOR. Thank you, Mr. Stillman.

Mr. Robert Harrold.

STATEMENT OF ROBERT E. HARROLD

Mr. HARROLD. Thank you, Mr. Chairman. Not only am I representing my company, ARI Network Services, but more importantly, I am representing the International Communications Association. It's almost 600 corporate, educational governmental and institutional members, who collectively represent about 15 percent of the rate base of the telecommunications industry here in the United States.

We certainly appreciate the opportunity to provide the subcommittee with the large telephone customer perspective on this important bill. I'm accompanied today by our long-time counsel, Bryan Moyer of Moyer and Hartman, to try to keep me honest in my comments.

After I read my comments, we look forward to answering your questions. I've submitted detailed writings on our points, so I'm going to try to be brief.

ICA shares the goals, as we understand them, of H.R. 1555, which includes promoting competition, securing lower prices, insuring higher quality services and encouraging the deployment of new technologies. We've long supported these goals and clearly competition is the ultimate safeguard for the telecomm industry.

We see that the bill, as we understand it, correctly recognizes that there is little, if any competition, as many other speakers have said today.

I'd like to address six points and suggest some areas where the bill might be improved. First of all, we believe that the marketplace should—competition should be simulated in the marketplace, where real competition remains absent or inadequate.

The point here is that one should not confuse the removal of entry barriers, which the various checklists in this bill perform, with the existence of meaningful facilities based competition. What is missing from the legislation is an adequate set of safeguards that will insure that dominant providers of facilities and services will not be able to discriminate against the emerging competitors.

While many witnesses have come before this subcommittee to explain the need for good separate subsidiary safeguard protections, an excellent recent explanation for the need for these safeguards was presented to this subcommittee by Bell South near the end of the last Congress, around July 29, during your hearing on the public utility entry into the telecommunications markets.

So here's what we suggest. Two things, one, is that in Section 272, your bill contains an excellent safeguard provision. Unfortunately, it only applies to one industry. It really denies all other industries, except for electronic publishing and their customer's interim protections.

We believe the legislation, rather than picking industry winners and losers, should provide everyone with a level playing field, and to use that provision to protect all entries into telecommunications. The best way of doing this, perhaps, would be to require local telephone exchange carriers, cable companies and public utilities to enter these new markets through those Section 272 safeguards.

Second, since the entry of cable television and public utility companies into telecommunications are considered to be the most likely head-to-head wire competitors to the local telephone monopolies,

the bill recognizes that unlimited, in-region telco cable mergers would run counter to the bills pro-competitive goals. We suggest that such provisions should also apply to the public utility mergers as well.

Our second point, insure economically rational pricing. American businesses really need to plan and budget for their telecommunications expenses. It is absolutely critical that we have the ability to carefully control our costs in an era of rampant global competition.

ICA is concerned with Section 247(b) of the bill that proposes to overturn almost all of the State and Federal regulatory pricing systems that use some form of price-cap regulation instead of a pure rate of return form of regulation. If it is the intent of the legislation to not only prohibit regulators from using rate of return regulation, but also to prevent them from considering earnings in their deliberations about the appropriateness, then the legislation will largely prevent regulators from having any meaningful control over the prices of monopoly service.

The legislation should, therefore, insure that its prohibition on rate of return regulation does not prevent State and Federal regulators from reviewing monopoly carrier earnings in determining the appropriateness of prices.

In summary, I'll just cover two other points very briefly. New incentives leading to worldwide compatibility and uniform access to customers and services are important. We'd like to reiterate what has already been said that there be reciprocity in other countries entering the American telecomm market.

Then, balancing personal privacy with technical, innovation and free information flows is an area that we believe that this bill has covered very well.

Anticipating your questions, Mr. Chairman, ICA is prepared to submit our proposed changes to the bill on Monday. I thank you for the opportunity to address these. If the concerns of the large telephone customers are adequately addressed by future versions of this bill, then ICA will actively work for its passage.

Thank you.

[The prepared statement of Robert E. Harrold follows:]

PREPARED STATEMENT OF ROBERT E. HARROLD, MANAGER, STRATEGIC PROGRAMS, ARI NETWORK SERVICES, INC. ON BEHALF OF THE INTERNATIONAL COMMUNICATIONS ASSOCIATION

I am pleased to have been invited to submit testimony on behalf of the business, educational, and institutional users of the International Communications Associations (ICA) for the Subcommittee's hearing on H.R. 1555, the Communications Act of 1995. Mr. Chairman, you and the members of the Subcommittee, as well as the staff, are to be commended for your efforts to put in place a set of rules that will guide the future of the communications industry. Clearly, the stated goals of H.R. 1555 are ones that ICA has long-proposed and that warrant prompt action. I hope that the perspective of the large telephone customer will facilitate the Subcommittee's deliberations by identifying policy objectives and market realities that must be addressed.

ICA is the largest and most broadly-based organization of telecommunications end users in the United States. ICA is a not-for-profit league of over 600 corporate, educational, and governmental users of telecommunications equipment, facilities, and services. ICA's members do not include firms predominantly engaged in the production, sale, or rental of telecommunications services or equipment. Collectively, ICA members spend over $23 billion per year on telecommunications. On average, individual ICA member telecommunications expenditures exceed $32 million annually.

Two-thirds of the ICA member companies employ over 10,000 persons and only 2% have work forces under 1,000. Over 86% of these firms conduct business from fifteen or more locations. ICA speaks from a telephone customer perspective that is broadly informed on the state of the telecommunications industry in the United States. Consequently, if the results of this Subcommittee's deliberations become law, ICA members will be deeply impacted.

Introduction

ICA believes that *competition* is the ultimate safeguard for the telecommunications industry. In recent years, significant progress has been made in developing a competitive telecommunications marketplace. The Modified Judgement ("MFJ"), as well as decisions of the Federal Communications Commission ("FCC"), have played a significant role in that development. ICA vigorously supports pro-competitive policies and the extension of such policies to the local telephone exchange marketplace. Currently, there is little, if any, competition in the local telephone service area. H.R. 1555 would help to remove the barriers and disincentives that restrict American entrepreneurs from attempting to fully compete in the provision of alternative local telephone exchange facilities and services.

"End State" Objectives of Business Users

ICA's interest in telecommunications legislation is defined backwards from objectives that are necessary and desirable for all telephone customers, including ICA members. It is as important to analyze whether in practice this legislation encourages the achievement of these objectives. ICA believes that the following developments should result from the legislation:

A. **Legislation should ensure economically rational pricing.** This is critical to ICA members' being able to budget and plan for their telecommunications expenses. It is also *critical* to American business' ability to carefully control costs in an era of rampant global competition. For those markets that are less than fully competitive, ICA encourages the application of cost-based pricing principles by regulators, both state and federal, to ensure that the prices in those markets are economically rational.

B. **Legislation should increase the availability of services for real user applications and needs—today and in the future.** It is important that new services be ones that all telephone customers, regardless of size, can really use, not just services that are pre-defined by dominant carriers and other providers. Public policies should promote increased interoperability among services and networks and allow maximum flexibility for the provision of new telecommunications services.

C. **Legislation should enhance the ability of the telecommunications customer to effectively plan and manage their telecommunications service needs.** The need for customers to manage their telecommunications resources on a day-to-day basis must be accounted for. A number of issues bearing on security, quality, interconnection, and national uniformity should be recognized in legislation.

D. **Legislation should contain new incentives leading to worldwide compatibility and uniform access to customers and services.** The development of a technologically advanced network based on worldwide standards is critical to large telecommunications customers, who are relying upon increasingly specialized telecommunications applications in order to remain competitive and innovative in a global environment.

E. **Legislation should balance personal privacy with technological innovation and free information flows.** The increasing complexity of these issues requires focus upon the desirable and necessary end results, not writing detailed rules about how information technologies can be used. Detailed rules would almost certainly be misinterpreted and would impair the development of new telecom-based applications.

ICA's Specific Legislative Objectives

ICA's specific legislative objectives seek to achieve the objectives described above, *using competition as a guide* in all cases. Legislation should always promote an open, competitive market in telecommunications services wherever possible. Where competition remains absent or inadequate, regulation should strive to *simulate* the same results that would occur in a competitive marketplace:

1. Most information services, long distance services, and telecommunications equipment offerings are provided profitably by firms separate from, and not affiliated with, local telephone companies. Therefore, as a general rule, local telephone companies should have no difficulty in providing these services and products in

a manner that is also separate from the local telephone market, i.e., through separate subsidiaries. Requirements of this type will provide more market certainty than staged or delayed entry by RBOCs into some lines of business and these timing requirements should not be used. Once the local telephone companies' core monopoly businesses become competitive, then their separate subsidiary requirement can eliminated.[1]
2. In order to allow the competitive capital markets to operate and provide checks on new telephone company businesses, separate subsidiaries should be subject to reasonable requirements for public debt and equity financing, just as an unaffiliated competing company would be.
3. Where there is any kind of sharing of resources between competitive and noncompetitive services, there should be cost assignment and allocation rules like those used by multi-product firms in competitive markets, in order to prevent cross subsidization of competitive services with monopoly ratepayer funds.
4. Sharing of resources and market information should be conducted on the same terms and conditions that apply in competitive markets. Transactions between the monopoly telephone company and its fully separated subsidiary should be carried out on an arms length basis under written agreements. Where proprietary product information is involved, these transactions may occur under nondisclosure agreements, as long as unaffiliated entities are able to execute similar, commercially reasonable non-disclosure agreements for access to the same information at the same time.

Business Users' Dependence on Telecommunications

Large telephone customers, such as ICA members, face competitors in both the technologically developed countries and the low-wage, less-developed countries. To compete in the world marketplace, large business has an absolute need for timely, accurate, cost-effective information that can be made available on demand. To accomplish this, user companies must be able to obtain, operate, maintain, and fully utilize state-of-the-art technology. In many ways, this capability has far greater and broader economic implications in terms of jobs, profits, competitive advantage, and balance of trade than the cost of telecommunications services that the large telephone customers purchase.

With the development of various voice and data based systems and applications, large business users have become dependent on efficient, reliable, readily available, and reasonably priced telecommunications equipment, facilities, and services. If this Subcommittee is able to promote *increased* competition and user choice in those areas of the telecommunications industry that are already subject to competition while at the same time fostering competition where it is largely non-existent, i.e., the local telephone exchange, than business telephone customers and the American economic future will be significantly benefited by your efforts. For this reason, ICA members are most interested in the deliberations of this Subcommittee.

Business Users' Telecommunications Experience

The American telecommunications system has evolved over many years. This evolution has been largely funded by ratepayers—business, institutional, educational, and residential customers—not the shareholders of the dominant monopoly suppliers of telecommunications services and facilities. The technological advances in the switching and transmission of voice, data, and visual images through the use of satellites, fiber optics, and digital technology have enabled ICA members, as well as the rest of the America, to apply these faster and more reliable telecommunications applications to their day-to-day operations.

Beginning almost two and a half decades ago, it was the *customer,* not the monopoly suppliers, who developed new and innovative methods of using these advances in telecommunications services. The monopoly providers of telecommunications services had very little incentive to provide the equipment, facilities, and services necessary to fulfill these new and expanding user needs. As a consequence, users were forced to go outside the traditional providers of telecommunications service, such as the old Bell System, to obtain the technologies and services necessary to meet their requirements. This promoted new industries to develop equipment, information, and transmission systems to meet these new and expanding user needs. Despite the well-documented anti-competitive behavior of the Bell System which attempted to frustrate this emergent synergism, the FCC decisions of the 1970's and early 1980's

[1] An excellent explanation on the need for separate subsidiary safeguards can be found in testimony of Herschel Abbot, General Counsel, BellSouth Telecommunications, Inc. before this Subcommittee. ["Lifting PUHCA Restrictions", Joint Hearing of the Committee on Energy and Commerce, July 29, 1994, Serial No. 103-150, starting at p. 48.]

and the AT&T Consent Decree triggered the development of what is now a healthy competitive environment (with the exception of the local telephone market) that is capable of providing state-of-the-art telecommunications and information equipment and services to both business and residential consumers.

Business Users' Position on Consent Decree

The telecommunications and information needs of ICA's business, educational, and institutional members are best served by a competitive marketplace. Consequently, the business telecommunications user community has *never* advocated the continuation of barriers to entry against any telecommunications supplier in any market if such entry would provide users with more choice. ICA continues to support that policy today. Unfortunately, as history in the telecommunications industry has taught us, the entry or presence of monopoly suppliers in some markets, without safeguards, may actually reduce or inhibit user choice and the potential for competition. Consequently, ICA has consistently stated that it could not support the removal of the existing line-of-business restrictions on interexchange services, information services, or manufacturing unless the BOCs' ability to abuse the monopoly power derived from their provision of essential local services is limited, either by actual and viable competition in the local exchange and access service markets or by effective regulation.

As the last twenty years of this Subcommittee's hearing records clearly show, it was the Bell System's use of its monopoly local telephone exchange facilities that enabled it to exclude or manipulate would-be competitors. The record of the U.S. Government's antitrust case against the Bell System, which began during President Ford's Administration (in 1974), is consistent with that of the Congress. Tens of millions of documents and an eleven-month trial at which hundreds of witnesses testified detail the many ways that the vertically integrated monopoly Bell System made anti-competitive use of their bottleneck facilities. Those records also clearly show how the Bell System was able to ignore FCC rules and orders.

During the same period, numerous House and Senate bills proposed various methods for revising the statutory guidelines for FCC regulation of monopoly telephone companies.[2] This mounting pressure for a Congressional revision of FCC rules and regulations dealing with monopoly local telephone exchange carriers was reduced significantly when the Consent Decree attempted to solve the telecommunications bottleneck facilities problem surgically, by divesting AT&T of its monopoly local telephone exchange facilities.

Users' Safeguard Concerns

Telecommunications users believe that the legislative provisions of H.R. 1555 that propose to modify or remove the long distance and manufacturing restrictions of the Consent Decree should be accompanied with sufficient guidelines to the FCC to ensure that the entry of monopoly Bell Operating Companies ("BOCs") into the competitive markets that have developed since divestiture does not result in a reduction in user choice.

The emerging *potential* for competition to develop in the local telephone exchange is the focus of H.R. 1555. Chairmen Bliley and Fields, as well as the other sponsors of the bill, should be commended for their efforts to promote competition in the local telephone exchange by endeavoring to remove the barriers to competition. The goals of H.R. 1555, as well as the Clinton Administration's pro-competitive recommendations are timely and needed. But it is important to note that the pro-competitive results sought will not come easily or immediately.

What is missing from the bill being considered by this Subcommittee is an adequate set of safeguards that will ensure that the FCC will sufficiently revise its common carrier rules so that providers of bottleneck facilities and services will not be able to discriminate against emerging competitors of local exchange services and existing competitors in markets that the BOCs choose to enter. Unfortunately, telephone customers, as well as the bulk of the telecommunications industry (outside of the monopoly providers of local telephone service and exchange access), have long been concerned about the effectiveness of FCC regulation of local telephone exchange companies, in particular the BOCs.

The narrowly defined safeguards in H.R. 1555, that are the result of negotiations between the newspaper industry and the BOCs, demonstrate newspaper industry recognition that the BOC bottlenecks still exist and require safeguards. The news-

[2] The hearing records and legislative calendars of this Subcommittee and the Subcommittee on Communications of the Senate Committee on Commerce, Science, and Transportation from the 94th to the 97th Congresses are over-flowing with various legislative proposals and efforts to revise the common carrier provisions of the Communications Act of 1934.

paper/BOC safeguard provisions in section 272 of H.R. 1555 represent a good effort to remove the dangers of the BOC bottlenecks until they are eliminated by competition. Unfortunately, the section 272 safeguards provide protection only to those who negotiated the provision—electronic publishers. The vast majority of the information services industry and the other industries covered by the Consent Decree receive no such protection as long as the BOC bottlenecks remain. The customers of all three industries (long distance services, information services, and manufacturing), not just a small subset of one of those industries, should be safeguarded until the future competition envisaged by H.R. 1555 becomes a reality. The timing and evolution of that competition is subject to many variables. The more prudent approach is to set in place safeguards, such as those contained in section 272 of H.R. 1555, and then eliminate them only when the local telephone exchange markets are fully competitive.

H.R. 1555's section 272 safeguards share a great deal in common with earlier legislative proposals that have been the subject of hearings by this Subcommittee. Earlier Subcommittee hearing records indicate that telecommunications users, both residential and commercial, and many vendors in the telecommunications industry recognized the need for safeguards until the local telephone exchange became competitive. Those concerns should be addressed by the Congress.

Telephone customer safeguard concerns could be easily addressed by applying the excellent safeguard provisions of section 272 of H.R. 1555 to all three markets that were the original focus of the Consent Decree until the disappearance of the local telephone bottlenecks. Given H.R. 1555's objective of enabling cable television companies to enter the world of telephony and the intentions of this Committee's leadership to support the entry of public utility companies,[3] the most fair approach would be to apply the section 272 safeguards to the competitive industries that the cable television, local telephone, and public utility industries choose to enter. While much of recent attention has focused on the need to apply section 272-type safeguards to the cable television and local telephone industries, the compelling analysis of BellSouth's witness to this Subcommittee last year.[4]

FCC Resources

In order for any legislative guidelines for safeguards to have the desired results, the FCC must have sufficient resources to implement those guidelines. The effect of federal budget reductions during the 1980's was a reduction in FCC resources. If H.R. 1555 were to become law, the FCC could potentially be faced with additional responsibilities without the necessary additional resources to ensure their implementation. If H.R. 1555 were amended to apply the section 272 separate subsidiary requirement to all three industries' (cable television, public utility, and local telephone) entry in new telecommunications markets, then the FCC would need few, if any, additional resources since the separate subsidiary approach to regulation is far more efficient (from a regulatory standpoint) than non-structural methods.

By improving its own rules dealing with the regulation of monopoly company entry into telecommunications markets, the FCC can increase the effectiveness of its staff to oversee these matters, while at the same time making more efficient use of its resources. If additional FCC resources are not forthcoming, Congress will have to ensure that the FCC adopts rules that are less resource intensive than they might otherwise recommend in order to guarantee a successful outcome to any Congressional guidelines regarding safeguards.

Conclusion

American businesses and institutions rely on telecommunications as a strategic resource. Telecommunications is one of the keys to greater competitive advantage, increased profitability, economic growth, and job creation. This reliance places upon government policy makers, and in particular members of Congress who want to revise existing policies, the responsibility to see that telecommunications and information equipment, facilities, and services continue to be readily available and provided at reasonable rates.

Business users continue to support BOC entry into those areas restricted by the Consent Decree if telephone customer safeguard concerns are adequately addressed. The local telephone network largely remains a monopoly with all of the incentives for anti-competitive abuse. Also, the FCC's existing rules and regulations, its administration of those rules and regulations, and the resources available to it need to

---

[3] See H.R. 912, A bill to permit registered utility holding companies to participate in the provision of telecommunications services.

[4] See footnote 1.

be sufficient to meet the concerns of the business telecommunications user community.

ICA stands ready to work with those who want to increase telephone customer choice by making the telecommunications marketplace, and American business generally, more competitive. We support your passage of H.R. 1555 if ICA concerns regarding safeguards and pricing are addressed by applying the excellent provisions of section 272 more broadly and by allowing regulators to considering earnings when determining the appropriateness of pricing for monopoly services.

Mr. GILLMOR. Thank you very much. I would appreciate receiving that.

Mr. Alfred Sonnenstrahl. I hope I pronounced that right. Telecommunications for the Deaf.

STATEMENT OF ALFRED SONNENSTRAHL

Mr. SONNENSTRAHL [through an interpreter]. No matter how you said my name, I don't know the difference because I can't hear you speak. But, thank you, Mr. Chairman, for allowing me this time to speak.

My name is Alfred Sonnenstrahl, and I hope the interpreter's pronounced my name correctly. I am the executive director for Telecommunications for the Deaf, Incorporated. It's a nonprofit organization that promotes visual telecommunication for people with hearing disabilities.

I'm here to represent TDI and the National Association for the Deaf, the National Center or Law and Deafness and Consumer Action Network, which has 12 national organizations of people with hearing disabilities.

Now, I trust that you already know that captioning promotes the usability of teletext, and programs all over America—television programs all over America. The benefits of captioning are not limited to Americans with hearing disabilities, captioning programming serves about 100 million Americans, 28 million Americans with hearing disabilities. There are 100 million Americans with both visual and hearing disabilities, and 12 million young children from kindergarten to second grade. I do not have the figures in front of my on children between third grade and 12th grade. I'm sure that would be many more in comparison for the figures for the children.

There are 27 million illiterate adults throughout the country, and 4 million individuals with remedial reading skills and 30 million Americans to whom English is a second language. Of that number are 8 million Hispanic Americans, 3 million Asian Americans, who use their native language as their primary mode of communication.

Before I proceed, what would it be like to listen to a program and all of a sudden the sound would be gone? Can you visualize how you would feel if you were watching a program and it would be an exciting part of the program and all of a sudden you lose the sound? Would you pay a full cable subscription fee with a smile knowing that only 5 percent of the programs have sound.

Last Tuesday, the Business Section of The Washington Post had an interesting article about future capabilities of TV and the computer. I read that article with trepidation. Will 100 million Americans, or 40 percent of Americans, benefit from that coming technology? Will all of those programs be captioned? I pose that question to you. Are my apprehensions justified?

Let me share with you, briefly, my interest. Several years ago, members of this very committee played a very important role in passing the Television Decoder Circuitry Act. This required that all TV sets, 13 inches or larger, have a built-in chip, decoder chip, which would display closed caption on the TVs. At the time the Decoder Act was enacted, a promise was made that one cable TV business locally would be captioned, that all their programs would be captioned on the Hill here—all the programs on meetings from the Hill would be captioned.

As of today, a smaller percentage of those programs are being captioned than last year, even. I don't believe even that hearing is captioned. I don't know if people with disabilities even know what's going on here. Even though we're talking about their needs, the hearing disabled public.

There is about 79 percent of the broadcast programs that are captioned. But on basic cable programs, only 5 percent. The premium cable programs, 36 percent. Legislation before you will greatly—the legislation will greatly influence the development of the super highway.

Few cable TV programs, as we are sitting here now—the captioning results that we have discussed took place last year with the Motion Picture Association and the cable industry. The language encouraged full access and usability through captioning. That means that—this language will insure that the programs will be fully accessible and usable through captioning, meaning that the captioning will be delivered intact throughout the whole program.

I recommend that H.R. 1555, 204(d)(1) "classes of programs" be eliminated. A determination should be made by the FCC for each provider or owner, whether or not the provider of those captioning will be economically feasible.

Also, the important thing is that with 500 channels coming, it will be harder to find which programs are captioned, or which have video descriptions. You should include language that would permit some kind of a navigation to find certain programs like which programs are captioned, and which programs have the video description; or which programs are in Spanish—a subtext to refer to things like that.

There are two things that I would like to add. One is a point of clarification. In my written testimony, I mentioned that the language—decoder language—should not be limited to the telephone companies. I understand that the language written and drafted by the House does include captioning to all current and future video providers, as my written testimony will provide to you.

Second, I want to stress the importance of the security of your future efforts to develop telecommunication policy that you would insure that where audio information is provided, a text alternative should be required.

In closing, I represent all other people with hearing disabilities and other potential captioning viewers and want to applaud all of you on the panel for the acknowledgement of the fact that every American should be able to maximize the use of their eyes and expand their information horizons across and through the accessible captioning media.

Thank you very much.

[The prepared statement of Alfred Sonnenstrahl follows:]

STATEMENT OF ALFRED SONNENSTRAHL, EXECUTIVE DIRECTOR, TELECOMMUNICATIONS FOR THE DEAF, INC., ON BEHALF OF CONSUMER ACTION NETWORK OF DEAF AND HARD OF HEARING AMERICANS, NATIONAL ASSOCIATION OF THE DEAF, NATIONAL CENTER FOR LAW AND DEAFNESS, AND TELECOMMUNICATIONS FOR THE DEAF, INC.

Mr. Chairman and members of the Committee. My name is Alfred Sonnenstrahl. I am the Executive Director of a not-for-profit national organization, Telecommunications for the Deaf, Inc., whose mission is to promote full visual access to information and telecommunications through consumer education and involvement, technical assistance and consulting application of existing and emerging technologies, networking and collaboration, uniformity of standards, and national policy development and advocacy.

While I am here to speak on behalf of TDI, I also represent the interests of the National Association of the Deaf, the National Center for Law and Deafness, and the Consumer Action Network[1], a consortium of twelve national organizations of people with hearing disabilities. I trust you already know that captioning enhances the usability of television sets and video programs for all Americans. The benefits of captioning are not limited to Americans with hearing disabilities. Captioned programming serves about 100 million Americans, as follows: 28 million Americans with hearing disabilities including one million Americans with *both* visual and hearing disabilities; 12 million young children in kindergarten, 1st and 2nd grades learning to read; 27 million illiterate adults, where 56% are under the age of 50, who are learning to read; 4 million individuals with remedial reading skills; and 30 million Americans for whom English is a second language. The latter includes 8 million Hispanic Americans and 3 million Asian Americans who use their native languages as their primary communication mode.

Before I proceed, can you imagine what it would be like to listen to a program and, all of a sudden, there is no sound? Could you visualize how you would feel when you anticipate watching a program only to find out that there is no sound? Would you pay a full cable subscription fee knowing that only five percent of their programs have sound?

Last Tuesday, May 9, 1995, the Business section of the Washington Post had an interesting article covering potential links of cable TV networks with computers. I read the article with great apprehension. Will 100 million individuals, or 40% of Americans, benefit from this upcoming technology? Will all of these programs be captioned?

Are my apprehensions justified? Let me share with you a brief point of interest. Several years ago, members of this Committee played a very important role in the passage of the Television Decoder Circuitry Act. That Act requires all television sets 13 inches and larger to have a decoder chip, which makes display of closed captions possible. At the time that the Decoder Act was enacted, a promise was made by one cable network that all television programs of activities on the Hill would be captioned. As of today, a smaller percentage of these programs are being captioned than last year by that network. I do not believe that this hearing is shown in captioned format even though the very testimony I am giving today involves viewers who rely on captioning for information access.

Television provides a ready source of information, news, and entertainment for most Americans. For most of television's history, deaf viewers had little or no access to television programs. We chose not to watch or relied on family and friends to share the information that we missed. When closed captioning finally began, we had for the first time access to a world of information that had been denied to us. But that information remained limited. Today, while 75% of broadcast television programs are captioned, only 5% of basic cable television programs and only 36% of premium cable television programs are captioned.

The legislation before you will do a great deal toward expanding access to the information highway through cable/television programming. Current language on captioning is, in fact, the result of negotiations which took place last year with the Motion Picture Association and the cable industry. This language ensures that pro-

[1] Founding members: American Association of the Deaf-Blind, American Athletic Association of the Deaf, American Society for Deaf Children, Association of Late Deafened Adults, Deaf & Hard of Hearing Entrepreneurs Council, Deaf Women United, National Association of the Deaf, National Black Deaf Advocates, National Congress of the Jewish Deaf, National Fraternal Society of the Deaf, National Hispanic Council of Deaf & Hard of Hearing People, and Telecommunications for the Deaf, Inc.

grams will be fully accessible and usable through captions, meaning that caption data will be delivered intact throughout the entire program.

However, we recommend that H.R. 1555 Sec. 204(d)(1) "classes of programs" be deleted. The determination should be made by the Federal Communications Commission for each provider or owner whether the provision of closed captioning would be economically burdensome.

Also, we would like to point out that such captioning language should not be limited to telephone companies. This language should be extended to all current and future providers, including those involved with multi-media programs.

Also of great importance, a persistent problem that is unaddressed in current law or the new legislation is the relative lack of timely, accurate information about when and where closed captioned programming will appear on television. The closed captioned programming that has been created is oftentimes hard to find. It is important that these 100 million Americans as described earlier have access not only to television programs themselves, but also to accurate information about the availability of closed captioning to maximize the useful benefits of these services. There are some new on-screen services and navigation guides that inform viewers about accessible programming through continually updated information. Now and as more programming is closed captioned, these navigation guides are vital to the *actual* dissemination of closed captioning to at least 40% of Americans. Artificial barriers that would deny full access to these new services would thwart the goal of the legislation to increase access to video programming by 100 million Americans. Therefore, we recommend that H.R. 1555 be amended to enhance a viewer's access to important new navigation services which provide us with the information we need.

The Television Decoder Circuitry Act legislation provides a fine example of how well access requirements can work. At the time of passage, the Electronics Industry Association expressed concerns about the costs, technical feasibility, and time frame for requiring decoder chips. Ultimately, though, the and television manufacturers not only learned that their concerns were easily met, they also learned that decoder-equipped television sets would be very attractive to the general public. After the Decoder Act went into effect, these manufacturers initiated an advertising campaign to promote the sales of television sets with built-in decoder circuitry. As a result, one television manufacturer, Zenith, had one of its best years selling these sets to the hospitality industry.

In closing, I, on behalf of people with hearing disabilities and other potential caption viewers, want to applaud you for acknowledging the fact that every American should be able to maximize the use of their eyes and expand their information horizons through across-the-board access to captioned media.

Mr. FIELDS. Thank you very much Mr. Sonnenstrahl and all the panel.

Let me really begin, if I could with you, Ms. Carroll. Let me make a comment to Mr. Sonnenstrahl that I said earlier, privately. My 5-year old daughter can sign. We felt it was very important for her to have sensitivity and be able to communicate with everyone.

Just as my daughter is developing sensitivity, her father wants to have sensitivity. So, let me ask you, Ms. Carroll, you mentioned just a moment ago some things that I was not aware of. You're talking about graphs and charts and some things being heat sensitive or not heat sensitive. Could you explain to us, you know, some of the problems that you're having.

Because, you know, I've heard just about every member of this committee at some time or another say that it's unobjective not to have information haves and information have nots, or to disenfranchise someone, or to keep someone from the full benefits of what we hope is going to be unleashed by this legislation.

Ms. CARROLL. Yes, the heat and touch sensitive input devices are generally a panel that instead of having raised buttons, which you might encounter either on a telephone, or at least on an ATM machine. There you have somewhat of a template so that you have a frame of reference on where the buttons are.

Normally, on the heat and touch sensitive panels, those are labeled visually, but there's no way by feel to know where the buttons are or which buttons mean which. So, that's a problem for people with vision impairments. It's also been difficult for people who have difficulty with their fingers and motor impaired people to deal with—they prefer to deal with a button, and there's a certain sized button. This has been studied by human factor specialists.

I don't, of course, know the technical specifications, but there is a subset of the consumer market that would be left out if the only way of inputting into a device is a touch or heat sensitive panel. I understand elderly persons also have trouble with them.

Mr. FIELDS. Let me just ask Ms. Carroll—and I'll also ask Mr. Sonnenstrahl—do you have any interaction with the industry groups that set standards?

Ms. CARROLL. I'm going to have to defer, hopefully, to Mr. Sonnenstrahl to some extent, because I'm new to this, new to the area, and new to this field. I know that there is an history of working with the industry and they have attended many of our conventions with products that are accessible.

So, I think there is a foundation for a working relationship there and we would like to see a Federal role in setting up the framework and the mechanisms to continue that so we're all coming from the same framework.

Mr. FIELDS. We don't expect you to necessarily have an answer today, but if you could get an answer, you know, for us, I would really appreciate that.

Ms. CARROLL. Surely.

Mr. FIELDS. Mr. Sonnenstrahl?

Mr. SONNENSTRAHL. Mr. Chairman, I'm very impressed with your sensitivity and understanding of the issue. You bring up a very good question. We don't have standardization, but we need that. If you can include that in the bill, it would be wonderful.

Mr. FIELDS. No, what I was asking, do you have any interaction with some of the groups that set standards in the manufacture of telecommunications products?

Mr. SONNENSTRAHL. As my paper will mention, we have a technology—telecommunications—no, I'm sorry—Electronic Industry Association. They have established a standardization for the decoders, the decoder chip, through the FCC.

But, there's no standardization at all as far as the industry goes. It's all voluntary with the decoders. So, that's all I can offer.

Mr. FIELDS. Have you had the opportunity to review the legislation? I would really like your opinion as to whether this advances, you know, what we hope to accomplish and create the sensitivities with the industries involved?

Mr. SONNENSTRAHL. I'll be very happy to work with you, and I haven't had a chance to read the legislation, but I've been working very closely with——

Mr. FIELDS. Again, we don't expect you to necessarily have the answer today, but if you could get a response back to us.

Mr. SONNENSTRAHL. We plan to work with you.

[The response appears at pg. 365.]

Mr. FIELDS. Ms. Carroll, also, pertaining to Section 248, any response or comments you have to the subcommittee, we will certainly appreciate that.

Ms. CARROLL. Okay.

Mr. FIELDS. Thank you very much.

The gentleman from Massachusetts, Mr. Markey, the ranking minority member.

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

Mr. Stillman, yesterday Mr. Shockley from Central and Southwest Electric Utility argued that multi-state electric utilities, those that span into different States in their provision of electricity should be able to get into the telecommunications business. As you know, that causes some problems in terms of our ability to make sure that the electric rate payer isn't subsidizing any telecommunications technologies that may be built in another State from the residents of the electric rate payer.

Now, here's an interesting quote from Mr. Shockley yesterday. He says, "The anchor tenant for construction of the last mile of the information super highway will be those electric rate payers that are paying to build this fiber optic that will help them with their demand management of electricity."

Now, he uses—he calls them "anchor tenants." We might call them "captive electricity rate payers." You know, that might be another way of describing them as well.

Of course, while one man's anchor is another man or woman's ball and chain, as they get tied to, you know, a telecommunications network being built in another State. They are never going to be the beneficiaries.

Could you give us your views on how we should deal with that issue?

Mr. STILLMAN. There are a couple of points there. First of all, demand management is, I think, a useful took for environmental purposes. It's a useful tool for consumers to try and cut their bills. All of the information that needs to be exchanged between an electric rate payer and the company doesn't take up more than 2 or 3 percent of the capacity of the fiber network that they're proposing to build.

But, when it comes to assigning the costs, which are quite large, for building that kind of a network, they want to make sure that their anchor tenant bears the burden of paying most of that cost.

That's fundamentally unfair, and something we've been trying to fight against in every context, regardless of who the electric utility is. You've got to make sure—we call it the "user pays" principle. We've put it forward in the context of telecommunications and it applies equally in electric utilities.

The joint and common costs of the network—which regardless of the network, are going to be the biggest part—should be borne by the people that are placing the most demand. Demand management for the electric rate payer is a very small portion and they should pay a very small portion of the joint common costs.

Mr. MARKEY. Let me move on. That's very helpful.

Yesterday before the committee, we had testimony from cable company executives. One of them in testifying said that he knows of no cable company in the United States that has lowered rates

as a result of competition from the direct broadcast satellite transmission of video services, the 18-inch dish that is more and more becoming part of the mix, but not in a way that reduces prices in a competitive way because the cost $700. Most people just aren't going to go out and buy one.

In addition, another one of the cable witnesses testified that in fact there probably are bad actors out in the marketplace, and they probably would take advantage of any deregulatory scheme that didn't put some pressure upon them.

How should we deal with those issues, Mr. Stillman?

Mr. STILLMAN. Well, actually the 1992 Act deals with those issues just fine, in our opinion. Congress had the foresight to realize that if competition was going to come, then regulation would no longer be necessary. So that, when there was an actual alternative—and the way to measure an actual alternative is whether it's available to everybody, whether people are actually subscribing to it, whether it's comparable type service, the price is comparable? We're just not there with direct broadcast satellite. There are only about—less than a million dishes that have been manufactured for this service.

There is no way—even if everybody buys one——

Mr. MARKEY. How many homes are there?

Mr. STILLMAN. There are about 100 million households in the country.

Mr. MARKEY. And 1 million dishes.

Mr. STILLMAN. 60 million cable subscribers and 1 million dishes on the market.

That by no means is competition. It won't constrain prices. So that's going to lead to the return to the bad old days of rate gouging.

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

Ms. Easterling, how many jobs do you think this bill can create? What is the upside job potential if we give these opportunities to the telephone industry?

Ms. EASTERLING. We just—really, I don't have that figure with me, although we have looked very closely at the study that was done by the Wharton folks and have agreed that looks like a legitimate study. It does project a tremendous amount of jobs. It projects them also by State and so forth.

Mr. MARKEY. Could you provide that information to the committee?

Ms. EASTERLING. Absolutely.

Mr. MARKEY. Thank you.

I would also note to the other witnesses, the gentleman from Texas and I—and I think almost all the members of our subcommittee—are very interested in the issue of insuring that those in the disabled community are given access to this wonderful revolution.

The Dakota Act of 1990 was something that came out of this subcommittee. The telecommunications devices for the deaf legislation came out of this committee. Counsel just mentioned to me—and I think it's ironic, but pertinent—that Alexander Graham Bell was trying to find a new and better hearing aid when he discovered the telephone by accident.

I think that we should keep that in mind in terms of what his intent was, and how it is possible to meld the needs of the general population with those that may have disabilities at the same time.

We thank you for your testimony and any suggestions that you have, I'm sure we would welcome and try to help you with. So, with that I reserve the balance of my time.

Mr. FIELDS. I just want to reiterate what my friend from Massachusetts just said, we are very interested in making sure that what is created, hopefully, through this legislation is available to all people. We would really appreciate any suggestions that you have for us.

I will implore you, as I have all the other panels, that if you have suggestions, please get those to us sooner than later; particularly if it can be done prior to this weekend when staff is going to be looking over a number of recommendations.

We appreciate your patience. We know you've had to sit here in the audience for a long time today. We appreciate that very much.

The subcommittee will now adjourn and reconvene in the morning at 10 a.m. Thank you.

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

[Additional material submitted for the record follows.]

PREPARED STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

First, I want to commend Chairman Jack Fields for all of his time and effort that went into drafting this piece of legislation. This committee is going to pass the largest telecommunications reform bill ever to go through Congress. I am proud to be an original cosponsor of this historic legislation. "The Communications Act of 1995" will be the biggest job creation bill to pass in the 104th Congress. This legislation moves a number of currently heavily regulated industries into true market competition with each other, thus ensuring consumers real choices as to where to place their local telephone, cable television, and electronic data business with. The bill, when it becomes law, puts the consumer in the drivers seat for all of his or her communications needs.

Generally, I feel this is a very effective piece of legislation; however, there are a few points of the bill I would like to address. In 1992, this committee passed out arguably the most regulatory piece of telecommunications legislation in the history of the industry. Frankly, I am disappointed that the 1995 bill does not simply repeal the 1992 Cable Act. The 1992 Cable Act took a giant step backward and decided that the consumer could best be served by massive regulations. I realize the legislation we are now debating eliminates many of these policies, but the bill does stop short of complete repeal.

Another issue I would like to touch on is the cellular industry. The themes of this legislation are deregulation and competition, but unfortunately, these themes do not reach into the cellular industry. The bill excludes wireless services from the competitive provisions including those requiring interconnection, network unbundling, and resale. Because the cellular industry is structured as a duopoly, competition could be brought about by extending these measures.

Overall, I support this deregulatory approach that will promote growth and competition in the telecommunications industry. If we can create a fair marketplace for telecommunication services, the industry, through competition, will create the much touted information superhighway in a less expensive and more efficient fashion.

Federal Communications Commission,
Washington, DC,
May 12, 1995.

The Honorable Jack Fields,
Chairman, Subcommittee on Telecommunications and Finance,
Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.

Dear Chairman Fields: Once again, thank you for the opportunity to testify yesterday before the Subcommittee on H.R. 1555 and other legislative proposals to reform communications law. During the hearing, I was asked to respond in writing to several questions concerning H.R. 1555's competitive, uniform rate structure, and broadcast provisions, as well as the broadcast ownership provisions as provided in H.R. 1556. Below are my responses and suggestions pertaining to the legislation. In addition, I am enclosing a description of the principles that I think should underlie the educational proposal I discussed in my testimony. I have specific ideas for legislative language which my staff would be happy to discuss with you.

Competitive Checklist and Commission Resources

H.R. 1555 establishes a checklist which is the foundation for competition in local exchange markets and for Bell Operating Companies' (BOCs') provision of interLATA services. The Commission would be required to issue implementing regulations within 15 months of enactment and subsequently to review local carrier and BOC filings setting out their compliance with elements of the checklist.

The workload that this will generate will require a significant commitment of Commission personnel and will stretch our resources in the common carrier area to the limit. Nonetheless, with a maximum effort by employees and by shifting resources from other functions for the short run, we should be able to accomplish this job with the resources the Commission currently has on hand.

I stated in my testimony that monitoring the checklist submissions will require the work of attorneys and economists. Our previous experience with issues included in the checklist, such as unbundling, collocation, equal access and dialing parity, has shown that attorneys and economists will play key roles in reviewing and interpreting the carriers' submissions under the law. We have the requisite mix of professionals and technical specialists at the Commission right now to carry out this added responsibility and I did not mean to suggest that we will have to retain additional attorneys or economists.

Other Competitive Provisions

In addition to the foregoing, I also suggest the following minor revisions. It is unclear whether the drafters intended to prevent the FCC from forbearing to apply certain of the interconnection and equal access provisions to newly entering local exchange carriers that do not control essential facilities or that lack market power. Applying some of these obligations to such carriers may not be in the public interest. If this was not the intent, it would be preferable to eliminate the cross-reference in proposed §242(a) to §201(a) of the Act, because the forbearance provision in the bill, proposed §229, does not permit the FCC to forbear from enforcing provisions of §201.[1]

You may also want to consider modifying the bill to prohibit "unreasonable or *unreasonably* discriminatory" conditions or limitations on resale in proposed §242(a)(3), rather than prohibiting any discriminatory conditions. This language would parallel the existing prohibition of unreasonable discrimination in §202 of the Act. Some forms of discrimination may be reasonable, such as when a carrier incurs different costs to provide similar services to different parties.

Proposed §242(b)(4)(B) should be revised to give the Commission authority to require physical collocation if the FCC determines that such a requirement would be in the public interest, rather than mandating such a requirement.

In proposed §242(c)(2), it would be preferable to permit the FCC to designate multiple impartial entities, rather than a single entity to administer numbering. It may be in the public interest to designate separate entities in different states or geographic areas, or to have separate entities responsible for different aspects of the numbering plan (e.g., area codes, local phone numbers, and 800 numbers could each be administered by a different entity).

[1] Except as otherwise noted, this letter refers to the sections of the Communications Act, as proposed to be amended by H.R. 1555, rather than to section H.R. 1555.

Uniform Rate Structure

Section 202(g) of H.R. 1555 would amend the uniform rate structure provision provided in § 623(d) of the Communications Act. The proposed language of the bill would have several effects which would be detrimental to the ability of competitors to enter and compete in new geographic markets. There are no significant regulatory costs that it has imposed on cable operators. Non-uniform, discriminatory pricing within a franchise area can surely serve as a barrier to the development of competition.

Broadcast Communications Competitiveness

The provisions in § 301 of H.R. 1555 related to advanced television service are critical to a successful and rapid transition to a digital broadcast service and the recovery of existing analog broadcast spectrum for alternative uses. These provisions must ensure the reasonable and fair treatment of both existing broadcast licensees and consumers. Yet they must also recognize that our country will reap great benefit from digital conversion, and that delaying that conversion may undermine or reduce our ability to secure those benefits.

In order to accomplish this transition, proposed § 336(a)(1) should require the Commission to assign each incumbent licensee a license for the provision of advanced television services. Section 336(c)(1) must also, however, clearly require each incumbent licensee, or any successor, to surrender the analog NTSC license at the end of the transition. In this way, incumbent broadcasters will be compensated for making the transition to digital service. However, through this mandatory transition, the public will also benefit by recovering spectrum that can be reallocated for new, emerging technologies, or for such other uses as are in the public interest.

Proposed subsection 336(c)(2)(A) ties the timing of the surrender of NTSC analog licenses to the actual penetration of advanced television (ATV) receivers in consumers' homes. I do not believe this is the most appropriate measure. We should instead look at how many consumers rely exclusively on analog broadcast signals for receipt of their video programming. I propose that the transition period be deemed complete when, on a market-by-market basis, less than 10% of households rely solely on over-the-air analog broadcasting for video programming, or at the end of ten years, whichever comes first.

Proposed subsection 336(d) provides for the collection of fees for any use of ATV spectrum which is subscription based and which is ancillary or supplementary in nature. I disfavor the imposition of annual fees on spectrum use by broadcasters. The proposed fee collection process would be complicated and burdensome both for broadcasters and for the Commission. I propose eliminating subsection 336(d).

Proposed subsection 336(e) requires the Commission to evaluate the ATV program within 10 years of its implementation to, among other things, determine whether and the extent to which "the Commission [can] reduce the amount of spectrum assigned to licensees in order to issue additional licenses for the provision of advanced television services." To the extent this section may be interpreted as restricting future allocations of recovered spectrum to ATV services only, I suggest that it be modified to allow the Commission discretion in determining the appropriate allocation, and to permit the Commission to issue any licenses for the recovered spectrum through auction where an auction is in the public interest.

Without wishing to seem to be too nit-picking, I would offer one further refinement. Proposed subsection 336(f)(1) suggests a rather precise definition of ATV. The ATV technology currently under consideration by the Commission is inherently extremely flexible. It would not be prudent to stifle creative applications of this flexibility by burdening it with the legal restrictions implied in this section. Subsection 336(f)(1) would require "enhanced" quality of audio and video resolution. While it might be expected that the market will naturally provide enhanced quality, I think we should let market preferences determine acceptable video quality. Thus, if they so choose, more program streams could be available to consumers. I would therefore propose that "Advanced Television Services" be defined as "... television services provided using digital or other advanced technology, as further defined in the opinion, report and order..."

Broadcast Ownership (H.R. 1556)

I believe that ongoing changes in communications markets justify reexamination of the broadcast ownership rules both at the national and at the local level. And, I support the overall thrust of the legislation with regard to national multiple ownership limits. The provisions pertaining to local broadcast ownership, however, raise certain concerns because they unduly limit the Commission's authority to review and prohibit transactions that could adversely affect media competition and diversity.

Local mass media markets vary enormously in size and composition and exhibit wide differences in their levels of competition and voice diversity. I believe, therefore, that it is important for any legislation prescribing local broadcast ownership rules at a minimum to afford the Commission the discretion to refuse to license ownership combinations that it believes would disserve either of our goals of competition and voice diversity. Further, it would be desirable in those cases where the legislation relies on case-by-case determinations by the Commission, to include some guidance in the legislation as to the conditions that should inform our decisions. Applying these considerations to the specific provisions of the legislation, there are two areas in which changes consistent with these concerns would be appropriate.

First, subsection (a) of H.R. 1556 effectively eliminates the local radio ownership rules without regard to the extent of competition in particular local media markets. In small radio markets, this could result in substantial ownership concentration and loss of diversity. The legislation should consider defining a minimum level of diverse ownership in such markets (e.g., not fewer than five separate owners). In addition, the Commission should be given the authority to deny applications that would result in highly concentrated markets or harm diversity on a case-by-case basis.

Second, subsection (a) of the legislation would effectively preclude the FCC from reviewing mass media cross-ownership combinations under any circumstances, including combinations in markets with very few media outlets or competitors. For example, one entity could own a cable system, a broadcast television station, a local newspaper and a wireless cable system irrespective of the number of competitors or media outlets in that market. Existing cross-service ownership restrictions may no longer be appropriate in the face of dramatic changes in technology and in the nature of media companies, but it is difficult to predict the precise impact these changes will have on our competition and diversity concerns under all conditions. Thus, the legislation should authorize the Commission to preclude combinations that would result in highly concentrated markets or harm diversity.

Education Proposal

Although most schools have telephone service, that service rarely extends beyond the principal's office. Eighty-eight percent of the nation's classrooms are without a phone line and, according to a recent Department of Education study, 97 percent are not connected to any computer network. In other words, we do not have even the most rudimentary infrastructure to connect the nation's classrooms to the information superhighway.

I propose a mechanism which would assist with networking the classrooms, not just the schools. The recent Department of Education survey found that while 35 percent of *schools* have an external Internet connection, only 3 percent of *classrooms* are connected. The internal connections are more costly, but only networking the classrooms can bring educational technology to bear on improving daily teaching and learning. Every classroom should have e-mail and access to the emerging information superhighway.

This mechanism must assist with installation costs. The *initial* cost of networking the classrooms is the greatest obstacle to bringing teachers and students into the Information Age. Giving schools preferential or incremental service rates will only help once the network is in place.

I believe we must identify a dedicated, broad-based source of revenue that bears a nexus to our purpose and does not unfairly burden a narrow set of ratepayers. One possibility is to tap funds raised through the Universal Service Fund, drawing from all telecommunications providers and, as noted below, available as assistance to all those providers in networking the classrooms. The total amount of assistance should be capped and the program should terminate after no more than 5 years.

No new bureaucracy would be created: this fund could be administered by a non-governmental entity such as that which collects and distributes the current Universal Service Fund. Funds could be passed *directly to states* according to the formula in Title I of the Education Act; the states could suballocate as they deem proper to localities or school authorities.

The mechanism should be technology-neutral. Schools should be free to choose among competing networking technologies and providers, i.e., satellite, cable television, wireless cable, and wireless telephone, in addition to local telephone connections.

Finally, in order to keep the cost low and ensure that awards are made only to school authorities committed to using and maintaining the technology, any grants should be awarded on a *matching basis*. Funds should be used only to create the *network* (hookups and network hardware/software); a hard or soft match would provide computers, program software, and teacher training. Creating the networks

should create a huge educational technology market and economies of scale that will bring costs down.

I hope my comments and suggestions are helpful. As always, my staff stands available to assist the Subcommittee in its consideration of the matters relating to telecommunications reform legislation.

Sincerely,

REED E. HUNDT,
Chairman.

cc: Congressman Edward Markey

FEDERAL COMMUNICATIONS COMMISSION,
WASHINGTON, DC,
May 16, 1995.

The Honorable JACK FIELDS,
Chairman, Subcommittee on Telecommunications and Finance,
Committee on Energy and Commerce,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I would like to clarify several comments I made in the letter I sent you late Friday, May 12, in response to questions raised at the May 11 hearing on H.R. 1555 and other pending telecommunications legislation. At the hearing, you had asked that I respond to your questions before the weekend.

1. On page 3 of my letter, commenting on subsection 336(d) of H.R. 1555, and referring specifically to "the collection of fees for any use of ATV spectrum which is subscription based and which is ancillary or supplementary in nature," I said "I disfavor the imposition of annual fees on spectrum use by broadcasters." I suggested eliminating the subsection. I should make clear that what I disfavor are fees imposed *solely* on the part of the spectrum used for subscription based or ancillary services. Such fees would distort use by introducing an artificial disincentive that would militate against broadcasters offering services subject to the fees. If you wish to impose any fees on broadcasters' use of digital spectrum, they should not distort markets and should not give the Commission an intrusive role in collecting such fees. In addition, it is important to recover the analog spectrum if after a reliable and fair period of time so that it may be designated early for future auction.

2. In my testimony on May 11, I commented that the "effective competition" provisions of the cable sections of H.R. 1555 do not sufficiently require evidence that competitive video programming service is actually available to consumers before the enhanced basic tier is deregulated. In legislative language that I forwarded on May 12, I suggested a revision to Section 202(h) of H.R. 1555, adding a subparagraph to tighten the definition of "comparable video programming." The addition of the two subsequent subparagraphs, copied verbatim from the draft bill, was by way of reference only. With great respect, my personal opinion is that the bill would be stronger if you deleted those paragraphs.

I do think that the effective competition standard, however, could appropriately be modified. It is very likely that effective competition will depend on a variety of different types of video delivery services entering markets, and I believe a broad reference to this possibility, with a delegation of market analysis to the Commission, would be suitable to relieve cable operators of unnecessary regulation at the earliest time while protecting consumers from the absence of choice until such choice arrives.

3. In my suggested legislative language for Section 202(f) regarding the complaint threshold, in line with my testimony at the hearing, I proposed reinstating the authority of a franchising authority to initiate a complaint. In my testimony, I also pointed out the importance of the current "one subscriber" complaint threshold and suggested it might be modified to require the local franchising authority to certify a subscriber complaint. Language to effectuate such a certification should have been included in the package I sent to you. I suggest inserting, in lieu of the "10 subscribers or 5%" threshold language, the following: "or a subscriber to such services files a complaint and such complaint is certified by the franchising authority."

4. Finally, in my testimony and in my letter, I proposed a universal service mechanism to achieve networking the nation's classrooms and libraries. A similar proposal was considered by an interagency working group on educational technology convened by the Administration.

I congratulate you on your hard work and your commitment to a fair process. If I can be of any further assistance, please do not hesitate to call.

Sincerely,

REED E. HUNDT,
Chairman.

PREPARED STATEMENT OF THE NEW ORLEANS CITY COUNCIL

The New Orleans City Council is concerned that ratepayers within the city, while acting as the "anchor tenants" for the development of the information super highway, will bankroll telecommunication investments and business failures.

The Council of the City of New Orleans ("Council") regulates two of Entergy Corporation's (a multi-state electric utility holding company) subsidiaries which provide electric energy and power to consumers in the City of New Orleans. The Council is the equivalent of a state level regulator with final administrative authority over electric rates.

The Council supports efforts to improve consumer protection provisions governing the entry of regulated utility holding companies into the telecommunications field. In our opinion, the existing language of H.R. 912 does not adequately protect consumers from the risks associated with the expansion of regulated utilities into unfamiliar, and potentially risky business ventures. The council believes that the question of the entry of the registereds into telecommunications should be examined in the context of an overall review of PUHCA.

The Public Utility Holding Company Act of 1935 ("PUHCA") established a regulatory framework consisting of extensive oversight by the Securities and Exchange Commission ("SEC") of financings, contracts and loans among system's affiliates. Congress enacted PUHCA in response to demonstrated abuses of holding companies which were widespread and gross, PUHCA's most important function is to ensure that utility holding companies do not manipulate transactions among affiliates so that captive consumers are unfairly subjected to higher rates.

For over sixty years, PUHCA has provided vital protection for captive ratepayers of multi-state registered holding companies. Collectively, PUHCA's provisions force registered holding companies to pay sufficient attention to the needs of their operating utility subsidiaries so that ratepayers will be protected from the risks associated with unregulated businesses. PUHCA's provisions relating to the issuance of securities, intercompany transactions and diversification activities are not found in any other statute.

Even with PUHCA in place, State Commissions are hard-pressed to keep up with registered holding companies. The City Council of New Orleans and the other Entergy Regulators have extreme difficulty even under current laws in ascertaining whether consumers are paying inflated rates because of costs associated with Entergy's non-regulated businesses that are improperly flowed through to captive utility ratepayers. Contrary to rumors being circulated, PUHCA remains an important check against continuous utility holding company efforts to take advantage of their captive ratepayers. Without PUHCA's protections or meaningful consumer safeguards in the telecommunications bill, it would be virtually impossible to prevent abuses that are harmful to consumers.

Utility holding companies have targeted the telecommunications fields for massive diversification efforts. They have publicly boasted about the magnitude of their fiber optics infrastructure investments, and referred to ratepayers as the necessary "anchor tenants" for the development of the information superhighways.

Because PUHCA presently prohibits such diversification, the registered utility holding companies would like to be exempt from the Act so they can aggressively pursue these non-utility investments which do not necessarily benefit electric consumers.

Generally, there may be nothing wrong with RHC's entering the telecommunications market. The City Council agrees that enhanced competition in this market best serves the nation's goals with respect to the Information Superhighway. However; the City Council believes that this initiative should include provisions to protect captive ratepayers from investment risks and cross-subsidies.

Although the current draft of H.R. 912 would require RHC's to engage in telecommunications activities through subsidiaries separate from utility operating companies, this is not enough protection for ratepayers. Utility and non-utility activities must be truly separated so that there is an effective "wall" between the utility and non-utility businesses. This wall must assure that procedures and controls are in effect so that inappropriate funds, information and corporate services do not flow from the utility to the non-utility side. The dangers of cross-subsidization are very

real, and the victim is the captive ratepayer stuck with higher rates. H.R. 912's Section addressing cross-subsidization fails to provide sufficient authority for states to detect and correct improper cost allocations.

Under the bill in its present form, "pure" telecommunications companies are treated differently from RHC's. Telecommunication companies provided entry into new markets by this bill are required to follow certain procedures to separate their businesses, but RHC's are not. RHC's should be subjected to the same or similar procedures.

Similarly, the audit provision provided in the draft is inadequate. Although an independent audit is available to state regulators, this audit is proposed to be supervised by the RHC's. This sets up a real possibility that the result of the audit could be slanted toward the interest of the RHC's. In our experience this results in a superficial examination by the company providing no real information. It is the classic case of the fox guarding or designing the henhouse. When considering the audit provision, it is important to note that other telecommunications companies and utilities are subject to far more rigorous auditing.

Moreover, an RHC's investment in the telecommunications field is not limited. This allows all RHC's in poor financial condition to invest without considering the ultimate effect on and risk to the ratepayers. Investment failures will hurt consumers; they have in the past and will in the future if the necessary precautions are not taken.

The Council believes that the core protections under PUHCA are still relevant today, and in fact, will insulate regulated utilities from disastrous and costly failures. If a broad exemption to PUHCA such as the one suggested today for RHC's entering telecommunications is granted without consumer protections, utilities will likely renew their diversification activities and such diversification would result in continued erosion of the average credit quality of the industry which result in higher cost of capital and higher rates for captive customers.

Finally, the result of this bill could be the unlimited expansion of RHC's into an unrelated business without protection, to the detriment of consumers, with a loss of focus on providing utility service.

The Council suggests that at a minimum, the following consumer protection accompany the telecommunications legislation: A methodology for transfer pricing that will ensure that when holding companies and their affiliated do business with each other, ratepayers do not subsidize improper costs; A "cap" on the amount of diversification and investment by registered holding companies in the telecommunications field, to protect ratepayers from the risk of excess failures; A federal presence with sufficient oversight authority to ensure large holding companies spread over several states do not elude state regulators; Periodic auditing of any telecommunications affiliate reporting, with adequate access to books and records for state regulators; Ongoing requirement of functional relationship and integration; Cost allocation rules to set out how costs will be allocated between the regulated and interaffiliate transactions so that ratepayers do not subsidize non-regulated, diversified investment; and States with clear authority to prescribe full retail competition, as well as full franchise competition, should be allowed to proceed in this direction so that ratepayers will have true choice as to their suppliers and to diminish, and hopefully eliminate, holding companies' monopoly power.

In conclusion, allowing the entry of registered holding companies into telecommunications businesses jeopardizes captive ratepayers. Any modification of PUHCA to remove diversification restrictions must be offset by effective federal and/or state regulation, as well as, provisions protecting consumers from unwarranted rate increases.

THE NATIONAL CENTER FOR LAW AND DEAFNESS,
WASHINGTON, DC,
September 22, 1995.

The Honorable JACK FIELDS,
Rayburn House Office Building,
Washington, DC.

DEAR CHAIRMAN FIELDS: During the hearings on H.R. 1555 held on May 11, 1995, Al Sonnenstrahl presented testimony on behalf of the undersigned organizations in support of requirements for captioning of all video programming. During the course of his testimony, you asked whether our organizations had interaction with industry groups that set standards in the manufacture of telecommunications products. You also asked whether H.R. 1555 will advance the goal of industry-wide standardiza-

tion as it relates to the usefullness of products and services for individuals with disabilities. This letter in intended to respond to those inquiries.

Over the past several years, there has been considerable interaction between representatives of individuals who are deaf or hard of hearing and industry groups that establish standards for telecommunications products and services. For example, together these various entities have sought to develop standards for text telephone (TTY) communications, TTY access to 911 telephone emergency services, decoder chips for televisions, closed captioned broadcasts, and hearing aid compatible telephones. Some of these efforts have been successful. For instance, through cooperative efforts with the electronics industry, captioning agencies, the Federal Communications Commission (FCC) and consumers, standardization of the decoder chip, which is required in all television sets with screens over thirteen inches, was accomplished.

Unfortunately, all too often, there has been no effort to include consumers with disabilities, especially those who are deaf or hard of hearing, in the standardization of telecommunications products and services. As a consequence, numerous products—even those intended for the use of such individuals—have not, in fact, been usable by these individuals. For example, inconsistencies between the two principal modes of TTY transmissions—Baudot and ASCII—have resulted in problems for 911 centers, relay centers, businesses, and consumers who often find that their own transmission format is incompatible with the party with whom they are trying to communicate. Similarly, at this very time, new cellular technologies being marketed are known to be incompatible with hearing aid use; no efforts to ensure the compatibility of such technologies with hearing aids—or with TTYs—took place at the initial design stage of those wireless technologies.

By requiring telecommunication equipment, customer premises equipment, and network services to be accessible and usable by individuals with disabilities, H.R. 1555 will ensure that industry groups consider the telecommunication needs of these individuals at the outset of their research and development of such products and services. Toward this end, it is expected that telecommunication businesses will work with consumers to establish industry-wide accessibility and compatibility standards. In turn, it is hoped that the FCC will utilize such joint industry/consumer efforts to finalize its accessibility guidelines required under H.R. 1555. In sum, we do believe that H.R. 1555 will significantly advance the goal of ensuring that industry considers the needs of individuals with disabilities when standardizing its products and services.

I hope that we have responded to your inquiries. Please let us know if we can provide any additional information on this point.

KAREN PELTZ STRAUSS,
National Center for Law and Deafness.

Counsel for Consumer Action Network of Deaf and Hard of Hearing Americans; National Association of the Deaf; National Center for Law and Deafness; and Telecommunications for the Deaf, Inc.

U.S. DEPARTMENT OF COMMERCE,
WASHINGTON, DC,
October 5, 1995.

The Honorable THOMAS J. BLILEY, JR.,
Chairman, Committee on Commerce,
Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN BLILEY: During the Committee's hearing on the Communications Act of 1995 (H.R. 1555) on May 11, 1995, Representative Stearns had several questions regarding the Administration's position on the issue of media concentration. In particular, Rep. Stearns raised the question of how this Administration's views differed from the previous Administration's report that called for relaxation of several media ownership rules.

The 1992 Report, *Globalization of the Mass Media*, suggested several changes in broadcast ownership restrictions, including relaxation of rules limiting the number of television stations one entity can own nationwide. However, it is important to note that the changes suggested in the Report were made with the expectation that other broadcast ownership restrictions and regulations would remain in place. In contrast, bills being considered by this Subcommittee would not only relax limits on national ownership of television stations, but would reduce or eliminate most broadcast ownership restrictions, extend broadcast license terms and eliminate comparative review during license renewal.

One of the bills under consideration by the Subcommittee, H.R. 1556, would allow one entity to own two television stations in a given market, eliminate all limits on national and local ownership of radio stations, repeal the network-cable ownership restriction, repeal the broadcast station-cable crossownership restriction, eliminate the network duopoly rule, and eliminate crossownership restrictions on broadcast stations and newspapers.

The effect of eliminating all of these rules at once would be to greatly concentrate ownership of the mass media in this country. Greater concentration of ownership will decrease diversity in the types of information available to the American public, especially the availability of different viewpoints on important public issues. Greater concentration of ownership will also reduce the number of locally owned and controlled media outlets, shifting power to large group owners. For example, two thirds of radio station owners today are sole proprietors. There is no dbubt that eliminating all ownership restrictions on radio will result in many of these small business people selling out to large group owners. The result will be a reduction in the number and diversity of viewpoints available in these communities.

In addition, the bills being considered by the Committee would extend the term of broadcast licenses from five to seven years and eliminate comparative review during license renewal. Allowing all of these ownership changes at once could increase the potential for existing communications media owners to consolidate control and reduce current levels of competition and diversity in this dyramic industry. I explained these concerns in more detail in my written testimony, which has been included in the record.

Thank you for giving me the opportunity to respond to the questions raised by members of the Committee regarding the Administration's views on this important legislation.

Sincerely,

LARRY IRVING,
Assistant Secretary for Communications and Information.

COMMUNICATIONS WORKERS OF AMERICA,
WASHINGTON, D.C.,
September 28, 1995.

The Honorable JACK FIELDS,
Chairman, Subcommittee on Telecommunications and Finance,
Committee on Commerce, U.S. House of Representatives,
Washington, DC.

DEAR MR. CHAIRMAN: This is to provide the information requested by Representative Markey at the Subcommittee's May 11 hearing. The union's witness was Barbara J. Ensterling, then Secretary-Treasurer.

Ms. Easterling was referring to increases in business and job opportunities to be expected after removal of MFJ restrictions now keeping the Bell companies from competing on equal terms in the marketplace.

Sincerely,

MORTON BAHR,
President.

COMMUNICATIONS LAW REFORM

FRIDAY, MAY 12, 1995

House of Representatives,
Committee on Commerce,
Subcommittee on Telecommunications and Finance,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. Jack Fields (chairman) presiding.

Members present: Representatives Fields, Oxley, Barton, Hastert, Stearns, Paxon, Gillmor, Klug, Cox, Frisa, White, Coburn, Markey, Hall, Bryant, Manton, Towns, Rush, Eshoo, and Klink.

Staff present: Catherine Reid, majority counsel; Michael Reagan, majority counsel; and David Leach, minority professional staff.

Mr. Fields. The Chair would like to welcome our witnesses to our third day of hearings on what we consider to be legislation that marks a watershed moment in telecommunications history.

We begin with a very distinguished panel this morning.

We will start with Mr. Lund and go from my left to my right. Mr. Peter Lund, President of CBS Broadcast Group. I will recognize you for 5 minutes. At the end of 5 minutes, due to the size of our panel I will ask you to summarize.

STATEMENTS OF PETER A. LUND, PRESIDENT, CBS BROADCAST GROUP; DEAN GOODMAN, PRESIDENT, PAXON COMMUNICATIONS CORPORATION; JOHN C. SIEGEL, SENIOR VICE PRESIDENT, CHRIS CRAFT INDUSTRIES; EDWARD REILLY, PRESIDENT, McGRAW-HILL BROADCASTING; GARY CHAPMAN, PRESIDENT, LIN TELEVISION CORPORATION ALSO ON BEHALF OF LOCAL STATION OWNERSHIP COALITION; MICHAEL EIGNER, EXECUTIVE VICE PRESIDENT, WPIX-TV; DICK FERGUSON, PRESIDENT AND CEO, NEWCITY COMMUNICATIONS; SHERWIN GROSSMAN, PRESIDENT, SHERJAN BROADCASTING COMPANY; AND ANDY SCHWARTZMAN, EXECUTIVE DIRECTOR, MEDIA ACCESS PROJECT

Mr. Lund. Good morning, Mr. Chairman. I am Peter Lund, President of CBS Broadcast Group. With real progress on our new regulatory structure for free over the air network television within sight at long last, I might add, it is actually a pleasure to be here today.

At CBS, as most of you know, we are only in the free broadcasting business, so from a standpoint of both business necessity and philosophy we care passionately about the future of free over the air television and radio. While strongly endorsing and supporting

your efforts to promote a more vigorous radio marketplace, I am here today principally to address the television side of your legislation.

Perhaps because so much perception of the network business is still shaped by the three-network era when ABC, CBS and NBC were American television with 95 percent of the audience on any given night, many people still do not realize how vicious the competitive marketplace in which we operate really is and has been for some time.

Obviously, we complete and ABC, NBC and FOX, but we also compete in varying ways with the Hollywood studios, the cable networks, independent television stations, syndicators like Tribune and, of course, newspapers, magazines and radio. And three of the regional Bell companies just hired away my predecessor, Howard Stringer; yet again more competition.

I am here today to tell you about a story of competition just within the network broadcasting sector. One year ago Rupert Murdoch and New World Television set off a chain reaction that is still playing out. By converting 12 affiliates of the three older networks, including eight of CBS's major market affiliates to FOX, a domino effect was triggered that has caused 78 affiliation changes in 40 markets, changes which will impact 33 percent of the viewers in America.

Please do not misunderstand. What FOX did was perfectly fair and perfectly legal. But the move underscores the myth of, quote, network power. At that time, CBS had won an unprecedented triple crown: first in daytime, first in prime time, and first in late night, a network still riding the crest of Letterman and Lillehammer.

But that was round one. It is not a question of if there is another battle among the networks for affiliates, it is clearly only a question of when. And that is why the broadcast ownership deregulation that is before you is essential and why my sad tale of last year is relevant.

The overwhelming pattern of television station ownership is group ownership, owning more than one station, frequently a number of stations, in order to insulate the owners from the vagaries of network rating ups and downs. The fact that group owners have important business relationships with more than one network greatly complicated the job of rebuilding the CBS network after the FOX/New World alliance.

As an example, we were faced with replacing our affiliate in Dallas. After exploring several options, we were able to strike a deal with the owner of a major Dallas/Ft. Worth independent station, Gaylord Broadcasting. Quite properly, however, Gaylord negotiated with us to secure also the CBS affiliation for their previously independent television station in Seattle. That led us to part company with the station in Seattle with which we had been affiliated happily for 37 years. That station was owned by the Bonneville Corporation which also owned our affiliate in Salt Lake City.

Fearing that we might lose the Bonneville/Salt Lake City affiliation as a result of dropping Bonneville/Seattle, we entered into negotiations with NBC regarding the station it owned in Salt Lake. The FOX New World moves and a separate CBS/Westinghouse

joint venture had left NBC without an affiliate in Philadelphia while CBS/Westinghouse had two. So we traded our extra Philadelphia station to NBC for NBC's owned and operated stations in Salt Lake and Denver, which, by the way, caused us to have to part company in Denver with my colleague and panel pal, Ed Reilly, since McGraw-Hill had been our Denver affiliate.

And I have just given you the simple version. In short, just to replace Dallas caused changes in Seattle, Salt Lake Denver and Philadelphia.

I could tell you other stories. We came within hours of going off the air in Milwaukee. We hope soon to win FCC approval to own a television station in Detroit that many viewers in that market do not even know exists, channel 62, formerly a religious broadcasting station with limited signal power and no existing local news operation.

Mr. FIELDS. Mr. Lund, if I could ask you to summarize please.

Mr. LUND. But we are on the air in every market. And we are still a national network able to compete for programming, advertisers and affiliates.

Mr. Chairman, in closing, with the relief you offer us and navigation tools that ensure that viewers can still find us, if the FCC follows through on the long overdue demise of the financial interest and syndication rules, prime time access rule, and other outdated regulations, if the current robust advertising marketplace continues and if we can find some programming that a few more people will want to watch, then CBS will continue to offer our viewers, your constituents, high quality news, sports and entertainment programming in each home, in every town and city, in every State in this country for free.

Thank you and I will be happy to answer any questions.

[The prepared statement of Peter A. Lund follows:]

PREPARED STATEMENT OF PETER A. LUND, PRESIDENT, CBS BROADCAST GROUP

Good morning, Mr. Chairman and members of the Subcommittee. I am Peter Lund, President of the CBS Broadcast Group. With real progress on a new regulatory structure for free over the air network television within sight at long last, it actually is a pleasure to be here today.

In addition to the CBS Television and Radio Networks, I oversee the seven television stations and 21 radio stations that CBS owns and operates. [see attached list].

Of all the witnesses you will hear from during your consideration of telecommunications reform, I may represent the least diversified major company. CBS is not in the cable business, does not own newspapers, and is not the offshoot of a Hollywood studio...all in stark contrast to our major competitors. We are only in the free broadcasting business, so from a standpoint of both business necessity and philosophy, we care passionately about the future of free over the air television and radio. While strongly endorsing and applauding your efforts to promote a more vigorous radio marketplace, I am here today principally to address the television side of your legislation.

Perhaps because so much perception of the network business is still shaped by the three network era when ABC, CBS and NBC *were* American television with 95% of the audience on any given night, many people still do not realize how vicious the competitive marketplace in which we operate really is and has been for some time.

We compete principally in three distinct markets: programming, advertising and distribution.

For programming, we compete not only with ABC, NBC and FOX, but also with: each of the major Hollywood studios, not just the two, Viacom/Paramount and Time/Warner, which have recently launched new networks of their own; an ever increasing number of cable networks. For example, for several years, more original "made

for television" movies have appeared on cable than on the broadcast networks; independent television stations, and national and local cable outlets, particularly in the sports programming market.

For advertising dollars, we compete not only with ABC, NBC and FOX, but also with: the aforementioned two new over the air networks, those same cable networks and those same independent television stations; Tribune, King World, and the Hollywood studio syndication arms which sell the advertising time in the "barter" programs they produce for local stations; to say nothing of newspapers, magazines, and radio.

For distribution, we compete not only with ABC, NBC and FOX, but also with: cable, DBS, and the various telephone entities, including the one that just hired away my predecessor, Howard Stringer.

But I am here today to tell you a true and contemporary story about competition just within the network broadcasting sector.

For CBS, the competitive story of the last year has been our struggle with FOX, and with ABC and NBC, for affiliates and the preservation of our national network.

One year ago, Rupert Murdoch and New World Television set off a chain reaction that is still playing out. By converting 12 affiliates of the three older networks, including 8 of CBS's major market affiliates to FOX, a domino effect was triggered which so far has caused 78 affiliation changes in 40 markets, changes which will impact 33% of the viewers in America who, I believe, are also your constituents.

Please do not misunderstand. What FOX did was perfectly fair and perfectly legal (although we continue to be mystified that FOX, which is perceived as a network powerhouse to the National Football League, Madison Avenue advertisers and to millions of viewers has so far successfully avoided being recognized as a "network" by Washington regulators).

By the way, when Mr. Murdoch took those 8 affiliates away from us, he took them from us just as we were winning an unprecedented network "triple crown," first in daytime, first in prime time and first in late night, a network still riding the crest of Letterman and Lillehammer.

Since that day just a year ago, I sit before you as the guy who helped put together the deals which rebuilt the CBS network. It was not always pretty, but CBS is represented in all those markets where we were displaced, although not in every case in a way that we would prefer nor would have ever envisioned.

But this was just round one. For, it is not a question of IF there is another battle among the networks for affiliates, it is clearly only a question of WHEN. And that is why the broadcast ownership deregulation that is before you is essential and why my sad tale of the last year is relevant.

The overwhelming pattern of television station ownership is group ownership, owning more than one station, frequently a number of stations with diverse network affiliations in order to insulate the owner from the vagaries of network rating ups and downs. The fact that group owners have important business relationships with more than one network greatly complicated the job of rebuilding the CBS network after the FOX/New World alliance.

As an example, we were suddenly faced with replacing our affiliate in Dallas. After exploring several options, we were able to strike a deal with the owner of a major Dallas/Ft. Worth independent station, Gaylord Broadcasting. Quite properly, however, Gaylord negotiated with us to secure also the CBS affiliation for their previously independent station in Seattle. Which led us to part company with a station in Seattle with which we had been affiliated happily for 37 years. That station was owned by the Bonneville Corporation, which also owned our affiliate in Salt Lake City.

Fearing that we might lose the Bonneville/Salt Lake affiliation as a result of dropping Bonneville/Seattle, we entered into negotiations with NBC regarding the station it owned in Salt Lake. The FOX/New World moves and a separate CBS/Westinghouse joint venture had left NBC without an affiliate in Philadelphia while CBS/Westinghouse had two. So we traded our extra Philadelphia station to NBC for NBC s owned and operated stations in Salt Lake and Denver (which, by the way, caused us to have to part company in Denver with my colleague, Ed Reilly, since McGraw-Hill had been our Denver affiliate).

And I have given you just the simple version. In short, just to replace Dallas caused changes in Seattle, Salt Lake, Denver and Philadelphia.

I could tell you other stories. We worked feverishly to rebuild the network under great competitive pressure. We came within hours of going off the air in Milwaukee. We hope soon to win FCC approval to own a station in Detroit that many viewers in that market do not even know exists in their market: Channel 62, formerly a religious broadcasting station with limited signal power and no existing local news op-

eration. But we are on in every market. We are still a national network able to compete for programming, advertisers, and affiliates.

But as I have already stated, for us, in this incredibly dynamic marketplace, the issue for CBS is not *IF* there will be another raid on our affiliates, but *WHEN* that next raid will occur. And I must tell you that if that crisis were to occur under the current ownership restrictions, I am not at all certain we will be able to respond as effectively as we did this time.

If we are given through this legislation the ability to purchase more stations, we will then have the option to try to buy stations in vulnerable markets in which affiliations are not possible for whatever the reason.

Some of our opponents portray our desire for greater ownership freedom and flexibility as rapacious empire building. Instead, I believe the facts show that the three networks, ABC, CBS and NBC, plus that struggling, emerging, up from the bootstraps non-network, FOX, are now and will continue to be very effectively held in check by the other major players in our business... the group owners... nine of whom own greater numbers of stations than any network does... 40 of whom own stations in the top 10 U.S. markets along with us... powerful companies such as the Washington Post, the New York Times, Gannett, Cox, Hearst, McGraw-Hill, and American Family Life Insurance. Let me assure you, those entities are not lacking in bargaining power with CBS, or any of the other three networks.

Still other voices claim that allowing networks to own more stations will jeopardize localism, a station s commitment to responding to local interests, local news and local sports. I vigorously reject that claim. Speaking for every television and radio station owned by CBS, our commitment to localism and our track record in providing the best local service to the communities we serve is unmatched.

Mr. Chairman, in closing, IF, we can take advantage of the relief you offer us; and IF, the FCC follows through on the long overdue demise of the Financial Interest and Syndication Rules, the Prime Time Access Rule, and other outdated regulations which hobble competition; and IF, the current robust advertising market continues to be the model rather than the recessionary death valley we barely traversed a few years ago; and IF, we can find some programming that a few more people want to watch, THEN, CBS will continue to be able to offer our viewers, your constituents, high quality news, sports and entertainment programming to each home, in every town and city, in every state in this country FOR FREE.

And that should be an important goal for this Committee. After all, with this legislation you intend to publish a blueprint for the information superhighway. Now, it may well be a technological marvel and an economic locomotive, but most of its traffic will be for a toll, and it will be very difficult to provide access for everyone.

Over the air network television always has been, and with your help, will continue to be free and universal, two things the rest of the highway will almost certainly never be.

Thank you, and I will be happy to answer any questions you may have.

CBS OWNED TELEVISION STATIONS

Station	Market
WCBS-TV	New York
KCBS-TV	Los Angeles
WBBM-TV	Chicago
WCAU-TV	Philadelphia
WCIX-TV	Miami-Ft. Lauderdale
WCCO-TV	Minneapolis-St. Paul
WFRV-TV	Green Bay-Appleton

CBS OWNED RADIO STATIONS

Station	Market
WCBS-AM/FM	New York
KNX-AM/KCBS-FM	Los Angeles
WBBM-AM/FM	Chicago
WGMP-AM/WOGL-FM	Philadelphia
KCBS-AM/KRQR-FM	San Francisco
WODS-FM	Boston
WARW-FM	Washington, D.C.
KTXQ-FM/KRRW-FM	Dallas-Ft. Worth
WWJ-AM/WYST-FM	Detroit

CBS OWNED RADIO STATIONS—Continued

Station	Market
KKRW-FM	Houston-Galveston
WCCO-AM/WLTE-FM	Minneapolis-St. Paul
KMOX-AM/KLOU-FM	St. Louis

Mr. FIELDS. By the way, your statement, along with other the members of the panel, will be included in the record in its entirety.

Mr. Dean Goodman, President of Paxon Communications.

STATEMENT OF DEAN GOODMAN

Mr. GOODMAN. Mr. Chairman and members of the subcommittee, my name is Dean Goodman and I am President of Paxon Communications Corporation, a publicly-traded company that owns and operates radio and television stations throughout the United States. I am also representing the Florida Association of Broadcasters as its chairman.

And I am happy to appear before you this morning to testify in support of H.R. 1555 and H.R. 1556. Paxon Communications Corporation owns 17 radio stations and four television stations with another five television station under contract. We are a relatively new but fast-growing broadcasting company.

In order to remain competitive and able to serve our communities in the future, radio and television owners like Paxon need relief from outdated ownership restrictions. Our industry's experience with partial radio deregulation demonstrates the public benefits that can and will result from a further update of broadcast ownership rules.

In 1992, the Federal Communications Commission relaxed its radio ownership rules which at the time had been in place for many years. At the time of the FCC's action, the radio industry in this country was stagnant with hundreds of radio stations losing money and stations going off the air. Modification of the radio ownership rules triggered a remarkable comeback of the radio industry.

Once struggling AM stations found new life as part of revitalized group ownership. Paxon's radio acquisitions includes four AM radio stations all of which were losing money. As part of our larger radio group, Paxon's radio AMs are now all profitable and provide continuous and popular news and sports programing to our audiences.

It has been nearly 3 years since the radio ownership rules were changed and the results have been good for the radio industry, good for the economy, and more importantly good for the listening public. It is now time to complete the process and remove all further radio ownership restrictions. With only 10,000 radio stations in this country, radio competition is alive, vibrant and ownership restrictions are simply no longer necessary.

On the television side, immediate ownership update is needed if the television industry is to compete in the new video marketplace and not face the inevitable declines faced by the radio industry prior to the partial liberation of the ownership rules. Television ownership rules have gone from 5 stations to 12 stations in the last 50 years.

The FCC has proposed relaxing ownership three times since 1991 but to no avail. Television ownership deregulation is long overdue and must be accomplished now by Congress as part of its telecommunications overhaul.

Paxon Communications Corporation and the Florida Association of Broadcasters believe that these proposed changes not only make sense for our industry, but are essential if over the air free television broadcasting is to remain truly competitive in an era of increasing video competition.

The local marketplace is extremely competitive and permitting dual ownership of TVs poses no real competitive threat. I am aware firsthand of the difficulties of owning and operating UHF television stations which are not affiliated with any major television network. My company has purchased and is in the process of purchasing a number of UHF stations from financially troubled sellers or out of bankruptcy proceedings. The public is better served by dual ownership of two healthy UHF stations than by separate ownership of financially struggling, perhaps bankrupt facilities.

One would need to own up to 186 television stations in a market in order to reach the 50 percent cap. Raising the national cap to 35 percent and then 50 percent also poses no risk to the highly competitive environment now faced by broadcasters. As the 1992 modification of the radio rules demonstrated, there comes a time when existing rules must be seriously reviewed and changed.

The growth of television broadcast groups is limited nationally in terms of the number of stations and in restrictions on potential audience reach. In individual markets television stations cannot achieve the efficiencies which flow from operating more than one station. Free over the air broadcasting needs the relief that H.R. 1556 would deliver. Our industry would benefit and the public would be better served. The broadcasters of Florida and Paxon Communications commends the bipartisan sponsorship of H.R. 1555 and H.R. 1556 and wholeheartedly supports the passage of these measures.

[The prepared statement of Dean Goodman follows:]

PREPARED STATEMENT OF DEAN GOODMAN, PRESIDENT, PAXSON COMMUNICATIONS CORPORATION

Mr. Chairman and members of the Subcommittee, my name is Dean Goodman and I am President of the Television Division and Executive Vice President of the Radio Division of Paxson Communications Corp., a publicly-traded company that owns and operates radio and television stations throughout the United States. I am also Chairman of the Florida Association of Broadcasters. I am happy to appear before you this morning to testify in support of H.R. 1555, "The Communications Act of 1995," and its companion bill, H.R. 1556. This landmark legislation will prepare the telecommunications industry for the 21st century, encourage new entrants, and permit long-established industries such as broadcasting to flourish. Today, I would like to focus my attention on the important changes in the radio and television ownership rules proposed in H.R. 1556.

Paxson Communications Corp. was founded in 1991 and is now publicly-traded on NASDAQ. It owns 17 radio stations and four television stations, with another five television stations under contract. We are a relatively new but growing broadcast company that is looking to expand its current radio and television ownership. Our company is headed by longstanding broadcasters who understand and are committed to serving our local communities and fulfilling all of our licensee public interest obligations. We are serious and sincere about serving the public's interest.

But in order to remain competitive and able to serve our communities in the future, radio and television owners like Paxson Communications Corp. need relief

from outdated, unnecessary and inequitable ownership restrictions. Just last Friday in a speech, FCC Chairman Reed Hundt noted that "Broadcast TV is going to change over the next 2 to 8 years." He was referring particularly to broadcasting's new programming challenges, but without corresponding ownership changes, free over-the-air broadcasting will not be equipped to meet these challenges.

Our industry's experience with radio deregulation demonstrates the public benefits that can and will result from further liberalization of the broadcast ownership rules. In 1992, the Federal Communications Commission substantially relaxed its radio ownership rules, which, at that time, had been in place for many years. At the time of the FCC's action, the radio industry in this country was stagnant with hundreds of radio stations losing money, stations going off-the-air each week, and investment dollars disappearing. Modification of the radio ownership rules triggered the remarkable comeback of our radio industry in this country. My own company grew from a mere two radio stations to a total of 17 at the present time and across the country radio success stories were written in every market. Once struggling AM stations found new life as part of revitalized group ownership, and specialty formats flourished. Paxson Communications Corp.'s radio acquisitions included four AM stations that were all losing money. As part of our larger radio group those AM stations are now all profitable and, just as important, are providing continuous and popular news and sports programming to our audiences.

It has been nearly three years since the radio ownership rules were changed and the result has been good for the radio industry, good for the economy, and, most importantly, good for the listening public. It is now time to complete the process and remove all further radio ownership restrictions. With over 10,000 radio stations in this country, radio competition is alive and vibrant, and ownership restrictions, either at the local or national level, are simply no longer necessary.

On the television side, immediate ownership relief is needed if the television industry is to compete in the new video marketplace and not face the inevitable declines experienced by the radio industry prior to the liberalization of the ownership rules. Current FCC regulations adopted over a decade ago in 1984 permit the ownership of up to 12 television stations reaching no more than 25% of the national audience. The rules also permit an entity to own up to 14 stations with a 30% national cap if at least two of the stations are controlled by minorities and at least 5% of the audience reach is contributed by the minority-controlled stations.

At the time of the adoption of the current television ownership rules in 1984, there were 840 commercial television stations in the country. In 1991, an FCC study warned of the need for a change in the television regulatory environment. The FCC has been reviewing the television ownership rules since July 11, 1991, when it adopted a Notice of Inquiry. A Notice of Proposed Rulemaking was then released by the FCC on June 12, 1992, and earlier this year, on January 17, 1995, the FCC released a Further Notice of Proposed Rulemaking. In each instance, the FCC has proposed a relaxation of the television ownership rules in light of the new, competitive marketplace of wired and wireless cable and DBS and the increase in the number of commercial television stations to 1,165 (a 39% increase in the number of operating commercial television stations in eight years).

It has now been nearly four years since the FCC initiated its review, and final FCC action in this matter may still be more than a year away. In the meantime, the video marketplace has changed and continues to change at a rapid pace. Television ownership deregulation is long overdue and must be accomplished now by Congress as part of its telecommunications overhaul.

H.R. 1556 proposes the kinds of changes that are desperately needed. It would allow for the ownership of two television stations in the same market provided that at least one of the stations is a UHF, unless the FCC determines that permitting such ownership would harm competition or diversity. The national coverage cap on TV ownership would rise from 25% to 35%, and a year later would be extended to 50% of television households. After that, the FCC would be directed to review the television ownership issue generally.

Paxson Communications Corp. believes that these proposed changes not only make sense for our industry, but are essential if over-the-air free television broadcasting is to remain truly competitive in an era of increasing video competition. The local marketplace is extremely competitive, and permitting dual ownership of UHF television stations, or a UHF combined with a VHF television station, poses no competitive threat which could not properly be monitored by existing anti-trust laws.

I am aware at first hand of the difficulties of owning and operating UHF television stations (which are usually unaffiliated with any major television network). My company has purchased and is in the process of purchasing a number of UHF stations from financially troubled sellers or out of bankruptcy proceedings. Permitting owners such as Paxson Communications Corp. to combine UHF ownership in

the same market will permit us to become truly viable competitors with existing profitable VHF stations and with the other video delivery services that we compete with on a daily basis. The public is better served by dual ownership of two healthy UHF stations than by separate ownership of financially struggling, perhaps bankrupt, facilities. Two profitable television stations can provide more public service than two failing stations.

Raising the national cap from 25% to 35% and eventually to 50% also poses no risk to the highly competitive environment facing broadcasters. As the attached chart demonstrates, in order for a single owner to control television stations reaching 50% of the country's television households, as measured by A.C. Nielsen and Co., it would have to own at least 25 VHF television stations in the top 25 markets. That is highly unlikely to happen, and even if it did, that owner would have far less reach than the four existing major television networks. Competition would certainly not be threatened by such ownership.

As television broadcasters, we now compete with wired and wireless cable, DBS, and a host of non-FCC regulated media. In the near future, we will face competition from telcos and other multi-channel providers that operate free from the unduly burdensome ownership restrictions imposed on television broadcasters. The increasing vertical integration of the cable and programming markets, and the prospect that this pattern will be repeated as telephone companies begin to provide video services, raise the spectre that over-the-air free television will be unable to compete for the most desirable programming.

As the 1992 modification of the radio rules demonstrated, there comes a time when existing rules must be seriously reviewed and changes must be made. The Commission's rules effectively prevent broadcasters from meeting the competitive challenges posed by burgeoning non-broadcast video technologies. The growth of television broadcast groups is limited nationally, both in terms of the number of stations and in restrictions on potential audience reach. In individual markets, television stations cannot achieve the efficiencies which flow from operating more than one station so that the expenses of news operations, sales and technical staffs, overhead, etc. can be shared. The ownership rules also force national broadcast programmers to turn to other distribution media if they wish to develop new program services. Free over-the-air broadcasting needs the relief that H.R. 1556 would deliver. Our industry would benefit and our public would be better served.

Paxson Communications Corp. commends the bipartisan sponsorship of H.R. 1555 and H.R. 1556 and we wholeheartedly support the passage of these bills.

Television Households by Market

TV Market	% of TV Households
New York, NY	7.082
Los Angeles, CA	5.205
Chicago, IL	3.272
Philadelphia, PA	2.829
San Francisco, CA	2.373
Boston, MA	2.219
Washington, DC	1.978
Dallas, TX	1.920
Detroit, MI	1.843
Atlanta, GA	1.653
Houston, TX	1.646
Seattle, WA	1.549
Cleveland, OH	1.540
Minneapolis, MN	1.487
Tampa, FL	1.466
Miami, FL	1.380
Pittsburgh, PA	1.214
Denver, CO	1.205
Phoenix, AZ	1.194
St. Louis, MO	1.181
Sacramento, CA	1.170
Orlando, FL	1.037
Baltimore, MD	1.033
Indianapolis, IN	.976
Portland, OR	.970

Television Households by Market—Continued

TV Market	% of TV House-holds
	49.422

As reported by Nielsen Marketing Research

Mr. FIELDS. Thank you, Mr. Goodman.

Mr. Siegel, Senior Vice President, Chris Craft Industries.

STATEMENT OF JOHN C. SIEGEL

Mr. SIEGEL. My name is John Siegel and I am Senior Vice President of Chris Craft Industries. For those of you who are not familiar with Chris Craft United Television, yes, we were the boat company, but we sold that business nearly 15 years ago. Our predominant business now is television broadcasting. We are a major group owner.

In addition, on January 16th, we launched the United Paramount Network, or UPN. We made television history on that date, when UPN premiered as the number one ranked network.

We are proud of the public service that our stations have performed over the years, including most recently extensive earthquake and fire coverage in California. We look forward to continuing with this tradition.

Thank you for inviting me here today to comment on H.R. 1555 and related bills. You and your staff are to be commended for your hard work on this very difficult measure. We strongly endorse H.R. 1555, and look forward to working with the committee to further refine and strengthen the bill as it moves through the legislative process.

Two concepts are of utmost importance to us in this legislation: safeguards and flexibility.

Strong safeguards that will promote vigorous competition among wired and wireless providers are necessary if you want broadcasters to continue to be universal, local, nondiscriminatory and affordable.

In this regard, the bill wisely provides the rules which assure access to viewers and protect the integrity of the local broadcast marketplace such as must carry, retransmission consent, syndicated exclusivity and network nonduplication are applied to the video platform not just cable.

Additionally, telephone companies offering video transport are prohibited from unfairly discriminating in favor of their own product either in relation to carriage or by menu manipulation.

Telephone company in region buyouts are limited in the bill. Prohibitions against telcos simply buying up cable systems in the same service area are necessary because otherwise you might just find you are trading one monopoly, cable, for an even more powerful monopoly, the telephone company. All of the above will help ensure health and competitive market in video.

In regard to spectrum flexibility, digitalization represents the competitive future of broadcasters. Broadcasters will be facing more and more competition from cable, telcos, satellites and others. Let the competition come, but as have you done in the bill, move

us into the digital world and give us the opportunity to compete as effectively as possible.

Digital will bring valuable options to the public that will augment our primary service but not replace our public interest obligations. I believe the public would like to be able to access through their television sets such information as player statistics while watching a sporting event or find out which car dealer in their neighborhood might have certain models with certain options while the car commercial is airing.

Moreover, local stations could provide to television sets textual and graphic information about emergency conditions such as tornadoes, earthquakes, school closings, and general weather reports. But broadcasters should not be limited here because we too are an important part of the information superhighway and can provide wireless services.

In digital, our free primary service will remain in tact, free to the public and unencumbered. However, if a broadcaster chooses additionally to offer ancillary or supplemental service in the digital spectrum on a pay or subscription basis, the bill provides the commission with the authority to charge for the use of that spectrum by the broadcaster.

Furthermore, spectrum granted to broadcasters for the transition to digital is solely for transitional purposes, with equivalent spectrum returned to the commission at the end of that transition.

Spectrum flexibility holds the promise of great opportunity, but keep in mind that going digital will not be easy, will take an indeterminate period of time and in no way comes with a guarantee of success. FCC Chairman Hundt said in a recent speech describing one view of the conversion to digital: The government is going to make you switch from a tried and true transmission signal to a new digital technology that has never been used commercially and broadcasters will be obliged to spend hundreds of millions of dollars to convert to the new technology, and consumers are going to be forced to spend billions on new digital television receivers, and all that will be done so that broadcasters can deliver to today's audience the same thing they currently get for free.

Mr. FIELDS. Please summarize.

Mr. SIEGEL. Some people argue that if given flexibility, broadcasters will gain unfair advantage over other technologies. This argument is nothing more than a red herring to disguise the fact that these other technologies simply don't want the competition, this legislation aims to provide. We say bring on the competition, but let us compete also.

Thank you once again and I applaud your efforts and the staff's efforts on this bill. And I would pleased to answer any questions.

[The prepared statement of John C. Siegel follows:]

PREPARED STATEMENT OF JOHN C. SIEGEL, SENIOR VICE PRESIDENT, CHRIS CRAFT INDUSTRIES, INCORPORATED

My name is John Siegel, and I am a Senior Vice President with Chris Craft Industries, Inc. For those of you who are not familiar with Chris Craft/United Television, yes we were the boat company, but we sold that business nearly 15 years ago. Our predominant business now is television broadcasting. We are a major group owner. In addition, on January 16, we launched the United/Paramount Network, or UPN. We made television history on that date, when UPN premiered as the number one ranked network.

We are proud of the public service that our stations have performed over the years—including most recently extensive earthquake and fire coverage in California. We look forward to continuing this tradition.

Thank you for inviting me here today to comment on H.R. 1555 and related bills. You and your staff are to be commended for your hard work on this very difficult measure. We strongly endorse H.R. 1555 and look forward to working with the Committee to further refine and strengthen the bill, as it moves through the legislative process.

Two concepts are of the utmost importance to us in this legislation—safeguards and flexibility.

Strong safeguards that will promote vigorous competition among wired and wireless providers are necessary, if you want broadcasters to continue to be universal, local, non-discriminatory, and affordable.

In this regard, the bill wisely provides that rules which assure access to viewers and protect the integrity of the local broadcast marketplace, such as must carry. retransmission consent, syndicated exclusivity and network non-duplication are applied to the video platform, not just cable.

Additionally, telephone companies offering video transport are prohibited from unfairly discriminating in favor of their own product either in relation to carriage or by menu manipulation.

Telephone company in region buyouts are limited in the bill. Prohibitions against telcos simply buying up cable systems in the same service area are necessary because, otherwise you might just find you are trading off monopoly—cable—for an even more powerful monopoly, the telephone company.

All of the above will help ensure a healthy, competitive market in video.

In regard to spectrum flexibility, digitalization represents the competitive future of broadcasters. Broadcasters will be facing more competition than ever from cable, telcos, satellites and others. Let the competition come, but, as you have done in the bill, move us into the digitalized world, and give us the opportunity to compete as effectively as possible.

Digital will bring valuable options to the public, that will augment our primary service but not replace our public interest obligations. I believe the public would like to be able to access through their television sets such information as player statistics while watching a sporting event, or find out which car dealer in their neighborhood might have certain models with certain options while the car commercial is airing. Moreover, local stations could provide to television sets textual and graphic information about emergency conditions such as tornadoes and earthquakes, school closings and general weather reports. But broadcasters should not be limited here, because we too are an important part of the information superhighway, and can provide wireless services.

In digital, our free primary service will remain in tact, free to the public and unencumbered. However, if a broadcaster chooses additionally to offer an ancillary or supplemental service in the digital spectrum on a pay or subscription basis, the bill provides the Commission with authority to charge for the use of that spectrum by that broadcaster. Furthermore, spectrum granted to broadcasters for the transition to digital, is solely for transitional purposes, with equivalent spectrum returned to the Commission at the end of that transition.

Spectrum flexibility holds the promise of great opportunity, but keep in mind that going digital will not be easy, will take an indeterminate period of time, and in no way comes with a guarantee of success. FCC Chairman Hundt said in a recent speech, describing one view of conversion to digital:

"—the government is going to make you switch from a tried-and-true transmission signal to a new digital technology that has never been used commercially, and

—broadcasters will be obliged to spend hundreds of millions of dollars to convert to the new technology, and

—consumers are going to be forced to spend billions on new digital television receivers, and all that will be done so that broadcasters can deliver to today's audience the same thing they currently get for free?"

Some people argue that if given flexibility broadcasters will gain unfair advantage over other technologies. This argument is nothing more than a red herring to disguise the fact that these other technologies simply don't want the competition this legislation aims to promote. We say, bring on the competition, but let us compete also.

Thank you once again. I applaud the efforts of you and your staff in regard to this bill. I would be pleased to answer any questions that you might have.

Mr. FIELDS. Thank you.

Mr. Ed Reilly, President of McGraw-Hill Broadcasting.

STATEMENT OF EDWARD REILLY

Mr. REILLY. Good morning. I am President of McGraw-Hill Broadcasting, but I am here in two additional capacities this morning to discuss the future of local broadcasters. As you seek to write the user manual for the future, do not turn your back on local broadcasters who have helped tie together communities across this country.

First, on behalf of the more than 600 television stations affiliated with ABC, CBS and NBC, let me discuss the proposals set forth in H.R. 1556 which effectively wipe all the rules on television ownership. This legislation threatens the foundation of localism and community responsiveness upon which our industry was built. It will put in the hands of a few individuals the ability to rule the airways and dictate the control and content of over the air television programming 24 hours a day, 7 days a week, 365 days a year throughout the entire country. This result would not serve the free marketplace of ideas.

Under the current law, a cable system cannot own or be owned by a broadcast station within its market. Television stations compete with cable, but also depend upon them for access to the households in their service areas. Moreover, if one or more broadcast networks acquired or were acquired by multiple system operators, the resulting conglomerate would be tempted to bypass affiliates and place popular free entertainment and sports programming on their own paid for channels. Thus the repeal of either rule would be anticompetitive.

The other major issue in H.R. 1556 is the national ownership caps. Local affiliates believe that eliminating or relaxing the ownership caps would radically skew the balance of power in favor of the national networks. If networks can own or have financial interest in stations that cover the top markets, they would control the critical mass of audience. As a result, remaining local broadcasters no longer would have the input in network programming decisions and would lose the independence to preempt network programming in favor of local news, public interest and local sports programming.

Increased national network control would disrupt the delicate balance that exists between the local affiliates and the national networks. That balanced relationship benefits each community because the program services we can offer better reflect the interests and standards of that community.

But if power shifts to the network, the balance is tipped. The result would be a concentration of national programming at the expense of time and effort devoted to local efforts. It is ironic that when many commentators, including the futurist, Alvin Toffler, are discussing a trend, the wave towards demassing of society and industry in which power and concentration is being dispersed, this subcommittee is considering legislation that would facilitate concentration of tremendous media power in the hands of a few.

Those who must justify the concentration of that power are attempting to wrap themselves in a mantel of deregulation. These proposals, however, would concentrate power in the hands of large vertically integrated companies and in the end be anticompetitive. One of the supporters of this proposal, the FOX network, must

92-967 O - 95 - 13

admit that it would have been next to impossible for that network to engineer the recent upgrades in facilities and cause all the problems that Peter mentioned and justify the purchase of the NFL franchise if the ownership rules they are now attacking had been abolished 10 years ago.

A once and for all concentration of power in the hands of a few will stifle even the diversity of views and business plans that you have here this morning on this panel.

Turning to the provisions of H.R. 1555, we commend Chairman Bliley and Chairman Fields and others for including a section on broadcast spectrum. We support section 301 and see it as a commitment to advanced television services, including High Definition Television.

The organization I chair, the Association for Maximum Service Television, has for many years spearheaded the industry's effort to transition to HDTV to benefit the 98 percent of the public we serve. Last month our 25-member board adopted a resolution endorsing the goal of transitioning our Nation's free and universal television broadcast system to the digital era.

Our view is that the entire American public, which only local broadcasters serve, must participate in the benefits of digital television and most centrally HDTV. What this resolution tells the subcommittee is that broadcasters are committed to advanced television services including HDTV.

That transition to HDTV cannot take place in the current broadcast channel without cutting the public off from its current service and making its more than 200 million analog sets useless. Instead, broadcasters need to borrow a second channel from the existing broadcast allocation in order to upgrade to new digital technology without disenfranchising the public.

Mr. FIELDS. Mr. Reilly, can I ask you to summarize also?

Mr. REILLY. As a matter of public policy, the assessment of fees other than for ancillary subscription services, or the imposition of auctions would prevent the orderly transition to digital. Broadcasters would hand back the spectrum once that transition has taken place. And that spectrum can be effectively arranged in block allocation at auction to maximize the revenues to the Treasury.

[The prepared statement of Edward Reilly follows:]

PREPARED STATEMENT OF ED REILLY, PRESIDENT, MCGRAW HILL BROADCASTING CO.

Good morning, Mr. Chairman, and members of the Committee. I am Ed Reilly, President of McGraw-Hill Broadcasting. I am here today to talk about an issue that is important to me and the more than 600 television stations affiliated with the ABC, CBS, and NBC networks—the future of local broadcasters. A lot has been written about how the information superhighway will shrink our world, and how the Internet will create new on-line virtual communities. That may be true and, like you, I look forward to preparing for that day. But as this Committee seeks to write the user manual for the future, I urge you not to forget the past or the present, and not to turn your back on broadcasters who have helped tie together real as opposed to virtual communities in towns and cities across our country. More importantly, I urge you not to forget the service they render to all Americans. The issue of broadcast ownership relaxation boils down to one simple question: Who should control the future of broadcasting, a large number of local broadcasters with diverse viewpoints, or a few large national companies?

I also am here to talk about another issue of critical concern to the future of television broadcasters, and that is the matter of spectrum for advanced television services, principally high definition television. It has been observed by more than one member of this Committee that, if the movie "The Graduate" were made today, the

one-word advice given to a young Dustin Hoffman would not be "plastics" but "digital." If that is the case, and we as broadcasters believe it to be true, then broadcasters do not want to be left at the altar holding analog technology.

First, let me discuss the proposals set forth in Rep. Stearns legislation, H.R. 1556, to effectively wipe out all the rules on television ownership. This legislation disturbs local broadcasters greatly because it threatens the foundation of localism and community responsiveness upon which our industry was built. Your local broadcasters want to remain *local* broadcasters, but this legislation will take away their voice. It will silence them in the ongoing national debate, and instead result in a handful of large media conglomerates ruling the airwaves. This legislation will put in the hands of a few individuals the ability to dictate and control content of over-the-air television programming 24 hours a day, 7 days a week, 365 days a year, throughout the entire country. We do not believe this result would serve the free market place of ideas.

The rules defining the relationship between the networks and the affiliates have served our Nation well by promoting localism, community responsiveness, and universal availability of free over-the-air broadcasting. Yet the proposals under review to abolish the cable/television cross-ownership prohibitions or significantly increase the national audience caps would severely damage their independence as local broadcasters.

The damage to local broadcasters would occur because this increased national network control would disrupt the delicate balance that exists between local affiliates and the national networks. Currently, networks rely on their affiliates to support national programs with a mix of local and independently produced syndicated programming. Similarly, affiliates need the networks as a source of national programming to provide high quality entertainment, news, and sports to the whole country. That balanced relationship benefits the networks, local broadcasters, and, I believe, each community, because the programs reflect the interests and standards of that community. But if too much power shifts to the networks, then the balance is tipped. The result could well be a concentration of nationally-produced programming at the expense of time and effort devoted to local issues.

There are two sets of rule changes under review that would interfere with the independence of local broadcasters.

Cable-broadcast and cable/broadcast-network cross-ownership. Under current law, which has been in place since 1970 and was codified in the Communications Act in 1984, a cable system cannot own or be owned by a broadcast station within its market. The reason behind this law is as valid now as it was when first adopted: Television stations compete with cable but depend upon cable carriage for their access to households they are licensed to serve. Though there has been a lot of technological change in the last 10 years, and though we expect tremendous change in the next 10 years, one thing will not change: cable, for most broadcasters, will remain the gatekeeper. Most broadcasters will depend upon cable systems to carry their signal to the majority of viewers who access their signal through a wire.

Thus, repeal of this law would be anti-competitive. Congress, the Commission and the Department of Justice repeatedly have found that cable operators are the dominant video programmer in virtually every market in the country—they are the gatekeeper. Cable companies that own an in-market broadcast station will have substantial incentives to favor their own station through carriage, channel position, and promotion and undermine their competitors by denying access to cable's essential bottleneck facilities.

These threats to competition would be even more severe if the cable/broadcast-network cross-ownership prohibition were to be repealed. If one or more broadcast networks acquire or are acquired by multiple system operators, they would be free to by-pass affiliates and place popular and free broadcast entertainment and sports programming on their own for-pay cable channels. They also would be in a position to force local affiliates to accept programming on the networks' terms. In total, any relaxation or repeal of the cable-broadcast or cable-network cross-ownership rules would give the gatekeeper undue power over a local broadcaster.

National ownership caps. The other major issue affecting the network-affiliate relationship is the question of how much of the national audience the networks can reach through their owned stations. Current rules provide that no licensee can own more than 12 stations or reach more than 25% of the Nation's households. Though the rules state that no broadcaster can own stations that reach more than 25% of households, loopholes currently available enable the networks to exceed that limit. We estimate that CBS has interests in broadcasters reaching 32% of the country. Fox will soon have a substantial financial interest in stations which reach almost 40% of the country. So as the Committee looks at the question of audience reach,

it must use an accurate number that fully attributes less than controlling ownership interests and does not permit public policy legal limits to be circumvented.

In addition to an accurate number, the affiliates believe that eliminating or relaxing the national multiple-ownership rule would radically skew the balance of power in the network-affiliate relationship toward the network. If networks can own or have significant interest in those stations that cover the most important markets in the U.S., the affiliates would no longer be able to maintain their independence to preempt network programming in favor of important local news, public interest, and local sports programming. It is somewhat ironic that as many commentators, including futurist Alvin Toffler, are discussing a trend, the "wave" of "de-massing" of society and industry, in which power and concentration is being dispersed, this Congress and this Committee is considering legislation that would concentrate tremendous media power in the hands of a few. It is ironic and unfortunate, since such a change would harm the ability of a local broadcaster to air non-network programs that better respond to the needs and interests of their local communities. Toffler also believes that while second wave companies find it hard to suppress the impulse toward vertical integration, third wave companies by contrast contract out as many of their tasks as possible, often to smaller, more specialized high tech companies. In a very real way our system of broadcasting makes excellent use of smaller, more specialized companies, stations whose entire energy is devoted to being specialists in San Diego TV or Houston TV or Boston TV.

We do not agree with the suggestion that network-owned stations have expanded local news, and therefore if they can control more of the country through their owned stations, local news will be expanded. First, many broadcasters in most of the country have expanded their news, so the network-owned stations are not unusual. This also ignores the point that a network-owned station almost never preempts a network program to cover a local sports event or to air a local charity telethon. *But more to the point:* If networks had the power, which they do not now, to make the *national* feed of news one hour long, they would do so—at the expense of local news. It would only make economic sense for them. Network-owned stations do not carry expanded news because the 25% limit on owned stations prevents the absolute ability to "program" a majority of the country at the network level. But if they had the power, they'd do it in a New York minute.

Now I know that some people here in Washington are arguing that rules in place, such as the "right to reject" rule, will protect affiliates in their dealings with the networks. Well, that may sound appealing to government lawyers in Washington, but we do not believe that rule by itself is sufficient to hold back the concentrated national power these legislative proposals would promote. The current regulatory environment allows for affiliate input to the network decision making process, reserves final judgment of what is aired to local management, yet provides for the network's legitimate concerns of clearing the vast majority of their programs. New long term contracts are already placing ever increasing limits on an affiliate's ability to make programming decisions. Elimination of these rules will move much further in that direction.

Finally, the Committee should realize that networks don't need these rule changes to compete with telephone or cable companies. Networks are programmers, and local affiliates supported changes in the FCC's rules—including the financial interest and syndication rules—to make the networks more competitive as programmers. The recent change at the FCC allowing 10-year affiliation agreements allows networks to guarantee clearance for the vast majority of their programs for many years in the future.

The ownership rules are in place to ensure licensees meet local needs, conveniences and interests. Without these rules, the laws of large scale economics will prevail, and inevitably lead, whether we like it or not, to economies of scale and sameness of programming that can only be achieved on a national level. Much of the same can be said for a move toward more national advertising, depriving small, local and regional companies of the opportunity to use the power of TV advertising to expand its business and eventually rival national companies.

Those who must justify a concentration of power are attempting to wrap themselves in the mantle of "deregulation." These proposals are sold as "deregulatory" when, in fact, they would concentrate power in the hands of large, vertically integrated companies producing programs, selling national advertising, and controlling the local distribution in most of the country and, in the end, be *anti*-competitive. One of the supporters of this proposal, the Fox Network, must admit that it would have been next to impossible for that network to engineer their recent upgrade and acquire NFL franchise if the national and local ownership rules they are attacking now had been abolished ten years ago and many more stations were already owned by the original three networks.

One final note: the cost to the federal government and the industry of enforcing these structural rules is minuscule. Compare what it would cost the government and the affected industries, if these matters were handled on a case-by-case basis in antitrust actions filed in hundreds of local federal courts across the country. A repeal of these rules, with their simplicity and efficiency of administration, would be counter-productive to the commitment of this Committee to reduce waste and efficiency in government.

In short, the ownership rules were put into place to facilitate the development of a competitive television broadcast service, owned by multiple companies, that provide a wide range and diversity in programming judgments and decisions. A repeal of these rules by Congress would be a giant leap backwards. We are entering a new age of broadcasting and no one is clear how it will develop. But what is clear is that the public will benefit if broadcasters are able to transform themselves and develop new services, new programming, new technology, and continue to offer high quality video programming to all Americans.

What you have here this morning in graphic form is a way to assure that transformation. This panel represents the difference of opinion of our industry—new networks, old networks, station owners with different long-term strategies. Each person with different, and they hope innovative, business plans. A once and for all concentration of power in the hands of a few will stifle the environment this type of innovation needs to grow. Separate companies operating in a competitive environment serving separate markets in a way that serves the public interest ensures that States and regions will benefit. Do not kill off these ideas. Do not silence these diverse voices. Do not alter the fundamental rules on television ownership.

Spectrum Issues

If the ownership issues will define who will control broadcasting in the future, the issue of spectrum for advanced television services will define *what* it is they control. Section 301 of H.R. 1555, the "Communications Act of 1995," answers the question whether broadcasters will be able to transition their free community-based service to the highest level of technical quality, to make friends with the future, or whether they and the 100 million households they serve will be left behind, handcuffed to the current technology and denied the opportunity to transition to the future telecom marketplace.

As broadcasters committed to high definition television and the use by broadcasters of their advanced television channels, we commend Chairman Bliley, Chairman Fields and others for including in the legislation a section on broadcast spectrum. We support that section and believe it represents a commitment by its sponsors to advanced television services, including high definition television. The organization I chair, Association for Maximum Service Television (MSTV), has for many years spearheaded the industry's effort to transition to HDTV. MSTV and its members remain committed to advanced television, including high definition television, and I am here today to tell you that commitment has never been stronger.

Eight years ago, the FCC initiated a process which has resulted in epic work and accomplishments on the part of government and industry and a series of FCC decisions based on these efforts. Hundreds of thousands of hours of volunteer efforts have been devoted to the FCC-created Advisory Committee on Advanced Television that ultimately resulted in the creation of an all-digital HDTV Grand Alliance system and the development of an HDTV transmission standard. That Grand Alliance system enabled American companies to leapfrog international competitors and establish American technology as the world leader, setting the stage for export opportunities throughout the world. Allocation of ATV spectrum to existing broadcasters—whether through a regulatory action or legislative mandate—is the only remaining chapter of an American technological success story of industry and government working together to bring about an orderly transition of our uniquely American, free, universal, community-based, over-the-air television system to the vastly improved picture and sound quality and other advances of digital technology.

To underscore the commitment of broadcasters to advanced television, including HDTV, let me read a resolution adopted last month by the Board of MSTV, which has sought to coordinate the broadcasters' position on this issue:

> The goal of public policy and of the local television community should be to transition our nation's free and universal television broadcast system to the digital era. The totality of the American public, which only local broadcasters serve, must have the opportunity to participate in the benefits of digital television and, most centrally, HDTV.

What that statement tells the Subcommittee is that broadcasters are committed to advanced television services, including HDTV, because they know the future of the industry is digital, and they want to be part of that future.

As this Subcommittee knows, broadcasters provide free, over-the-air programming to every home in America. Broadcasters are *the* universal service provider, and that role is especially important for those Americans, 37% of households, who do not want or cannot afford cable TV service. Television broadcasters want to participate in the digital future, and the 37 million homes who depend on broadcasters for video programming also want them to go digital. All broadcasters need is the spectrum to do it. But make no mistake: Broadcasters need the spectrum to continue to be broadcasters, to serve their 100 million households. Broadcasters need the spectrum to continue to serve the public tomorrow, next year, next decade.

That transition cannot take place in the current broadcast channel without, in a flash cut, obsoleting the more than 200 million analog sets in American homes and thereby disenfranchising the public from its current service. The shift to digital requires the use of a second channel from the *existing broadcast allocation.* With the migration of service to the digital channel and new sets capable of receiving it, broadcasters then would be required to give back the existing NTSC channels.

In short, to make the transition, each broadcaster needs to borrow a channel and invest millions of dollars to convert equipment to digital at a time when few sets can receive advanced television service (and there is a minimal advertising base to support it). We will need to develop a whole new range of programs and technical capability to produce HDTV and show the public that its worthwhile, and to prove that it has the support of advertisers. This investment is in addition to the tens of millions of dollars stations already have pooled to promote and apply the technology to broadcasting—to assure it fits in six MHz channels, that all existing stations can be accommodated, and that viewers won't be disenfranchised by shrunken ATV service areas and from excessive interference to existing NTSC service.

That is why the legislation wisely would have the Commission, in the first instance, issue the advanced television channel licenses to existing licensees. It also is why the Committee should assure that the Commission shall not require the payment of any fee for these licenses. The exception would apply to broadcasters' use of the ATV channels for supplemental and ancillary services for which they might assess charges—in which case the FCC could levy fees.

The alternative of subjecting the new channels to auctions or fees for the transmission of free over-the-air broadcast service would undermine that transition—introducing speculation, uncertainty, delays and expense into the conversion of the public's service to digital. This, in turn, would strand 40% of Americans who rely exclusively on local broadcasters in an analog technology which eventually would wither away when the rest of the world has gone digital.

Imposing auctions or broad fees at this point would also be patently unfair to broadcasters by penalizing them as they seek to become more spectrum efficient. It has long been the policy of this Committee and the FCC to encourage, not penalize, spectrum efficient technology and the investment in that technology. Indeed, as other spectrum users have become more efficient, such as cellular or the satellite technology going digital, they have not been penalized but have been encouraged. To suggest that broadcasters have to pay as they undertake an upgrade of their technology would be perverse and contrary to the long-term goal of efficient use of the spectrum.

Some who would handcuff broadcasters to old technology argue that the FCC lacks authority to grant ATV spectrum to broadcasters. This argument fails under careful analysis. The FCC's objective in its ATV proceeding has been to "enhance the current television broadcast system." It also has recognized that the current system will be most readily enhanced if broadcasters have flexibility in the use of these new technologies and the mix of services they make possible. The Commission has determined that deployment of ATV will enhance the current television broadcast system, and that such deployment is a logical technological evolution for broadcasters. Granting broadcasters the channels they need to accomplish this deployment, without sacrificing current television viewers, will promote this logical evolution. Indeed, such ATV channel assignments simply "lets broadcasters be broadcasters," both for those Americans with digital receivers and those with older television sets.

Others suggest that the FCC should exact a price for broadcasters' use of their spectrum, because spectrum newly allocated for other uses is auctioned. But broadcasters do not seek to use frequencies outside their existing spectrum allocation. Broadcasters' access to a transition channel will enable them to upgrade from current NTSC to new digital technology without disenfranchising their viewers. Since the transitional channel will serve to facilitate the delivery of a service by current licensees, a new licensing process is not required, nor are payments called for as a substitute for the current Commission practices. Moreover, as a matter of public policy, the assessment of fees could impede the digital transition by eroding broad-

casters' ability to provide new services and innovation. As it is now expected that broadcasters will have to hand back their NTSC channels once that transition substantially has taken place, the time to consider exacting a price for the spectrum is when the spectrum is turned back.

Amid the stunning changes that have recently altered and expanded the means of communication, the importance of traditional broadcasting is undiminished. Broadcasting remains unique in its ability to reach all Americans, serve them for free, and respond to their tastes and needs community by community.

Broadcasters are now prepared to bring these same attributes to a digital world. Despite digital television's obvious attractions, it is not a sure thing and will require sustained, risky investment by those who provide it. Over the past several years, many broadcasters have undertaken the preliminary planning and investment necessary to roll out ATV, thereby paving the way for enhanced television service and competition in the video marketplace. Government actions that impede broadcasters' ability to transition to digital HDTV will jeopardize its viability, penalize the viewing public, and unfairly deny broadcasters the opportunity to upgrade for the future enjoyed by other media. Instead, broadcasters should be assigned ATV channels and permitted to serve the public in the digital era while continuing to meet their public interest obligation. This course is consistent with the law and puts the U.S. on a solid path to a digital future that all Americans will enjoy.

To conclude my testimony on H.R. 1555 and H.R. 1556, I want to remind the Subcommittee that the network-affiliate partnership is unique in its ability to foster the core values of community responsiveness, localism, and universal availability of free over-the-air service. Affiliates can continue to serve these values only if the basic structure of the network-affiliate relationship is preserved, and they obtain the transition channel they need. We agree that Congress should streamline the FCC's regulations when appropriate, but must maintain these rules that are essential to localism and diversity. Relaxing the national ownership caps and eliminating the ban on broadcast-cable and cable/broadcast-network cross-ownership is not "deregulation," but a conscious decision to abandon an industry structure based on localism in favor of a structure where a handful of large and powerful networks would exercise concentrated national power in the television marketplace.

In short, if a few large companies can own enough television stations to reach more than 25% of the national audience, without negotiating with others for the exhibition of their programs, the delicate local-national partnership that has been the strength of our system of broadcasting will be destroyed. The goals of diversity and localism, long the pillars of the Communications Act of 1934 and the broadcast industry, would be obliterated.

Although the world is changing, we are going to change with it. Changes in the financial syndication rules and 10-year affiliation contracts have changed the industry tremendously. But the laws of physics and economics mean that a diversified industry may not be as efficient as a concentrated industry. That is a price worth paying to preserve our unique system of local broadcasting that benefits all the people of our country.

Mr. FIELDS. Thank you very much.

Mr. Gary Chapman, President of LIN Television.

STATEMENT OF GARY CHAPMAN

Mr. CHAPMAN. Thank you, Mr. Chairman. I am here today on behalf of the local station ownership coalition, a group of 16 television broadcast companies which owns 50 television stations across the country.

The issue that unites our coalition is the need to change the FCC outmoded local television ownership rule which says that no one can own or control more than one station in a market. Crafted at the beginning of television, this rule no longer is good public policy in the multichannel marketplace of the nineties.

We commend Representative Stearns, you, Mr. Chairman, and Chairman Bliley and the other cosponsors for introducing H.R. 1556, which includes provisions that revise the local television ownership rule and endorses the continuation of local marketing agreements.

We urge that those provisions be added to H.R. 1555. As Congress pushes the fast forward button for other segments of the communications industry to encourage competition, it cannot leave its finger on the stop button for local broadcasters.

Relaxation of the local ownership rule will serve the public interest by giving broadcasters the flexibility to meet the challenges of today's multichannel marketplace and remain viable providers for free, over the air diverse local programming.

Local television stations are unique in their ability to serve their communities; public service, news, other local programming. But this is very expensive to produce. Each of these alternative sources of programming is a competitor with local television stations for audience and, increasingly, advertising revenue.

In this multichannel marketplace, local stations are under a substantial competitive hardship since advertising is our sole source of income. Television broadcasters have searched for creative solutions to marketplace changes. One such solution is local marketing agreements, LMA's, innovative joint ventures which enable separately owned stations in the same market to find economies of scale through combined operations.

There are approximately 50 LMA's. In virtually all of these cases, the LMA's have enabled financially distressed stations nearly all of them UHF stations to stay on the air and it has made possible to put new stations on the air. My company, LIN Television, we participate in five LMA's. In New Haven, in Dallas, in Austin, in Norfolk, and in Battle Creek.

Our Austin station entered into an LMA that enabled a UHF station, whose construction permit almost expired due to lack of capital, to finish the construction to get on the air. The new station now brings the Austin market new innovative programming including kids ideas, a children's program written and produced by a teenage host, Chelsea Hernandez. Chelsea interviews other kids with unique talents and hobbies making this Saturday morning show a favorite among kids in Austin.

Another LMA success story is WMO-TV, the ABC affiliate in Battle Creek. The financial stability resulting from the LMA in Grand Rapids has allowed channel 41 to once again produce a 6 p.m. and 11 p.m. newscast. LMA's have not only increased competition in their local marketplace, but increased options for viewers, advertisers, programmers, including substantial improvement in the quality and quantity of local news and other local programming.

Relaxation of the local ownership rule in this year's telecommunication bill is not only good for the broadcaster, it is good for consumers who will reap the benefits of more and better programming and will be assured the continued universal stability of free, over the fair broadcasting for years to come.

One other important issue for broadcasters is preserving equitable broadcast station access to the video system being developed by the telephone companies. If telephone companies are to become the new video gatekeepers, it is essential that they not be permitted to favor their own service.

Thank you, Mr. Chairman.

[The prepared statement of Gary Chapman follows:]

PREPARED STATEMENT OF GARY CHAPMAN, PRESIDENT, LIN TELEVISION, INC. ON BEHALF OF THE LOCAL STATION OWNERSHIP COALITION

Mr. Chairman and Members of the Committee, thank you for inviting me here today. I am the President of LIN Television, which operates eight television stations across the country. I am here today representing the Local Station Ownership Coalition comprised of sixteen broadcast groups which own some fifty television stations, a list cf which is attached to my testimony. These stations include network affiliates and independents in markets of all sizes.

The issue that unites our group of diverse broadcasters is the need to change the FCC's outmoded local ownership rule, the duopoly rule, which says that no one can own or control more than one television broadcast station in a market. At the outset I would like to strongly endorse the provisions in the Stearns-Bliley-Fields bill, HR 1556, that revises the local ownership rule. We urge Congress to incorporate the Stearns-Bliley-Fields local ownership provisions into the comprehensive telecommunications package HR 1555. As Congress pushes the fast-forward button for other segments of the communications industry to encourage competition, it cannot leave its finger on the stop button for local broadcasters.

The policy behind the local ownership rule dates from the advent of television at a time when the scarcity of media outlets threatened competition and diversity. As we all know, the marketplace of the 90's is a vastly different one than the 40's. This rule is no longer good public policy. Today's local television broadcaster is a single channel outlet in a multichannel world. The local video marketplace is characterized by an abundance of video channels, which are becoming available due to new technologies, changing economics, updated regulations, and soon, legislation. Today the consumer has a multitude of sources of information—not available in the 40's or even the early 60's when this rule was last amended—many more television stations, 150 cable channels, and increasing access to DBS, wireless cable, and soon video dial tone from the phone companies.

Relaxation of this rule is essential if broadcast stations are to continue to provide diverse local programming to consumers, including news and weather, and compete with the other players on the information superhighway. The policy decision made in this legislation with respect to the television local ownership rule will determine the future of locally-based television broadcasting in this country.

This legislation must come to grips with the hard fact of broadcasters' single channel limitation. Congress cannot leave local television stations frozen in regulatory policy from the 1940's.

By revising the restrictive rules that were developed for yesterday's marketplace, broadcasters will be able to meet the challenges of today's marketplace and continue to provide free over the air locally based news and other programming.

The Local Media Marketplace—A Challenge for the Local Television Station

One of the most critical functions of over-the-air broadcast television over the past four decades has been to provide local communities with locally relevant programming. The desire for localism is derived from fundamental societal values, including the need for an educated citizenry able to take part in local decision-making. These interests remain fundamental and, despite the rapid introduction of new technologies providing new video programming, local television stations are unique in their ability to serve their communities with local programming.

However, changes in the marketplace make it questionable whether our industry can continue to perform its important role. Both technological changes and the economics of the multichannel business make the local media marketplace a very different place than thirty years ago when two or three television stations were the only providers of video programming.

The media marketplace of the 90's is an increasingly expansive one. Today every local television station has far greater competition from other local stations than it did ten years ago. The number of commercial television stations has risen from 677 in 1970, to 883 in 1985, to over 1,160 today. That's an increase of nearly one-third in just the last decade.

Additionally, new technologies also are providing consumers with a plethora of information sources. There are 150 channel cable TV systems and 150 channel DBS systems with 300 or 600 channel fiber based telephone video dialtone networks on the horizon, and digitized MMDS and LMDS systems with an equal number of channels. These technologies, moreover, are interactive and offer opportunities for advertising, marketing, and programming, literally, at a personal level to each family, and to each viewer in a local market.

And this is just the video transmission media. I am not even counting other sources of video, like the local video store, or other media, like local radio, news-

papers, magazines, direct mail, etc., which vigorously compete with each other and with broadcasters for the attention of the public and for the advertising dollar.

Economic Pressures from Cable

Local broadcast stations now face formidable, life-threatening challenges from a variety of competitors for the local ad dollar. And unlike their competitors, advertising remains broadcasters' only source of revenue.

The economics of the multichannel video business, particularly the cable business, is undergoing a fundamental change, one that virtually guarantees that cable will garner an increasing share of local advertising revenues. For years, cable's share of local ad revenues has lagged behind its rapidly increasing penetration and viewership because of the fragmentation of ownership in local markets.

Increasingly, however, cable operators have been creating market-wide "interconnects," capable of offering local spots on all or nearly all of the cable systems in a market. At the same time, driven by the additional incentive to compete with the phone companies and provide a seamless local telephone service, cable operators have been "clustering" at a rapid pace, buying or trading cable systems so that they dominate local markets. As a result of its recent acquisitions of Cablevision Industries, Houston Industries, and Newhouse, for example, Time-Warner now has over 30 "clusters" in excess of 100,000 homes. In Memphis, Time-Warner controls 60% percent of the cable homes in the market, and 34% of the total homes in the market. In Reno, TCI controls 77% of cable and 52% of the total homes. Both have been aggressively acquiring cable systems in order to create super clusters.

Driven by interconnects and clustering, cable's share of local advertising revenues is rising rapidly, hitting $600 million in 1993, an increase of 80% from 1990, and is projected to rise at a comparable rate for the foreseeable future. And with the pressure of competition from the phone companies, satellites and wireless cable and regulation of subscriber rates, cable MSOs can be expected to accelerate both clustering and their efforts to target local advertising as a primary source of future revenue growth.

Because of the increased competition from other stations and the new media, many broadcast television stations, particularly in smaller markets, are now marginal operations. The FCC found that in 1991 smaller market stations lost on average $880,000 each. Cable will not have to grab much more of the advertising market to put many more stations in the red.

We are not blind to the fact that, with your help, digital compression may give broadcasters an additional path into the multichannel video business. But the digital conversion will require a formidable capital investment. For many stations, particularly in smaller markets, the feasibility of that investment is at best highly questionable. To make it possible we need the elimination of the prohibition on owning two stations in a market, to allow pooling of resources and taking advantage of economies of scale. Hamstringing us with the current ownership restrictions could mean that many broadcasters will never make it to the digital world.

Congressional Policy Direction Regarding the Local Ownership Rule—Essential

In 1991 the FCC issued a report that found many changes in the market place had affected the television industry. Four years later, despite this report, and despite the acceleration of the marketplace changes, the ownership rules for television remain untouched.

Despite the fact that broadcasters' principle competitors (cable) are free to consolidate their ownership of facilities in a local market, the FCC's duopoly rules continue to absolutely bar television broadcasters from owning more than one television channel in a market. The prohibition applies across the board—without regard to the competitive and other conditions in each local broadcaster market and without regard to the level of consolidation among and competition from non-broadcast video competitors. This leaves broadcasters in the untenable position of being forced to compete against multichannel competitors with only one channel per market.

The pending Further Notice of Proposed Rulemaking (MM Docket No. 91-221, released January 17, 1995) on Television Broadcasting indicates that the FCC is unlikely to make fundamental changes to the television ownership rule. Clear policy direction from the Congress is essential to ensure that local television stations can meet marketplace challenges and consumers can continue to rely on free over the air broadcasting as their major source of local news.

Local Marketing Agreements—Innovative Marketplace Solutions

To respond to the challenges of today's media/advertising marketplace, under the existing regulatory scheme, a significant number of television broadcasters, emulating their colleagues in radio broadcasting, have entered into innovative arrangements called local marketing agreements (LMAs). An LMA is a type of joint venture

that generally involves the sale by a licensee of blocks of time on its station to another station—in the same or adjacent market—which then supplies the programming to fill that time and sells the advertising to support it. Such agreements enable separately owned stations to function cooperatively, achieving significant economies of scale via combined sales and advertising efforts, shared technical facilities, and joint programming arrangements and increasing stations'access to diverse programming.

No one knows precisely how many LMAs there are. We believe there may be as many as 50, with several others in the works. In the vast majority of these cases, the LMAs have enabled financially distressed stations, nearly all of them UHF stations, to stay on the air, or have made it possible to build new stations which otherwise would not have gone on the air.

In my company—LIN Television—we participate in five LMAS: in New Haven, Dallas, Austin, Norfolk, and Kalamazoo, Michigan. Three of these LMAs allowed stations to get on the air. In the other two cases, the LMAs prevented struggling stations from going off the air and have meant more programming and more options for viewers, programmers, and advertisers in these markets.

Our Austin station (KXAN, Channel 36) entered into an LMA that enabled a station—whose construction permit almost expired due to a lack of capital to finish construction—to get on the air. This new station (KNVA, Channel 54) is now bringing to the Austin market new and innovative programming, including: a Spanish-language public affairs program, a popular children's program where the 10-year-old host interviews other children in the Austin area, frequent weather updates, and an outlet for the new Wamer Brothers Network.

Our Dallas/Ft. Worth station (KXAS, Channel 5) entered into an LMA which enabled another station to stay on the air. Before the LMA, this other station (KXTX, Channel 39) was a struggling independent station competing with fifteen others, including major independent group owners Paramount and Fox. It had no real news programs, very few viewers, big debts, and no viable future. Our LMA let KXTX pay all of its bills and regain its financial footing. As a result, KXTX was able to provide the only continuous election night coverage of local Dallas races in the November 1994 election.

Another LMA success story is WOTV, the ABC affiliate in the Battle Creek-Grand Rapids-Kalamazoo, Michigan market. From 1985 to 1990, squeezed by competition from an overlapping ABC affiliate, the entrance of new stations in its market and increased programming costs, this locally owned station lost over a million dollars a year. Finally, in 1990 the station discontinued carrying any local newscasts. Even eliminating these costs, however, did not save the station and it faced the prospect of going dark. But at the last moment, in late 1991, the stations entered into an LMA with our station in Grand Rapids. After several more years of red ink or marginal returns, this investment and the operating efficiencies of the LMA have rendered Channel 41 once again profitable. More important to the local community, Channel 41 is once again producing 6:00 p.m. and 11:00 p.m. newscasts, as well as sponsoring a wide variety of civic activities and promotions in Battle Creek and Kalamazoo.

These cases are the norm, not the exception. In virtually every instance, LMAs have resulted not only in increased competition in the local video market with greater options for viewers, advertisers and programmers, but substantial improvements in the quality and quantity of local news and other local programming. A compendium of LMA examples is attached to my testimony.

The experiences with LMAs in radio and television are good indications that duopoly relief in television will produce a healthier industry, better able to continue to serve its viewers.

Recommendations

For the reasons I have discussed, we recommend that Congress act to ensure the ability of broadcasters to compete in a fair and equal fashion in the emerging multichannel marketplace. Congress must do more in the telecommunications legislation than leave this important issue to the FCC. It must provide a policy framework in the legislation that will allow broadcast television stations to survive and compete in the marketplace.

The local ownership provisions in the Stearns-Bliley-Fields legislation should be added to the telecommunications legislation. These changes to the rule will result in more diversity and competition. They will give local television stations the flexibility to continue to be viable, active providers of free over-the-air programming to consumers.

Broadcast Coalition—Support for Relaxation of T.V. Local Ownership Rule and Continuation of LMAs: ABRY Communications, Boston, MA; Act III Broadcasting,

Inc., New York, NY; Argyle Television Holdings, Inc., San Antonio, TX; Blade Communications, Inc., Toledo, OH; Clear Channel Television, Franklin, TN; Ellis Communications, Atlanta, GA; Granite Broadcasting Corp., New York, NY; Kelly Broadcasting Co., Sacramento, CA; LIN Television Corporation, Providence, RI; Malrite Communications Group, Inc., Cleveland, OH; Outlet Communications, Inc., Cranston, RI; Pappas Telecasting Companies, Visalia, CA; Providence Journal Broadcasting Corporation, Providence, RI; River City License Partnership, St. Louis, MO; Sinclair Broadcast Group, Inc., Baltimore, MD; Waterman Broadcasting Corp., Fort Myers, FL.

Mr. FIELDS. Thank you, Mr. Chapman.

Mr. Michael Eigner, Executive Vice President and General Manager of WPIX-TV.

STATEMENT OF MICHAEL EIGNER

Mr. EIGNER. Good morning Mr. Chairman. It is a pleasure to be here.

In addition to my responsibilities as general manager of WPIX, I also serve as Vice President for Tribune Television, East Coast. My responsibilities include WPHL in Philadelphia and WLVI in Boston. For the past year I have served as Vice Chairman for the Association of Independent Television stations known as INTV.

Today I am representing both Tribune and INTV. Tribune broadcasting operates eight television stations, six radio stations and its parent, Tribune Company, is a leader in print, electronic publishing and also owns the Chicago Cubs.

INTV represents local television stations across the country not affiliated with ABC, NBC or CBS including small television stations and newer group owners. On behalf of both tribune and INTC, we heartily endorse most of the provision in H.R. 1555 and 1556. My written testimony contains some suggestions for perfecting the legislation.

The core premise of this legislation is competition, not regulation. As a career broadcaster, I remember the not-too-distant past when broadcasting was the most heavily regulated of any sector in the economy. We have come a long way since then and these two bills set a workable framework for well into the 21st Century.

The dynamic of the present television marketplace more than justifies loosening the national ownership caps duopoly rule and to newspaper cross-ownership restriction. The present consolidation clustering and vertical integration of the cable NSOs stand out in stark comparison to television broadcasting. When the regional Bell companies enter the local video marketplace the imbalance between media will be even more acute.

Any two regional Bell companies combined are larger than the entire television industry. Cable, telecos, and for that matter direct broadcast satellite and wireless cable are multichannel subscription enterprises. Broadcast television is not.

To compete against these media, broadcasters with our single revenue stream must grow or be crushed by economies of scale. Programming is the key. Consumers watch shows, not channels, and quality programming is expensive.

Your national ownership and duopoly proposals will allow broadcasting to grow and innovate. A review of the cable networks owned by TCI and Time Warner makes the case for duopoly relief. These conglomerates are consistently shifting their emphasis to-

ward local market advertising and offer their multichannels to local advertisers.

On the other hand, broadcasters today are limited to one free off air channel reliant on a single source of revenue. UHF stations in particular suffer from technical and economic handicaps. Permitting UHF/UHF or UHF/VHF combinations will allow us to harness local efficiencies and keep many stand alone UHF stations on the air.

National ownership rules should also be relaxed to meet the challenge of our multichannel competitors, we must harness the efficiencies of group ownership. Let me illustrate. The Tribune's last two acquisitions have been UHF stations in Philadelphia and Boston. Because of our expertise in operating independent stations, although they remain distinctly behind the network stations in revenue and audience share, both have moved from red to black.

For example, Philadelphia now broadcasts an evening news, thereby enhancing public dialogue and information. I can assure you that the prior ownership could not have sustained the costs of the expanded service. Ten years ago we purchased WGNX, a UHF station in Atlanta from Pat Robertson. We transformed it into a full-service independent. Three years ago it launched a 10 o'clock prime time news, the first in the Atlanta market. This past December it became a CBS affiliate.

This progression would not have occurred unless a major organization with expertise and financing had made the long-term commitment. Localism has been enhanced by our entry into these markets, but nobody is served by a television station operating in the red. We would like to continue to make broadcast acquisitions in major markets in order to face the new competition irrespective of origin.

The broadcast newspaper cross ownership rule makes no sense in today's multichannel marketplace. None of our video competitors are subject to this rule. In New York, NYNEX or Time Warner can start a newspaper, but WPIX cannot.

With the hundreds of media channels available a newspaper broadcast combination cannot by any stretch of the imagination dominate a local market. The distinction between electronic and print publishing is bright. There is no reason to discriminate against local broadcasting——

Mr. FIELDS. Mr. Eigner, we would ask you to summarize also, please.

Mr. EIGNER. Spectrum flexibility is the key to advanced digital television. H.R. 1555 ensures that there will be free over the air digital television. Advanced TV for the economically advantaged and disadvantaged, urban and rural. Thank you for the opportunity to present my views and I look forward to answering any questions.

[The prepared statement of Michael Eigner follows:]

STATEMENT OF MICHAEL EIGNER, EXECUTIVE VICE PRESIDENT & GENERAL MANAGER, WPIX-TV, VICE PRESIDENT, TRIBUNE TELEVISION—EAST COAST, AND VICE CHAIRMAN OF THE BOARD OF DIRECTORS, ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.

Good morning Mr. Chairman and members of the Subcommittee. My name is Michael Eigner and I am the executive vice president and general manager of WPIX-

TV, Channel 11 in New York City. As the vice-president of Tribune Television—East Coast, I also have management responsibilities for WPHL-TV in Philadelphia and WLVI-TV in Boston. For the past year, I have served as vice-chairman of the Association of Independent Television Stations, Inc. (INTV).

For almost 50 years, the United States has enjoyed the benefits of a free, over-the-air video transmission system. Free television has been this nation's information highway, providing news and entertainment programming to all Americans, rich and poor, urban and rural. Throughout the years, the Tribune company has been leading broadcast company. My station, WPIX, was recently honored by the Broadcast Pioneers, as its station of the year, for forty-seven years of service to the New York metropolitan area. Tribune Broadcasting operates eight television and six radio stations which are part of a larger company on the cutting edge of print and electronic publishing. This legislation breaks down the walls that separated the telephone, cable and broadcast industries, thereby shaping the foundation of our nation's local, free off-air television system well into the twenty-first century. To meet the challenges inherent in this intensely competitive era, local television stations will have to adapt. To accomplish this, many of the restrictions historically placed on local television broadcasters will have to be modified or eliminated. Alternatively, new safeguards will be necessary in order to insure that telephone company video delivery systems do not stifle competition from free, off-air television stations.

The Subcommittee should support H.R. 1555 and H.R. 1556. The premise of these bills is that the government must justify the reasons for rules before it enacts regulations. We could not agree more. Historically, broadcasters have had to argue, document and persuade Congress and the regulators to free-up the industry so that we could better serve our communities, precisely the opposite approach taken in H.R. 1555 and H.R. 1556. The following outlines my observations on key provisions in both bills.

I. TELEVISION OWNERSHIP RULES

As a leading trade association specifically devoted to representing local television stations, INTV spent considerable time reaching a consensus position on this issue. Throughout these discussions we focused on current and future competition in local markets. We do not believe it is appropriate to use the television ownership rules as a means of limiting competition or preserving existing market share. In many instances, INTV members represent small to medium sized companies who are eager to compete in this brave new world. Congress should help create a competitive climate that allows local off-air television stations to compete with multichannel wire-based services. In this light, we reached a consensus on the following issues.

A. Local Ownership Rules: Television station owners should be permitted to own up to two television stations in a local market, provided one of the facilities is a UHF station

This proposal is reflected in H.R. 1556, sponsored by Mr. Stearns, Mr. Bliley and Mr. Fields and others. We urge the subcommittee to support these provisions. Under the legislation, a single owner could own either a UHF/UHF combination or a UHF/VHF combination in a local market. This approach makes sense for several reasons: (1) competition in local markets from multichannel subscription services makes it much more difficult for an individually owned single channel station to compete; (2) UHF stations as a class suffer from inherent disadvantages in the marketplace; and (3) by harnessing economic efficiencies UHF/UHF and UHF/VHF combinations will increase the number of off-air voices available in a community, thereby fostering diversity and competition.

1. Competition has increased dramatically

Unlike subscription services, a local off-air television station relies on advertising from a single channel as the primary, if not the sole, source of revenue. Competition in local advertising markets from multichannel cable systems has become fierce.

As multichannel providers, cable systems have a distinct advantage, providing local advertising opportunities on over 30 to 50 (or more) channels.[1] Cable systems are able to offer local advertisers targeted audiences on specific channels. For example, the local sporting goods store can purchase time on ESPN or the local sports channel. Also, local advertisements can be placed on more generalized programming

---

[1] Over 69% of all cable systems provide 30 or more channels of service. In terms of subscribers, over 95.3 of cable subscribers have access to 30 or more channels of service. *1995 TV and Cable Factbook,* Vol. 63, Services volume at 1-77.

channels such as TNT, USA or CNN. Finally, a local cable operator can offer advertising availabilities on groups of channels covering a broad section of the audience.

Clustered systems and cable interconnects give cable the ability to provide regional coverage. For example, the New York City interconnect, WNYI, provides coverage from the tip of Long Island, into New Jersey, up to Westchester County, through several Connecticut counties and throughout the burroughs of New York City. In effect, the New York Interconnect provides coverage equivalent to a VHF station in New York City. Also, cable systems have the ability to provide specific coverage to sub-geographic areas of the system. During the past year, the major interconnects and clustered MSO's have enjoyed dramatic increases in advertising revenues:

Local Advertising Growth—Cable Interconnects and Multiple System Operators[2]

Interconnect, MSO or System	First Quarter Growth 1995 vs. 1994
Adlink	32%
Cable AdNet of N. Carolina	15%
Cox Communications	17%
Falcon Cable	18%
Chicago Interconnect	20%
Jones Intercable	25%-28%
New York Interconnect	34%
Northwest Cable Advertising	3%
Post-Newsweek Cable Inc.	16%-17%
Prime Cable	30%
Tampa Bay Interconnect	30%
Tele-Communications Inc.	20%
Time Warner Cable Cincinnati	12%-15%
Time Warner CityCable NYC	35%

[2] Multichannel News, April 17, 1995 at 1.

These double digit increases in local cable advertising are not unique. From 1988 to 1993, local and spot cable advertising increased at a compound annual rate of 17.5 percent. Estimates for the 1993-1998 period show a compound annual increase of 14.2 percent.[3] Contrast these figures to the relatively flat increase that occurred in local television station advertising revenue. Between 1988 and 1993, local advertising revenue grew at a compound annual growth rate of only 3 percent. Projections for the 1993-1998 period indicate that the compound annual growth rate for local advertising on local television stations will be only 6.4 percent, less than half the growth rate for cable television.[4]

Cable is not the only local competitor. As a direct result of this legislation, the telephone companies will be entering the video business potentially offering hundreds of digital video channels. They are already becoming a factor in the local advertising market. A recent supplement to *Multichannel News* explains:

> Although the regional Bell operating companies are being very quiet about their strategies, in many cases they are looking to the cable industry for both consulting advice, vendors and ad managers so they can create local ad sales operations in markets they are entering with video networks.[5]

For example, in Dover Township N.J., where the FCC has granted authority to build a video dialtone system, FutureVision has already commenced local advertising efforts.

> [S]everal telcos aren't waiting until they have subscribers before they establish local ad offices. They are taking steps to organize and set up their infrastructures now, and are pitching and selling. For example, FutureVision CEO Robert Schena said he has already signed up a major supermarket in Toms River, N.J., to distribute "electronic coupons" to subscribers.[6]

In Chicago, Ameritech is looking at digital ad insertion equipment for its VDT system in an effort to pursue local advertising. The cable interconnect in Atlanta, Cable Advertising of Metro Atlanta, is owned by a Telco, U.S. West. U.S. West is moving

[3] Veronis, Suhler & Associates, *Communications Industry Forecast* at 131.

[4] *Id.* at 94.

[5] "Telcos Calling on Local Advertisers," *Multichannel News Supplement,* March 27, 1995 at 26A.

[6] *Id.* at 40A.

into the local interactive advertising market with "GOtv" which is appearing on Time Warner's Full Service Network in Orlando, Florida and on U.S. West's digital TV system in Omaha Nebraska. In Bell South's 12,000 home test system in Chamblee, Georgia, local spot and zoned spot advertising will be the responsibility of providers leasing capacity on the system. Sprint is in the early stages of planning its local advertising strategy on its VDT trial in Wake Forest, North Carolina.[7]

The best evidence of the telephone companies' plans for local advertising were summed up by Bell Atlantic CEO Raymond Smith. Bell Atlantic plans to provide local interactive advertising.

> What two-way interactivity will bring to the table for advertisers, according to Smith is the ability to immediately measure and track their message's impact on buying behavior. In that kind of arena, the DMA becomes rather meaningless.[8]

Telephone company entry into local video markets is at hand. The advertising alternatives provided by telephone company video systems will soon become important players in the marketplace.[9]

Fierce competition for local advertising dollars tells only part of the story. Every day single channel television stations have to compete with cable and, very soon, telephone companies for programming. Cable expenditures for programming have eclipsed spending by local television stations.

Expenditures on Entertainment Programs

[In Millions][10]

Year	Cable	Local TV
1988	1,334	1,680
1989	1,640	1,785
1990	1,909	1,864
1991	2,087	1,765
1992	2,232	1,817
1993	2,378	1,891
1994*	2,485	1,995
1995*	2,650	2,130
1996*	2,875	2,260
1997*	3,100	2,390
1998*	3,350	2,520

[10] Veronis. Suhler & Associates, Communications Industry Forecasts at 151. Statistics from 1994-1998 are projections.

These data demonstrate that cable has outspent local television stations for programming. In fact, when looking at total expenditures for television-filmed entertainment, cable networks will be second only to the broadcast networks, accounting for a greater share of the market than local television stations and barter syndication.

Shares of Total Expenditures on Entertainment Programs[11]

Year	TV Nets.	TV Stations	Cable Nets.	Barter Syndication
1994	38.1	20.3	25.3	16.3
1995	37.7	20.3	25.3	16.7
1996	37.4	20.2	25.6	16.8
1997	37.4	19.9	26.0	16.7
1998	37.5	19.7	26.2	16.6

[11] Id. (1994-1998 projections).

[7] *Id.* at 40A.

[8] *Id.* at 21A. The term "DMA" refers to a television station's designated market area and defines its local market. It analyzes the predominant viewing patterns on a county by county basis using Nielsen's ratings.

[9] While Bell Atlantic has asked the FCC to delay action on their video dialtone applications, nobody doubts the telephone industry's inexorable drive towards entering local video markets either as traditional cable systems or through video platforms. The legislation will accelerate this process.

Competition for programming will not end with cable. The telephone companies have become competitors for program product. Earlier this year a consortium of telephone companies joined to start a new programming venture, with former CBS executive Howard Stringer. Recently Disney entered into a $500 million programming deal with Ameritech, Bell South and SBC Communications, Inc. According to *Broadcasting and Cable* magazine:

> Disney's pact with Ameritech, Bell South and SBC Communications will invest $500 million during the next five years to assemble a line up of programming and deliver it via the phone companies' evolving video dial-tone networks.[12]

The venture has the ability to reach 50 million customers in 19 mid-western and southern states. According to Ameritech VP, Patrick Campbell, Ameritech will begin offering services by the end of this year in the Chicago and Detroit suburbs.[13]

Given the competition for local advertising dollars and programming, a local television station will find it increasingly difficult to provide effective competition to these multichannel juggernauts. The analysis does not even include the rapidly expanding DBS industry or the rejuvenated wireless cable industry (MMDS). Our competitors can offer hundreds of video channels in a local market. Television stations are limited to one. This patently unfair rule is anachronistic in today's multichannel environment.

2. The case for UHF combinations

Competition from multichannel providers make the existing local ownership rules obsolete. While Congress may wish to repeal all the local ownership rules, H.R. 1556 provides a good start by permitting UHF/UHF and UHF/VHF combinations. As a class, UHF stations suffer from considerable signal and technical handicaps. Signal reach for a UHF station is considerably smaller than its VHF counterpart.[14] In addition, technical interference problems are more acute in the UHF band.[15] As a result, these stations generally garner smaller audiences and operate at much higher costs—a fact the FCC expressly recognizes when computing the reach of a UHF station under its national ownership rules.

While some have argued that wire based delivery systems make UHF stations equivalent to VHF facilities, this is not true. UHF television's experience with cable demonstrates this fact. As Tables 1 and 2 indicate, the profitability of UHF facilities declined during the period of rapid cable expansion. The primary reason for this is that cable has provided direct competition to stations at the local level, diluting a station's audience and advertising revenues. The same result can be expected with the arrival of new telephone company video systems. Indeed the impact of this multichannel competition led the FCC to conclude:

> Although broadcasting will remain an important component of the video mix, small-market stations, weak independents in larger markets and UHF independents in general will find it particularly difficult to compete, and some are likely to go dark. The analysis supports the conclusion that in the new reality of increased competition regulations imposed in a far less competitive environment to curb perceived market power or concentration of control over programming are no longer justified and may impede the provision of broadcast services.[16]

Permitting UHF/UHF and UHF/VHF combinations in the same market will result in significant efficiencies for these stations. Table 3 is based on actual station costs for a UHF station in a mid-sized market. The data were provided by an INTV member station. As Table 3 indicates, there is a 24 percent efficiency savings from the combined operation of two UHF stations in a market as compared to operating each station individually. Similar savings will accrue with UHF/VHF combinations.

---

[12] *Broadcasting & Cable,* April 24, 1995 at 33.

[13] *Id.* at 34.

[14] FCC Network Inquiry Staff, *New Television Networks, Entry Jurisdiction Ownership and Regulation*, 1980 at 69-70.

[15] *Id.* at 70.

[16] FCC Office of Plans and Policy, Broadcast Television in a Multichannel Marketplace, June 1991 at vii. This analysis justifies permitting UHF stations, as a class, to combine with other stations in the market. In no way do we advocate a waiver policy based on a case by case analysis of individual failing stations. Such a policy is inconsistent with the public interest. It would cause a perverse incentive for a station to degrade its service to the point of bankruptcy before another owner could purchase the station. Local service suffers during the interim and the new owners have to expend considerable resources simply to bring the station to the break-even point.

TABLE 1

UHF profitability plummeted during rapid cable growth in the mid 1980's and only returned to positive levels after 1991.

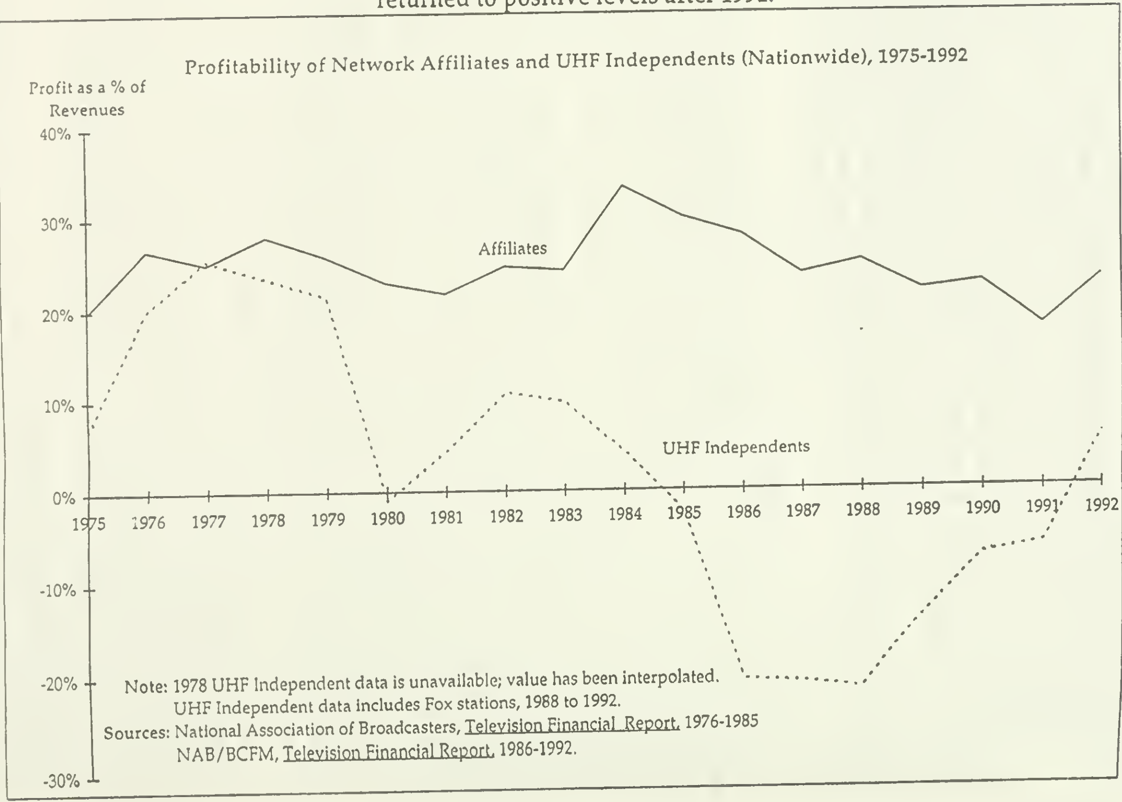
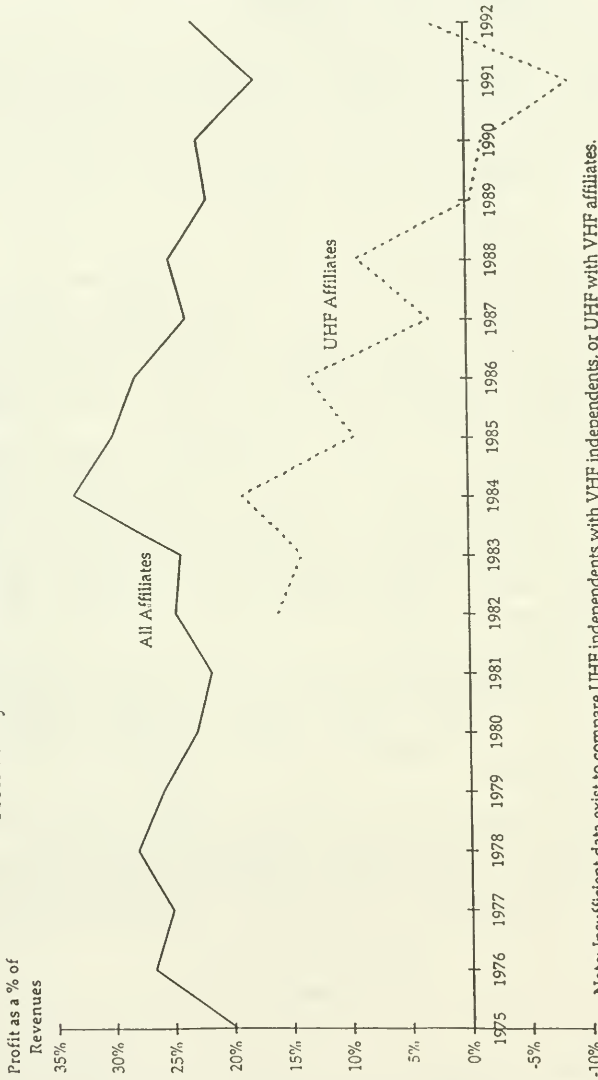


TABLE 2

The growth of cable in the 1980's has not reduced the profitability gap between VHF and UHF affiliates, implying a UHF disadvantage remains.



Note: Insufficient data exist to compare UHF independents with VHF independents, or UHF with VHF affiliates. Thus, UHF affiliates and all affiliates are used. The spread illustrated above is a very conservative estimate of the actual profitability gap. An even wider gap would be evident if UHF affiliates were omitted from the all affiliate data.

Sources: National Association of Broadcasters, Television Financial Report, 1976-1985
NAB/BCFM, Television Financial Report, 1986-1992.

Table 3—Annual Expenses

[UHF/"Independent"]

	Station A Annual Expenses	Station B Annual Expenses	Combination of Stations A & B Annual Expenses	
Program Licensee Fees	$2,500,000	$2,500,000	$4,500,000	Less wastage of unaired program episodes.
Production & Operations	$800,000	$800,000	$1,000,000	Sharing of certain operational expenses including maintenance, engineering, and production.
Promotion & Advertising	$850,000	$850,000	$1,200,000	Sharing of internal promotion infrastructure; greater purchasing scale of external media.
Selling	$1,325,000	$1,325,000	$1,600,000	Sharing one salesforce.
General & Administrative	$800,000	$800,000	$1,200,000	Sharing of overhead; building, utilities, etc.
Total	$6,275,000	$6,275,000	$9,500,000	24% Efficiency Savings

3. Permitting local combinations will enhance diversity and competition

There can be little doubt that without a relaxation of the local ownership rules, many UHF stations will be unable to compete. Unless changes are made, some UHF stations may either exit the market or become a less effective voice in the community, reducing the number of viable free off-air voices in local markets. Times have changed. Diversity should no longer be measured solely in terms of independently owned outlets. Rather, diversity should be measured in terms of the number of facilities available in local markets, regardless of ownership.

There is little danger that commonly owned facilities will simply simulcast programming. The economics of television dictate that commonly owned stations provide different programming alternatives, because the owner will want to maximize the audience watching both stations. Permitting UHF/UHF and UHF/VHF combinations in local markets will allow local television stations to compete against existing and future multichannel providers. These combinations will be able to harness the efficiencies associated with combined operations. It will result in better programming including more news and public affairs programs. In the end, the American public, especially those not subscribing to pay services, will have more and better programming choices.

Finally, in the multichannel marketplace, no single owner is in a position to dominate "thought" in a local market. Consumers are able to access information from a variety of sources. Each cable channel provides an independent voice in the market. National and local cable news channels abound. Newspapers, magazines, radio, DBS, MMDS and other services provide a rich array of information to local markets. Combined UHF/UHF or UHF/VHF stations will not detract from the plethora of voices that are available.

B. National Ownership Rules: The national rules should be relaxed to permit broadcasters to reach, at a minimum, 35 percent of the national audience

INTV supports H.R. 1556 with respect to the relaxation of the broadcast national ownership rules. When viewed at the national level, the shear magnitude of the cable and telephone industry justifies a change in the national broadcast ownership rules.

1994 Annual Revenue[17]

[billions]

Local Telephone Companies	$100
Cable Television	25
Broadcast TV	25

[17] Washington Analysis Nat-West, 1995.

Given the national reach of broadcast television's multichannel competitors, there is no justification for keeping the current national ownership limits at 12 stations and 25 percent national audience reach. Indeed, the Federal Communications Commission has recommended a relaxation of these rules, noting that there has been a 30 percent increase in the number of television stations since the rules were en-

acted in 1984.[18] The Commission proposes to gradually increase the national audience reach limits to 50 percent over several years.

None of our multichannel competitors are subject to similar restrictive rules on national reach. Today, cable passes over 96 percent of US households with subscription rates at approximately 62.5 percent. There are no national ownership limits on the reach of individual cable networks. A single company can own several cable networks, potentially reaching the entire national audience. Moreover, most of these cable channels are vertically integrated with the cable system operators themselves.

A single multiple system cable operator is permitted under the FCC rules to reach 30 percent of homes passed on a nationwide basis. In each local market, however, a cable operator has control over 30-50 or more channels. In many markets cable occupies the status of a "bottleneck facility." Accordingly, the competitive posture of each multichannel cable system is far greater than a local television station which, even under this legislation, will be limited to a maximum of two channels of service in each local market.

Telephone company video systems have no national audience reach restrictions. These systems will be providing hundreds of channels in each local market. Also, as a direct result of this legislation, the telephone companies can develop program services that will be provided to subscribers outside their service area, potentially reaching the entire national audience.

New multichannel competitors are not subject to caps on their national reach. The rapidly expanding direct broadcast satellite service (DBS), which offers 150 channels of video programming, can potentially reach every house in America. It has been estimated that DBS subscribers will exceed one million in 1995 and may exceed ten million by the end of the decade.[19] Wireless cable (MMDS) is not subject to national ownership reach limits. The recent infusion of capital from the telephone companies will make MMDS a formidable competitor.

Relaxing this television ownership rule will create a stronger free, off-air television system. Increased group ownership will help broadcasters harness efficiencies. For example, broadcast companies will be able to spread the costs of management, sales and programming personnel over a number of stations.

Modifying these rules will assist broadcasters in program acquisition and development. As group ownership increases, a broadcaster is in a better position to afford top quality programming. Program suppliers are driven by the need to "clear markets." Group ownership permits more efficient "one stop" transactions, allowing television station owners to compete with nationally distributed wire-based networks. Moreover, increased group ownership provides a solid economic base for the broadcaster to develop and produce its own programming. Group ownership will assist not only in developing entertainment programming, but will enhance an owner's ability to produce additional news and public affairs programming.

Tribune Broadcasting's last two acquisitions illustrate the point. We acquired two UHF stations, one in Philadelphia and another in Boston. Because of our expertise in operating independent stations and the resources we could harness, Tribune moved both station's "bottom line" from red to black. Philadelphia now broadcasts an evening news produced by the Philadelphia Inquirer and its journalists, thereby enhancing public dialogue and information. The prior owner of our Philadelphia station could not have sustained the costs of these expanded services. Ten years ago we purchased WGNX-TV, Channel 46 in Atlanta from Pat Robertson. Tribune transformed the station into a full service independent. Three years ago, it launched a Ten PM Prime Time news program, the first in Atlanta. The station became a CBS affiliate last December. This progression would not have occurred unless a major organization with the expertise and financing had made the long term commitment. We believe these acquisitions have been good for the American public. Unfortunately, the current national ownership rules impede our ability to turn stations around in other markets.

While the government has traditionally been concerned about diversity, it is simply inconceivable that a broadcast group owner will somehow control the national marketplace of ideas. First, there are simply too many wire-based nationally distributed programming channels such as CNBC, CNN and C-SPAN. Second, group owned stations do not impose monolithic views on their individual stations. The fun-

---

[18] It is worth noting that the FCC in 1984, recommended the abolition of the national ownership limits. The existing rule, which limits ownership to 12 stations and 25 percent of the national audience, was enacted "out of an abundance of caution." See *Multiple Ownership Report and Order*, 100 FCC 2d 17, 1984; *Multiple Ownership Reconsideration Order*, 100 FCC 2d 74, 1985.

[19] *Cablevision*, November 14, 1994 at 6. USSB, a new direct satellite service, estimates that 40 percent of all television households will be receiving DBS service in seven years.

damental economic truth of broadcasting is that each local station serves the specific interests of its community. Editorial decisions are made at the station level consistent with these local interests. Broadcasters who fail to recognize this fact will not be in business for long. Third, Americans consume their information at the local, not at the national level. An individual living in Washington, DC. watches local television stations. It makes little difference that the television station owner also operates a station in San Francisco. Finally, individuals can receive information from a variety of sources including newspapers, magazines, cable channels, DBS, the Internet and, soon, from telephone company video delivery systems.

The competitive pressures from cable systems, telephone video systems and other multichannel subscription based services justifies a significant relaxation in the broadcast national multiple ownership rules. Absent this relaxation, free off-air television will have significant difficulties competing in the video marketplace. The universal broadcast system, which provides news and entertainment to all Americans will become competitively disadvantaged and decline. One way to insure a full diverse compliment of off-air video choices is to relax those rules which prevent television station owners from competing.

In sum, Congress should take steps to relax the national multiple ownership rules. Eliminating the numerical 12 station cap is essential. Raising the national audience reach cap to 35 percent is a step in the right direction.[20]

C. Broadcast/newspaper cross ownership: The rule should be repealed

In today's advanced information age, the current broadcast/newspaper cross-ownership rule makes no sense. The marketplace of the mid 1970's no longer exists. The lines between newspapers and electronic video distribution have become blurred. Veronis Suhler's industry forecast explains:

> Newspapers are transforming themselves into full-service consumer multimedia information providers. More than 600 newspapers have a voice information service that provides stock quotes, weather reports and other options. There are 150 free voice services supported by advertising, 215 papers have voice mail for personal ads, 500 papers offer 900-number information services, and more than 140 papers provide text and database information to on-line services such as Prodigy and America Online. We expect that this trend toward multimedia applications will be extended as interactive digital media services become available.[21]

Our direct video competitors are not prevented from owning newspapers. There are no rules preventing cable systems from owning newspapers in the same local market. With the elimination of the MFJ information services restriction, no federal law prevents the telephone companies from acquiring or creating newspapers in the regions where they will be providing voice or video services. In fact, companion legislation H.R. 1555 allows the telephone companies into electronic publishing through a separate subsidiary and subject to certain restriction. Satellite delivered DBS services and wireless cable systems are not prevented from owning newspapers. There is no reason to single out broadcasting.

Newspapers and broadcasting are completely separate businesses. Each operates in a separate product market and are, at best, imperfect substitutes. Local newspapers provide news and other forms of information. Broadcast stations provide entertainment programming as well as news. Newspapers sell to advertisers based on circulation. Broadcasting sells advertising based on ratings.

Finally, in an environment with hundreds of communications channels, artificially restricting broadcast stations from owning local newspapers can no longer be justified. Local consumers have a rich variety of sources to access information. The potential for dominating thought in local markets from combined newspaper and broadcast operations is simply impossible to realize.

II. BROADCAST/CABLE AND NETWORK/CABLE CROSS-OWNERSHIP RULES SHOULD BE RETAINED

Unlike the broadcast ownership rules mentioned above, the broadcast/cable and network/cable cross-ownership rules present unique problems and deserve special

[20] In this regard, we believe the current FCC policy of counting UHF stations as having half the reach of their VHF counterparts is sound policy. As we observed previously, UHF stations suffer from significant financial and technical handicaps. We recommend that the language of H.R. 1556 be changed to include this so called "UHF discount."

[21] Veronis, Suhler & Associations, *Communications Industry Forecast, 1994-1998* at 180.

consideration.[22] An immediate repeal of these rules could impede competition in local television markets.

As the broadcast industry demonstrated throughout the 1992 Cable Act debate, there is a significant body of evidence documenting that cable operators dropped television stations from cable systems and/or relegated them to disadvantageous channel positions. This can be crippling to a local television, because, on average, 62.5 percent of a television station's audience views a local station through a cable system. These incentives will be magnified ten fold if a cable company owns a television station in the same market or a broadcast network and cable MSO combined.

While local stations compete with cable operators, competition is most acute with the other broadcast television stations in the market. Common ownership increases the incentive to drop or reposition competing local stations. Such behavior not only benefits the cable system's local advertising efforts, but directly benefits the commonly owned station or off-air network.

At the present time, the must-carry and channel positioning provisions of the 1992 Cable Act prevent potential anticompetitive mischief. The cable industry, however, has challenged the constitutionality of these rules and the case remains in litigation. *See Turner* v. *FCC,* Civ. No. 92-2247, (D.DC 1995). While the broadcast industry believes these rules will be sustained by the Supreme Court, there is always the possibility of an unfortunate ruling.

As a result, the Congress should not, at this time, eliminate the broadcast/cable or the network/cable cross-ownership prohibitions. Instead, it should delay disposition until the Turner case is resolved. If the must-carry and channel positioning rules are upheld, then Congress could move to eliminate the rules. On the other hand, if must-carry and channel positioning rules are not sustained, then the broadcast/cable and network/cable cross-ownership rules should be revised only if adequate—constitutionally sustainable—safeguards are established to prevent anticompetitive behavior.

III. SPECTRUM FLEXIBILITY

At its core, H.R. 1555 attempts to break down the barriers between various communications industries. The telephone companies will be able to enter our core business, providing video programming (in addition to voice and data) directly to consumers. Cable companies will be providing telephony as well as traditional cable services. All of these companies will be able to participate in the digital revolution. Local television stations should be given equal treatment. We should be able to harness the efficiencies of digital transmission and explore new entrepreneurial opportunities. Congress should support the spectrum flexibility provisions of H.R. 1555.

Spectrum flexibility is the key to our future. To remain competitive, broadcasters will have to convert to digital transmission systems. While estimates vary, it could cost an individual station up to ten million dollars to convert to digital. New transmitters must be used and in some cases new tower sights must be found. The ability to finance digital transmission may depend, in large measure, on a station's ability to secure an additional revenue stream by providing supplementary and ancillary services.

The six megahertz of spectrum that broadcasters will use for digital television was allocated by the FCC for broadcast television use over forty years ago. We are not receiving additional spectrum. On the contrary, we are using the spectrum allocated to us in a far more efficient manner. Existing analog systems required a significant amount of "buffer" spectrum in order to avoid interference, especially in the UHF band. New digital technologies will enable us to use this "buffer" spectrum to broadcast new digital signals. Television stations should not be penalized for using spectrum more efficiently.[23]

The six megahertz of "buffer" spectrum is essential for the orderly transition to digital television. Stations cannot simply turn off their existing NTSC analog signal and start broadcasting in digital. Doing so would render over 200 million television sets obsolete—overnight! Existing television sets cannot receive digital signals. The

---

[22] The cable network cross-ownership rules are not statutory. In fact two years ago a Republican controlled FCC relaxed the rule, permitting the networks to own cable systems reaching up to 10 percent of the homes passed nationwide and 50 percent of the homes passed in each local market.

[23] Like television broadcasting, the cellular telephone industry is in the process of converting its analog system to digital. No one has suggested that spectrum be taken away from the cellular industry because it can use its allotted spectrum more efficiently. Indeed it would be terrible policy for the government to take away spectrum from existing users simply because they have found a way to increase capacity on their allocated spectrum. Such a policy would create tremendous disincentive to develop more efficient means of using spectrum.

laws of physics prevent a television station from broadcasting digital and analog video signals, at the same time, over its existing six megahertz of spectrum. There must be an interim period where local television stations are using six megahertz to broadcast in analog and six megahertz to broadcast in digital. Over time, the number of new television sets capable of digital reception will increase to the point where the vast majority of the American public can receive digital signals. At that time the government could recapture spectrum. Absent such a transition period, advanced digital television may never become a reality.

Some have argued that the six megahertz of broadcast spectrum to be used for advanced television should be auctioned off to the highest bidder. This policy is shortsighted.

An up-front spectrum payment will delay the transition to advanced television. Money, which would have been used to build new transmitters and towers, will now be diverted to paying for the spectrum. It will be extremely difficult for many local stations, especially UHF stations and stations in small markets, to get the capital necessary to fund both a spectrum payment and new equipment at the same time. Also, local television stations are in the best position to deploy new off-air broadcast transmission systems. Auctioning the spectrum off to the non-broadcasters means no digital television because these entities are likely to use the spectrum for non-broadcast purposes. Even if these bidders decided to use the spectrum for advanced television, deployment will be delayed, because these individuals will have to start a television station from scratch. Spectrum auctions could actually reduce, not enhance, government revenues. Implementation delays will place local television stations at a competitive disadvantage. The result will be lower profit margins as our competitors move to provide digital video and other services. Lower profit margins means a weaker general revenue tax base from the broadcasting sector. A superior policy would be to wait until after television stations convert to digital transmission systems. At that time the government could then decide to recapture spectrum and auction it off. This approach would yield more general revenue to the government in the short run while, at the same time, provide spectrum revenues in the future.

Congress should also recognize that our major digital competitors did not have to "pay" for their spectrum. Direct Broadcast Satellite services did not have to pay for the spectrum used to deliver 150 channels of video programming. Wireless cable (MMDS) did not have to pay for spectrum. In fact, Bell Atlantic, NYNEX and PACTEL just invested hundreds of million of dollars in MMDS systems. Many cable systems use spectrum (CARS licenses) to connect to their headends. This spectrum was not subject to auctions. The cellular telephone industry, which includes all of the Regional Bell Operating Companies, did not pay for its spectrum.

Finally, the off-air television industry remains committed to providing a channel of free over-the-air service to the American people. Every other spectrum user providing video to the home does so on a subscription basis. It is inconsistent to require spectrum auctions for a service which will be provided to the American public for free.[24]

The provisions of H.R. 1555 will help local off-air television stations in their transition to advanced digital television. The legislation would permit local stations to provide ancillary and supplementary services on spectrum that will be used for advanced digital television. It also would require stations to pay a fee for a portion of the spectrum that is devoted to such services if they are provided to consumers on a subscription basis. H.R. 1555 also requires stations to continue to provide a channel of free, over-the-air television service.

It should be noted, however, that the legislation does not require the FCC to allocate spectrum for local, off-air advanced television services. Under the bill, the FCC could, if it desired, take the six megahertz of spectrum and allocate it for other uses. While there is a significant likelihood that the FCC will use the spectrum for advanced television, there is no absolute guarantee that it will do so. To the extent there is some uncertainty regarding the entire allocation, local television stations may find it difficult to budget for the transition to digital television. The legislation would be improved significantly by requiring the FCC to allot this spectrum for advanced digital television today.

IV. TWO STEP COMPARATIVE RENEWAL PROCEDURES

The renewal modifications contained in H.R. 1555 are long overdue. Extending the license period from five to seven years makes eminent sense. Also, under cur-

[24] In this regard, the industry agrees that a spectrum payment may be appropriate for that portion of the spectrum that may be used by television stations to provide subscription based ancillary and supplementary services.

rent law, a local station can have its license challenged even though it has met or exceeded all of the FCC requirements. All a challenger need do is file a competing application and promise to exceed the existing licensee's performance. Many of these promises are nothing more than "pie in the sky" proposals. Nevertheless, an existing television station must bear the tremendous legal costs of an FCC hearing, diverting precious resources from its primary mission—serving its community of license.

H.R. 1555 puts an end to this practice. If a station meets the FCC requirements it will be renewed. If it fails to meet these standards, it can be sanctioned by the Commission or have its renewal application denied. At that point, the FCC will consider new applications for the channel. This is a superior policy which has been employed by the FCC for years when evaluating license transfers.

V. ACCESS TO VIDEO PLATFORMS

The legislation contains important provisions regarding a local television station's access rights to new telephone company video systems. These provisions will help prevent anticompetitive favoritism with respect to a telephone company and its own video programming affiliate.

Our experiences with cable over the last decade taught us that access to wire delivery systems are critically important to local off-air television stations. Once consumers subscribe to wire-based delivery systems they effectively lose the ability to receive signals over-the-air. If a station is not on the wire, it cannot be viewed. Advertising revenues decline and a station is no longer able to afford competitive programming. In the end, local stations may exit the market.

The crux of our historic problems with cable was that the owner of the wire also owned, or had a financial interest in, programming that was transmitted over the wire. The owners of the conduit also owned the content. This meant that a local television station, who competed with local cable operators for audiences and advertising, relied on the cable system to reach its audience. The wire became a bottleneck facility with the ability to damage the competition by refusing to carry local stations or giving them disadvantageous channel placement.

This legislation re-creates the same scenario. The telephone companies will own the conduit and, through their video programming affiliates, also have a financial or ownership interest in competitive programming that is transported over the wire.

As presently drafted, the legislation provides several key safeguards to guard against anticompetitive conduct. It insures that many of the rules applicable to existing cable operators are applicable to telephone company video systems.

First, we support the provisions that preserve a television station's ability to select between retransmission consent or must-carry. These rights are critical to the survival of free off-air television and will insure a station's access to the wire. Second, we applaud the legislation's provisions requiring telephone company video systems to have sufficient capacity to carry local television stations and all *bona fide* independent programming services. Third, the legislation ensures that local television stations will be able to bargain for exclusive rights to programming by applying the network non-duplication and syndicated exclusivity rules. Without these rules, it would be impossible for a local station to enforce such rights. Finally, the non-discrimination provisions with respect to rates and interconnection will hopefully prevent anti-competitive discrimination. Special consideration should be given to the navigational safeguards contained in the bill. We are pleased the legislation prevents the telephone companies from discriminating with respect to information that will be provided to subscribers for selecting programming on the video platform. Navigational discrimination is a key concern. As the various video platform architectures develop, this provision will be extremely important in preventing anticompetitive abuses.

VI. TELEPHONE COMPANY "BUY-OUTS" OF CABLE SYSTEMS

We fully support the provisions in H.R. 1555, which attempt to put some limits on a telephone company's ability to purchase cable systems located in the telephone company's service area. From the outset, Congress has sought true facilities-based competition to existing cable television systems. This means two competitive wire-based delivery systems in each community. Congress should avoid replacing one monopoly—cable—with another—the telephone company.

Obviously, two wires may not be economically feasible for "thin route" rural areas. Accordingly, the exemption provided for rural areas is appropriate. The legislation, however, contains several other exemptions which could result in simply replacing existing cable monopolies with telephone company monopolies for millions of Americans in medium-sized towns and suburban areas.

Under the legislation, a telephone company could purchase numerous cable systems so long as the aggregate number of subscribers to these cable systems are less than ten percent of all the households located within the telephone company's service area. As the tables contained in Appendix A indicate, this can result in many telephone companies buying out their cable competitors. For example, Bell Atlantic serves approximately 12.7 million households in its service area. Under the bill, Bell Atlantic may be able to purchase cable systems serving approximately 1.27 million subscribers. This would make Bell Atlantic potentially one of the largest multiple systems operators in the United States. When analyzed on a state by state basis, this provision could result in a telephone company purchasing all the cable systems in an entire state. For example, Ameritech could acquire all the cable systems in Indiana or Wisconsin. Bell Atlantic could acquire all the cable systems in Delaware, Maryland or West Virginia. At the very least, a telephone company could acquire cable systems in the major municipal areas.

The ten percent buy out exemption is limited to some extent. If a cable system is part of a geographically clustered multiple system operator, then a telephone company is limited to acquiring systems in franchise areas with 35,000 inhabitants. For non-clustered systems, a telephone company is limited to acquiring systems in franchise areas with 50,000 inhabitants. Nevertheless, no empirical data has been presented indicating whether these limitations will prevent the full scale purchase of cable systems by the telephone companies in most franchise areas.[25]

Moreover, the ten percent exemption is only one of several potential exemptions to the buy out prohibition. Taken together, all of the exemptions contained in the bill could result in the wholesale acquisition of existing cable systems by the telephone companies.

On balance we support "anti buy-out" provisions of the bill. Nevertheless, we would ask the Subcommittee to study the exemptions carefully. It is very possible that the dream of a competitive two-wire universe could be frustrated. In this event, additional legislative changes may become necessary.

VII. CONCLUSION

On balance, H.R. 1555 and H.R. 1556 provide the framework for a more competitive video marketplace. Relaxation of the local and national multiple ownership rules will help local stations compete in the marketplace of the twenty-first century. Similarly, the newspaper-cross ownership rule should be eliminated. We would caution against eliminating the broadcast/cable and network/cable cross ownership rules at this time.

H.R. 1555 deserves full Subcommittee support. The spectrum flexibility provisions in the bill are the key to the television industry's rapid deployment of advanced digital television. The legislation's reforms of the comparative renewal process are long overdue. We urge the Subcommittee to act favorably on both measures.

APPENDIX "A"

Table 1—Potential Telephone Company Acquisition of Existing Cable Operators Under the 10% Buy-out Exemption

Company	Total Households in Service Area (millions)	10% of Total Households (millions)	Cable Subscribers in Service Area (millions)	Exemption Households as a % of Cable Subscribers Within Service Area
Ameritech	15.8	1.58	8.5	19%
Bell Atlantic	12.7	1.27	8.4	15%
Bell South	19.1	1.91	10.7	18%
NYNEX	11.7	1.17	7.05	17%
Pactel	11.4	1.14	6.45	18%
South Western Bell	11.4	1.14	5.5	21%

[25] For example, only 2.13 percent of all cable systems (239) have 50,000 or more subscribers. *1995 TV & Cable Factbook*, No. 63, Services Volume at I-77. In terms of subscribers, these systems account for approximately 41.8 percent of all subscribers. This leaves a significant number of cable systems that could potentially be acquired under the legislation.

Table 1—Potential Telephone Company Acquisition of Existing Cable Operators Under the 10% Buy-out Exemption—Continued

Company	Total Households in Service Area (millions)	10% of Total Households (millions)	Cable Subscribers in Service Area (millions)	Exemption Households as a % of Cable Subscribers Within Service Area
US West	11.7	1.17	6.15	19%

Source: Warren Publishing Co., Barbed Wires II, 1993, pgs. 155-168.

Table 2—Potential Telephone Company Acquisition of Existing Cable Systems With a 10% Buy-out Exemption State by State

Company	Number of Subscribers That Can Be Acquired	Basic Cable Subscribers Within Service Area By State (millions)
Ameritech	1.58	Illinois—2.1
		Indiana—1.1
		Michigan—2.0
		Ohio—2.4
		Wisconsin—.875
Bell Atlantic	1.27	Washington, DC—.161
		Delaware—.333
		Maryland—.977
		New Jersey—1.97
		Pennsylvania—3.14
		Virginia—1.38
		W. Virginia—.449
Bell South	1.91	Alabama—.829
		Florida—3.3
		Georgia—1.36
		Kentucky—8.04
		Louisiana—.888
		Mississippi—.446
		North Carolina—1.38
		South Carolina—.691
		Tennessee—1.02
NYNEX	1.17	Connecticut—.948
		Maine—.281
		Massachusetts—1.54
		New Hampshire—.331
		New York—3.58
		Rhode Island—.271
		Vermont—.111
Pactel	1.14	California—6.15
		Nevada—.303
South Western Bell	1.14	Arkansas—.494
		Kansas—.538
		Missouri—.981
		Oklahoma—.650
		Texas—2.902
US West	1.17	Arizona—.679
		Colorado—.839
		Idaho—.219
		Iowa—.737
		Minnesota—.682
		Montana—.245
		Nebraska—.317
		New Mexico—.227
		North Dakota—.121
		Oregon—.701

Table 2—Potential Telephone Company Acquisition of Existing Cable Systems With a 10% Buy-out Exemption State by State—Continued

Company	Number of Subscribers That Can Be Acquired	Basic Cable Subscribers Within Service Area By State (millions)
		South Dakota—.097 Utah—.407 Washington—1.13 Wyoming—.157

Source: Warren Publishing Co., Barbed Wires II, 1993, pgs. 155-168.

Table 3—Potential Telephone Company Acquisition of Existing Cable Systems With a 10% Buy-out Exemption By Television Market

Company	Number of Subscribers That Can Be Acquired (millions)	Representative TV Metro Markets By Cable Television Households (Subscribers) (millions)
Ameritech	1.58	Illinois: Chicago—1.642 Indiana: Indianapolis—.542 Michigan: Detroit—1.054 Ohio: Cleveland—.883 Wisconsin: Milwaukee—.362
Bell Atlantic	1.27	Washington, DC—1.068 Maryland: Baltimore—.544 Pennsylvania: Philadelphia—1.868 Pittsburgh—.852 Virginia: Roanoke-Lynchburg—.236 West Virginia: Charleston-Huntington—.342
Bell South	1.91	Alabama: Birmingham—.326 Mobile—.272 Montgomery—.136 Florida: Tampa—.852 Miami—.837 Orlando—.700 Georgia: Atlanta—.874 Savannah—.156 Augusta—.132 Kentucky: Louisville—.315 Lexington—.236 Paducah—.187 Louisiana: New Orleans—.409 Shreveport—.213 Baton Rouge—.180 Mississippi: Jackson—.168 Columbus-Tupelo—.100 Biloxi—.086 North Carolina:

Table 3—Potential Telephone Company Acquisition of Existing Cable Systems With a 10% Buy-out Exemption By Television Market—Continued

Company	Number of Subscribers That Can Be Acquired (millions)	Representative TV Metro Markets By Cable Television Households (Subscribers) (millions)
		Charlotte—.488
		Raleigh-Durham—.448
		Greensboro—.320
		Greenville—.139
		South Carolina:
		Columbia—.160
		Charleston—.137
		Florence—.105
		Tennessee:
		Nashville—.407
		Memphis—.357
		Knoxville—.284
		Chattanooga—.201
NYNEX	1.17	Connecticut:
		Hartford-New Haven—.769
		Maine:
		Portland—.256
		Bangor—.056
		Presque Isle—.022
		Massachusetts:
		Boston—1.511
		Springfield—.195
		New York:
		New York City—4.186
		Buffalo—.452
		Albany—.353
		Rochester—.246
		Rhode Island:
		Providence—.406
		Vermont:
		Burlington—.146
Pactel	1.14	California:
		Los Angeles—2.794
		San Francisco—1.506
		Sacramento—.647
		San Diego—.726
		Fresno—.230
		Nevada:
		Las Vegas—.180
		Reno—.144
South Western Bell	1.14	Arkansas:
		Little Rock—.261
		Ft. Smith—.124
		Jonesboro—.052
		Kansas:
		Wichita—.292
		Topeka—.103
		Missouri:
		St. Louis—.488
		Kansas City—.479
		Springfield—.141
		Columbia—.071
		Oklahoma:
		Oklahoma City—.341
		Tulsa—.271
		Ardmose—.039
		Texas:
		Dallas-Ft. Worth—.839
		Houston—.733
		San Antonio—.369

Table 3—Potential Telephone Company Acquisition of Existing Cable Systems With a 10% Buy-out Exemption By Television Market—Continued

Company	Number of Subscribers That Can Be Acquired (millions)	Representative TV Metro Markets By Cable Television Households (Subscribers) (millions)
		Austin—.249
US West	1.17	Arizona:
		Phoenix—.546
		Tucson—.187
		Flagstaff—.022
		Colorado:
		Denver—.587
		Colorado Springs—.151
		Grand Junction—.045
		Idaho:
		Boise—.074
		Idaho Falls—.061
		Iowa:
		DeMoines—.207
		Cedar Rapids—.177
		Minnesota:
		Minneapolis—.633
		Duluth—.084
		Montana:
		Billings—.052
		Missoula—.044
		Great Falls—.038
		Nebraska:
		Omaha—.218
		Lincoln—.160
		North Platte—.012
		New Mexico:
		Albuquerque—.288
		North Dakota:
		Fargo—.124
		Oregon:
		Portland—.125
		Eugene—.491
		South Dakota:
		Sioux Falls—.139
		Rapid City—.054
		Utah:
		Salt Lake City—.288
		Washington:
		Seattle—.930
		Spokane—.189
		Yakima—.105
		Wyoming:
		Cheyanne—.034
		Casper—.030

Source: Warren Publishing Co., Barbed Wires II, 1993, pgs. 155-168. 1993 Television & Cable Factbook, pgs. F12-13.

Mr. FIELDS. Thank you.

Mr. Richard Ferguson, President and CEO of New City Communications.

STATEMENT OF DICK FERGUSON

Mr. FERGUSON. Thank you, Mr. Chairman. In addition to being the head of an employee-owned radio holding company, I serve as the vice chairman the NAB radio board.

First let me applaud you and thank you and other sponsors of H.R. 1555. As a radio broadcaster, I believe this is outstanding leg-

islation on a number of fronts. But as a hands-on radio broadcaster who oversees 18 stations in seven different cities and States, I wish to spend my time this morning talking about an issue not included in your legislation, radio ownership restrictions.

Mr. Chairman, the American radio industry is one of the most dynamic communications media in the Nation and certainly one of the most competitive. Over 11,000 stations provide local service to every town, city and county and in country.

But in order for us to remain competitive in the digital world of the future, we need to be treated like our competitors and not like we were when the Communications Act of 1934 was enacted. In fact, the digital world is here today. Right now many cable systems offer for a fee 30 channels of CD-quality stereo music services. One cable company or program service can offer all of this choice and we are limited to a few choices and opportunities in our markets.

FCC has already proposed authorizing the startup and we understand it will go forward of a satellite-delivered digital radio service. We could see as many as 60 radio channels, or more, being beamed into every town in America, and also being owned by one or two companies.

Add to that audio services that could be offered by telephone companies as they enter the information business, again with no restrictions.

I read last week that the first real-time radio station started broadcasting on the Internet.

This is the news competitive marketplace that we face, and we are up to the challenge, we are not asking for protection. But we need to have the wherewithal to compete with these new entries in the audio universe. We need that level playing people. We need to be able to play the game by the same rules.

With all this new competition, it simply does not make sense to limit radio broadcasters to a few stations in a given market or to some completely arbitrary number of stations on a national basis, when one or two operators can bring 60 radio stations into every single market in America.

If you multiply that by the number of markets, you are talking about one or two people effectively having 12,000 radio stations while we are limited to 20 AM and 20 FM.

The FCC loosened the restrictions somewhat a few years ago with the duopoly rule and we got a taste of what deregulation might mean. Through consolidation and expansion of these rules, many stations that were failing and going bankrupt and providing limited, if any at all, public service news and entertainment were able to stay on the air and now provide diversity of programing in their marketplaces.

Since these duopoly rules were passed in 1992, our company has purchased second FM stations in 5 of the 7 markets that we operate in. Today—two of these stations were bought out of bankruptcy. All of these stations today operate as healthy members of the broadcast community and each one of them offers a different programming service that was not previously available in its market place.

In Orlando, where we operate two FM stations and a news/talk AM station, we recently purchased an additional AM station which

now provides a 24-hour children's service. We provide music, stories, educational games and contests for kids between the ages of 4 and 12. This type of service would not be possible if we did not have other stations in the market to help underwrite the costs.

Our experience indicates that allowing broadcasters to own multiple station necessary a local market has in fact—this is no longer speculation—created more choice, not less choice, and has given more choice not only to listeners but to advertisers. And it has made a more responsive and vibrant video industry.

Localism is what our business was founded on. It is the soul that makes us unique; a free universal, locally based radio system is the system that has worked for a long time.

We have licenses that basically require us to discharge public service responsibilities and changing these ownership rules does not alter that in any way. Radio is preparing for its digital future in the next few years and we look forward to providing listeners with digital audio which will match the quality our competitors will provide, but it will cost us millions of dollars on an industry wide basis. We need to track the capital to do that.

Mr. Chairman, I urge you to consider the outmoded radio ownership restrictions as you have in 1556, and I hope that you will give radio the relief that it has needs.

[The prepared statement of Dick Ferguson follows:]

PREPARED STATEMENT BY DICK FERGUSON, PRESIDENT AND CEO, NEWCITY COMMUNICATIONS, INCORPORATED

Thank you, Mr. Chairman. I am Dick Ferguson, President and CEO of NewCity Communications, an employee-owned radio company in Bridgeport, Connecticut. I also serve as Vice Chairman of the NAB Radio Board.

Let me first applaud you and the other sponsors of H.R. 1555. As a broadcaster, I believe this is outstanding legislation on a number of fronts.

But as a hands-on radio broadcaster who oversees 18 stations in seven different states, I want to spend my time this morning talking about an issue not included in your legislation—radio ownership restrictions.

Mr. Chairman, the American radio industry is one of the most dynamic communications media in the nation. Over 11-thousand stations provide local service to every town, city and county in this country.

But in order for us to remain competitive in the digital world of the future, we need to be treated like our competitors, and not like we were when the Communications Act of 1934 was first enacted.

In fact, that digital world is already here. Right now, many cable systems offer (for a fee) digital music services to homes and businesses. One cable company or program service can offer as many as 30 distinct channels of audio programming. The audio is CD quality, state of the art.

The FCC has already proposed authorizing the start-up of satellite-delivered digital radio services. We could see as many as 60 channels or more being beamed into every town in America—again, being owned and operated by one or two companies.

Add to that the audio services that could be offered by telephone companies as they enter the information business. Again, no restrictions.

This is the new competitive marketplace we face—and we are up to the challenge. But we need to have the wherewithal to compete with these new entries in the audio universe. To do that, we need to be able to play the game by the same rules.

With all this new competition, it no longer makes sense to limit radio broadcasters to a few stations in a given market or to some arbitrary number of stations on a national basis. Your bill's goal is to let the marketplace work—but it can't if radio, unlike our competitors, is still operating under old rules.

The FCC loosened up the restrictions somewhat a few years ago, and we got a taste of what deregulation might mean. Through consolidation and expansion, many stations that were failing and providing limited public service, news and entertainment were able to stay on the air and provide a diversity of programming.

Since the duopoly rules were passed in 1992 allowing expanded ownership in local markets, our company has added second FM stations in most of our markets. Two were purchased out of bankruptcy. Today, both of those stations are healthy and providing service to their communities previously unavailable.

In Orlando, where we own two FMs and a news/talk AM station, we recently bought an AM station that was duplicating the programming of an FM stations and are now providing a 24-hour children's station—with music, stories and educational games and contests for kids ages 4-12.

Many of these projects—particularly the children's station—have come about because of the flexibility offered by the expanded ownership rules.

Our experience indicates that allowing broadcasters to own multiple stations in a local market creates more choices for listeners and advertisers, and in turn a more responsive and vibrant radio service.

Localism is what our business was founded on and what makes us unique—free, universal, locally-based radio. And as always, our licenses will be based on our ability to discharge our duty to our local audience. A change in ownership rules does not alter this basic fact.

Radio is also preparing for its own digital future in the next few years. We look forward to providing listeners with digital audio that will match the quality these new competitors will provide. But to do that, we will need to make capital investments of millions of dollars industry-wide.

If we are not allowed to grow and attract that capital, then it will become increasingly difficult for radio to convert to digital—and that will be a big loss to both us and to your constituents.

Radio is one of the most competitive businesses I know. Today, we have a myriad of competitors from direct mall and catalogs to cable TV. Tomorrow, we will add satellites that reach one market where radio already has an exclusive franchise—automobiles. We also will see competition from cable audio, telephone companies, Internet services and all the rest.

Removing the outmoded ownership restrictions on radio is the only way we can compete in the long term and be as good as we can be.

I urge this subcommittee to amend H.R. 1555 to provide for complete deregulation of radio ownership. Give us the tools we need to compete. Thank you.

Mr. FIELDS. Thank you very much.

Mr. Sherwin Grossman, President of Sherjan Broadcasting Company.

STATEMENT OF SHERWIN GROSSMAN

Mr. GROSSMAN. Thank you, Mr. Chairman. My name is Sherwin Grossman, I am president of Sherjan Broadcasting. We own an LPTV station serving the Hispanic community of Miami, Florida.

I am 70 years old. I first started in the broadcasting business in 1951 in Buffalo, New York, and since then I have been through a lengthy FCC comparative hearing, both with full powered station. I have run network stations, affiliates of CBS, Dumont and NBC.

In between I have been a banker, a senior number two officer of a $350 million bank, a vice president of a $25 billion bank, and when I completed the development of a $50 million bank, on my 65th birthday, I resigned as president and went back to the broadcasting business full-time, which is my first love. And ladies and gentlemen, life truly begins at 65.

LPTV was conceived in 1980, before ATV was a word, and before everyone had cable. It took years for the FCC to get out of the quagmire of speculators and deluge of applications. Today there are literally hundreds of LPTV stations serving small communities and niches in major communities, succeeding because of localism.

As the cable industry has strengthened, it has resisted carrying broadcast competitors, full or low power. Hence the 1992 Cable Act. The low power TV industry has grown and thrived with no help or subsidies, just Americans starting their own businesses and put-

92-967 O - 95 - 14

ting their money where their mouth is and it approaches probably a billion dollars in investment and creating some 30,000 jobs, attracting audiences through localism.

And dividing TV just like radio, which has clear channels and local channels, class C, class A, FMs. LPTV cannot survive, any more than full power, without cable. Even in a market like mine where 48 percent do not take cable service. I am here not asking for subsidies, red tape, or burdensome regulation, but I am certainly willing to accept any regulations imposed to full power stations if I can play on a reasonably level field.

My station employs 40 people. If we get on cable we will employ 70. Ron Bruno's station in Congressman Klink's district will lay off 17 employees if it does not get on cable. If on cable, it will hire 30. The same goes for Larry Nelson's station in Congressman Hastert's district.

My TV station has an agreement with Telearte, S.A., one of the largest and fastest growing production companies in South America. And in my estimation we have the best Hispanic programming in the City of Miami. The profile in Miami is 45 percent Cuban and the rest South American and believe me we shake up the town. We are there.

We have been named the official emergency station for TV for Dade County. We have had over 7,000 letters, we measure them by the foot, of people writing their cable companies requesting carriage. We invited the general managers of the top cable companies to visit our station and see for themselves what we had.

Most stonewalled us and would not even answer the telephone. Four came and told me they were recommending carriage to their home office. And then silence. The home office turned them off and told not them not to take calls.

The story is repeated over and over throughout the country. The largest MSOs dig in their heels regardless of what their managers say. After endless hours of work, I am finally dealing with one cable company. At least TCI is willing to talk to me, which is a heck of a lot more than anyone else has done.

I don't know where it will end. If you take TCI's published leased access rate, divide it by two—because I don't need the entire Miami DMI—it would cost me $1,728,074.60 a year just to get on cable to reasonably compete in the market.

I don't ask any new regulations any more than anyone else, but I ask the committee to give LPTV a fair chance. At least don't make me climb a cliff. One cable can deny all must carry, but a few TV stations. The field can be leveled significantly with no increase.

Mr. FIELDS. We ask you to summarize also, please.

Mr. GROSSMAN. Thank you, Mr. Chairman. I appreciate it and the rest of my statement will go in.

[The prepared statement of Sherwin Grossman follows:]

PREPARED STATEMENT OF SHERWIN GROSSMAN, PRESIDENT, SHERJAN BROADCASTING COMPANY

My name is Sherwin Grossman. I am President of Sherjan Broadcasting Company. We own an LPTV station serving the Hispanic community of Miami, Florida. I first entered the broadcasting business in 1951 in Buffalo, New York. Since then,

I've been through a lengthy FCC comparative hearing for Channel 6 in Miami. Both were full power stations. I have run network affiliates of CBS, Dumont, and NBC.

In between, I've been a banker, Senior Vice-President and number two officer of $350 million bank and Vice-President of a $25 billion bank. On my 65th birthday, I completed the development a new bank, which is now a $50 million institution. I resigned as President to devote full time to broadcasting, my first love. And ladies and Gentlemen, life truly begins at 65.

LPTV was conceived in 1980, before ATV was a word and before everyone had cable. It took years for the FCC to get out of the application quagmire, but the speculators were eventually weeded out. Today, there are literally hundreds of LPTV stations, serving small communities and niches in major cities, and succeeding because of localism. As the cable industry has strengthened, it has resisted carrying broadcast competitors, full or low power. Hence the 1992 Cable Act was adopted.

The low power TV industry has grown and thrived with no help or subsidies—just Americans starting their own businesses, and putting their money where their mouth is, attracting audiences through local programming, and dividing TV just like radio, which has clear channels and local channels, Class C FM's and Class A.

LPTV can't survive any more than full power without cable, even in a market like mine where 48% do not take cable service. I am not here asking for subsidies, red tape, or burdensome regulation; but I am certainly willing to accept any regulations imposed on full power stations if I can play on a level cable field.

My TV station has an agreement with Telearte, S.A., one of the largest and fastest growing production companies in South America—in my estimation, the premiere producer of programs in South America. We have a special affinity with the cultural needs of Miami's Hispanic population and provide the best Hispanic programming in the market, because the other two Hispanic stations are flagships for networks that are oriented toward Hispanics west of the Mississippi. The profile of Hispanic Miami is 45% Cuban, with the balance from South and Central America. And we cater to local needs too, with a $6 million dollar state-of-the-art facility, including a 40- by 50-foot studio, satellite feeds, a news department, production facilities, local newspaper advertising, and community outreach to the street and malls of the city. We have been named the official emergency TV station for Dade County.

During the August 1994 Cuban rafter exodus, we broadcast the names of the detainees at all the refugee camps in Guantanamo, Panama, Gran Cayman, and the Bahamas and were in daily communication with the Immigration Service and the camps. We logged thousands of phone calls from desperate and emotional relatives and friends of the rafters, from as far away as Boston, New Orleans and Puerto Rico. Miami cable subscribers were denied the information we provided.

We have had literally thousands of letters written to cable companies requesting our carriage. We invited the general managers of the top cable companies to visit our station and see for themselves what we have. Most stonewalled us and would not even answer the telephone. Four came and told me they were recommending carriage to their home office. And then silence. The home office turned them off and told them not to take calls. This story is repeated over and over again throughout the country. The largest MSO's dig their heels in, regardless of what their local managers tell them their customers want.

After endless hours of work, I am finally dealing with one cable company. At least TCI is willing to talk to me, which is a heck of a lot more than anyone else has done. But I don't know where it will end. If you take TCI's published leased access rate and divide it by two, because I don't need the entire Miami DMI, it would cost me $1,729,074.60 a year just to get on cable to reasonably compete in the market.

I don't want any more new government regulations any more than anyone else, but I ask the Committee to give LPTV a fair chance to compete by removing unwarranted restrictions from the Communications Act. These restrictions now prevent cable companies and LPTV stations from agreeing on channel positioning on cable and deny all must-carry to all but a few LPTV stations. The field can be leveled significantly with no increase in the number of channels that cable must devote to broadcast carriage and no reduction in the cable carriage rights of any full power station. I am also asking the Committee to direct the FCC to take LPTV into account when we get to advanced television systems, by not using our channels until other channels have been used up first, and by letting those LPTV stations that are able to make the conversion to ATV have permanent status.

Mr. FIELDS. We appreciate your testimony.

Thank you very much.

Mr. Andy Schwartzman, Executive Director, Media Access Project.

STATEMENT OF ANDREW JAY SCHWARTZMAN

Mr. SCHWARTZMAN. Thank you, Mr. Chairman. This is very important material that you are discussing today, and the principal thrust of my testimony is that it is too important to be treated as an add-on to much larger legislation. These issues deserve much more attention in this subcommittee and there is no reason to include it in this legislation.

Three years ago, consumers supported passage of the 92 Cable Act. We wanted new competitors like DBS to have access to necessary programming. We wanted cable rate regulation. And we wanted must carry protections for broadcasters.

Broadcasters also wanted must carry relief, as well as retransmission consent. We formed an alliance and worked together to help pass that law.

We have since gone hand in hand with the NAB to the Supreme Court in defense of must carry. We argued to the justices that our system of free broadcasting is the best in the world, and that it is sound constitutional and policy doctrine to require cable operators to carry all local TV signals.

We complained that unlike cable, broadcasters serve everyone and that "must carry" protects the 40 percent of Americans who don't get cable. We said that broadcasters are entitled to special treatment because they volunteer to use scarce public spectrum for public good. They are selected because they will promote diversity in the cultural background of their ownership and management. Hopefully, their programming decisions will expose Americans to a broad range of issues perspectives and ideas.

Moreover, broadcasters accept the duties to reflect the needs of their community of license, to establish that they are of good character and to pay extra attention to the needs of American children. They are also charged with ensuring that unsuitable programming is not carried during the hours when unsupervised children are in the audience.

There are a lot of broadcasters in the room today. In H.R. 1555 they are asking to be relieved of many of the duties upon which they relied in demanding the additional privileges of must carry and retransmission consent. I haven't heard one of them suggest that they should give up any of those benefits. No, they want more.

Even though license renewals have become virtually automatic, they want even longer license terms and additional latitude to violate the law while still keeping their licenses. In particular, they want Congress to forbid competition for licenses and to ensure renewal, notwithstanding proven acts of discriminatory employment practices or excessive commercialization during children's programming hours or failure to provide educational programming or news staging or overcharging candidates for public office or even the broadcast of indecent programming during daytime hours.

I also oppose H.R. 1556, which would repeal rules ensuring diversity in broadcast ownership. The FCC has been following a careful glide path in adjusting ownership rules to changing conditions. You have heard how successful broadcasters have become under duopolies under the existing scheme.

While I have been quite unhappy about the speed with which these rules have been lifted, I strongly prefer leaving this authority

in the hands of the FCC. Diversity matters and the FCC, has the ability and the experience to fine tune the regulations.

Localism also matters. It is no accident that the greatest complaints about abusive program practices and cheap titillation have been interposed against absentee owners who have no roots in the communities they serve. The alternative to content neutral ownership regulations is increasingly intrusive content regulation, something that can be and should be avoided.

You are also being asked to permit unlimited alien ownership in broadcasting. Unlike other media, broadcasting stations are an integral part of the machinery of our democracy. H.R. 514 would allow foreign governments and those working in their service to endorse candidates for public office, decide who can appear on a broadcast debate and to administer candidate's access via equal time and lowest unit rate provisions of the law.

And now to the biggest give away of all. Spectrum flexibility may be the most inspired euphemism since major league replacement player. A huge hunk of spectrum was set aside for high definition TV, but it is increasingly clear that rapidly developing technology permits use of this beachfront property for other uses. The speed with which these changes are happening argues for giving the FCC more, not less latitude in this matter.

I certainly agree that the FCC should devise rules permitting the most efficient use of available spectrum but it has ample authority to do that right now. Broadcasters say they will pay for spectrum if they don't use it for Broadcasting, but they don't want to allow anyone else to bid or to compete for this right and they don't want to pay extra for this exclusivity. Nor do they want to share editorial control. There is no reason to give it to them. If there are to be multiple program feeds, why shouldn't there also be multiple programmers?

The same lawyers who invented LMA's to circumvent the Communications Act's ownership provisions can design a condominium system to require that there be many voices, not one huge programming colossus, on each bitstream.

I say in my written testimony that this committee shouldn't be endorsing and grandfathering LMA's unless they know what they are. LMA's would permit convicted felons, military paramilitia groups, to take over programming of television stations 24 a day without any involvement by the FCC in determining that they are of adequate character. That is what you are being asked to approve.

You have got plenty of other things on your plate. I urge you to focus on bringing more competition to the delivery of voice, data and media services and to strip the broadcast provisions from legislation.

Thank you.

[The prepared statement of Andrew Jay Schwartzman follows:]

Prepared Statement of Andrew Jay Schwartzman, Executive Director, Media Access Project

This Subcommittee has undertaken an important mission. Cable and telephony need statutory changes to bring competition. While I am by not means happy with many parts of H.R. 1555, I am glad that you are trying to address the matter.

You have a lot to do. The goals of economic expansion, job creation, and marketplace competition can best be achieved if Congress ensures a place on the Information Superhighway for small businesses, and businesses owned by females and minorities. It is this sector of the economy that accounts for the vast majority of new jobs. It is this sector of the economy that can best contribute to robust economic competition as well as competition in the marketplace of ideas. Historic market entry barriers, however, have made it very difficult for such companies to compete effectively against the huge companies that have increasingly dominated the marketplace. I would welcome the opportunity to work with members of this Committee to adopt suitable provisions that would remedy this problem.

As last year's experience proved, passage of this kind of bill is not easy. Sadly, broadcasters are trying to take advantage of the massive nature of this venture to slip some dangerous and unneeded measures into H.R. 1555. This is the wrong place, and the wrong time. Broadcasting should be examined separately after you deal with cable and telephony.

Three years ago, consumer groups supported passage of the 1992 Cable Act. We supported Mr. Tauzin's efforts to bring new competitors, like DBS and wireless cable, into the market by assuring them access to necessary programming. We wanted restoration of cable rate regulation. And we very much wanted to assure that broadcasters would have the benefit and protection of cable must carry rules.

Broadcasters also wanted must carry relief, as well as retransmission consent. We formed an alliance and worked together to help pass that law.

We have since gone hand in hand with the NAB to the Supreme Court in defense of must carry. We argued to the Justices that our system of free broadcasting is the best in the world, and that it is sound constitutional and policy doctrine to require cable operators to carry all local TV signals. We explained that, unlike cable, broadcasters served 100 percent of the homes in every community, and that must carry protected the 40 percent of Americans who don't get cable. We said that broadcasters are entitled to special treatment because they volunteer to use scarce public spectrum for public good. They are selected because they will promote diversity in the cultural background of their ownership and management so that their programming decisions can more nearly enable Americans to have access to a broad range of issues, perspectives and ideas. Moreover, broadcasters accept the duties to reflect the needs of their community of license, to establish that they are of good character, and to pay extra attention to the needs of American children. I would add that broadcasters are also charged with insuring that unsuitable programming is not carried during hours when unsupervised children are in the audience.

There are a lot of broadcasters in the room today. They're asking to be relieved of many of the duties upon which they relied in demanding the additional privileges of must carry and retransmission consent. I haven't heard one of them suggest that they should give up any of those benefits.

No. They want more. Even though their license renewals have become virtually automatic, they want even longer license terms and additional latitude to violate the law while still keeping their licenses. In particular, they want Congress to require the FCC to grant license renewals without regard to proven acts of discriminatory employment practices, or excessive commercialization during children's TV hours, or failure to provide educational programming, or news staging, or the broadcast of indecent programming during daytime hours

I strongly oppose H.R. 1556, which would repeal rules insuring diversity in broadcast ownership. I would stress that the FCC has been following a careful glide path in adjusting ownership rules to changing conditions. While I have been quite unhappy about the speed with which these rules have been lifted, I strongly prefer leaving this authority in the hands of the FCC.

Diversity matters, and the FCC has the ability and the experience to fine tune the regulations. There is, for example, strong reason to continue the prohibition against ownership of daily newspapers and VHF TV stations in the same community. No one should be allowed to obtain that much power.

Localism also matters. It is no accident that the greatest complaints about abusive program practices and cheap titillation have been interposed against some of the largest group owners. These absentee owners simply have no roots in the communities they serve. The alternative to such content-neutrai ownership regulation is increasingly intrusive content regulation. That is something which should be, and can be, avoided.

Perhaps the most telling example of the unwise haste embodied in H.R. 1556 is the grandfathering of what are known as "LMA's." No member of this Subcommittee who knows what an LMA is should be voting to legitimize them. LMA's are a device to undermine the elements of licensee responsibility central to the Communications Act. Under these schemes, broadcasters can "lease" their entire programming sched-

ule to felons or to the same paramilitary groups which may have blown up a federal building in Oklahoma City.

You are also being asked to permit unlimited foreign ownership of broadcasting stations. Unlike other media, broadcasting stations are an integral part of the machinery of our democracy. Repeal of Section 310 would allow tyrannical foreign governments and those working in their service, to endorse candidates for public office, decide who can appear on a broadcast debate, and to administer candidates' access via equal time and lowest unit rate provisions of the law.

I speak as one who has been very sympathetic to GATT and NAFTA. I welcome foreign investment in most lines of commerce, to a degree which does not incur the pleasure of many of the members of the minority side of this Subcommittee.

But I do not support allowing foreign governments, or their nationals, to obtain domination over American broadcasting stations. For one thing, repeal of Section 310 of the Communications Act would interpose a major obstacle to increasing diversity. To the extent that broadcasting has been a business in which hard working managers have been able to use "sweat equity" to move into ownership, opening broadcast ownership to foreign buyers will bid up the price of these properties beyond reach.

Why am I more anxious when I learn about foreign ownership of American media outlets than when I hear about foreign ownership of an office building, a clothing store, or a candy manufacturer? Because it is one thing to invest in material things; it is another thing to control the exchange of information and ideas. Broadcasters transmit information which, in its aggregate form, contains ideas. While data can be reduced to electronic pulses, ideas are not a mere commodity.

Let me give you a concrete example, because my concerns are not merely hypothetical. About 20 years ago, the former South African government attempted to channel some 11 million dollars into the purchase of American media, including TV licenses. In fact, the FCC actually approved transfer of several stations to a front man for this enterprise; fortunately, the approval was cancelled before it could be consummated. The scandal ultimately brought down the Prime Minister, but it stands as a warning that foreign interests have a very real desire to propagandize the American electorate.

Finally, I want to address the biggest giveaway of all, what the broadcasters now call "spectrum flexibility." This is the most inspired euphemism since "major league replacement player." Under Section 301 of H.R. 1555, broadcasters would get a huge gift—enormous amounts of additional, valuable, publicly-owned spectrum. However, unlike spectrum allocated to broadcasters under the Communications Act of 1934, the public receives *nothing* in return.

In the early 1990's, the FCC reserved an extra chunk of public spectrum for the exclusive use of each existing television station owner to convert from "analog" to "digital" television technology. The express purpose of this action was to enable broadcasters to provide High Definition Television, which doubles the clarity of today's television picture.

But digital technology changed rapidly, and the broadcasters' business plans changed with it. They determined that it would be far more lucrative to provide non-HDTV pay-TV, paging and data services over the new spectrum. Thus, broadcasters are now proposing a scheme that would permit TV stations to provide one "advanced" television channel to the public, while leaving discretion to use the remainder of their transmissions for other program and non-program services as they wish. Broadcasters say that they will pay for the spectrum if they don't use it for broadcasting, but they don't want to allow anyone else to bid, or even to compete, for this right. And they don't want to pay extra for this exclusivity.

The speed with which these technological changes are happening, and the important public interest questions that are raised, argue for giving the FCC—the expert agency—more, and not less, latitude in this matter. There is no need for this Subcommittee to rush and simply give away this prime "beachfront property" to incumbent broadcasters. This summer, the Commission will commence a three-part proceeding to determine how to best allocate this spectrum. This will give industry and members of the public a much-needed opportunity to engage in a discussion over this critical issue. Broadcasters, who have recently enjoyed two of most lucrative years in recent memory, will not suffer.

As the FCC prepares to initiate these proceedings, Chairman Hundt has been raising important and legitimate questions as to whether broadcasters should give something back to the public for the exclusive right to this extra spectrum, like free time to political candidates. And there are other questions—and other options—to be considered. For example, if the Commission should choose to allocate the extra spectrum to broadcasters, why should they have complete editorial control over all the multiple program feeds that will be possible using digital technology? Why

shouldn't there be multiple programmers? The same lawyers who invented LMA's to circumvent the Communications Act's ownership provisions can design a condominium system to require that there be many voices, not one huge programming colossus, on each bitstream. In any event, the FCC and the public should, at the very least, have the ability to debate these options.

Of all the broadcast provisions in H.R. 1555, the allocation of additional broadcast spectrum is perhaps the most important to the future of television and to the continuing vitality of the public interest standard of the Communications Act. As the legislation now reads, however, broadcasters would get everything, and the public virtually nothing. There is no reason for this Subcommittee to act in haste. The allocation of this spectrum, and the obligations that accompany it, are decisions better left to the FCC.

Mr. FIELDS. Thank you.

Mr. Lund, there has been concern about the loss of localism if the ownership caps are lifted. This committee has great respect and affection for Mr. Reilly, but Mr. Reilly said something that could be of great concern to the committee, that the amendment as it is drafted threatens the foundation of localism. But then if I understood what you said, Mr. Eigner, you said that your investment actually improved localism in a market.

And so I would like for you and Mr. Lund to respond to what Mr. Reilly has said.

Mr. LUND. Well, the fear that raising the caps will diminish localism, I believe is a red herring. The television stations that CBS owns have as much local programming as any other station in their market.

Perhaps more importantly, it is called good business. The television stations program not only for their communities but also to attract an audience so they can sell time. There is no model under which a television station does better by expanding its network programming and diminishing its local programming. And that is true for the television stations that we own. They do better with expanded local programming, not with expanded network programming.

Mr. FIELDS. Mr. Eigner?

Mr. EIGNER. I agree with Mr. Lund. Our stations rely on the revenue that we get from the community and revenue is based on ratings. And what has been successful for our markets, and I believe all markets, is that the viewer wants local news, local flavor, and we program for the local market.

So by raising the caps and increasing group ownership should in no way detract from the station's desire to maintain its revenue base and deliver that local audience.

Mr. FIELDS. Mr. Chapman, let me ask you, you discuss localism in a little bit of a different way. But along the same line, how do you view lifting the caps relative to localism?

Mr. CHAPMAN. Mr. Chairman, our group—and I speak for this coalition, in terms of addressing the national caps, we have no position on this. I think this would better be answered by the gentlemen who are here.

But we, quite frankly, have no position on the national caps.

Mr. FIELDS. Mr. Reilly?

Mr. REILLY. Well, as you can see this, is a rather contentious issue amongst certain segments of the broadcasting industry. But I think if you have an opportunity speak to the rank and file mem-

bers of all of the affiliate associations, you will find on this issue overwhelming consensus on this issue.

The changes that we see taking place are driven more by economics than—that will result from changing the balance between national network-owned stations and local stations. The way the industry works today, there is a requirement that the networks and affiliates get together to come up with consensus programming, because the networks have to have essentially affiliate agreement to program those stations.

It would be in the economic interest certainly of the networks of the network side of those companies, let alone whoever may own them in the next iteration, to convert more and more of the programming to national programming because it is economically more feasible. The station may make more money by being local, but the overall company makes more money by being national and I think the economics drive toward more national programming.

Mr. FIELDS. Are you representing a unified affiliate position and/or an official affiliate position?

Mr. REILLY. The official position of NASA, which is the group of all three of the network affiliate stations, is unified on this position, yes, sir.

Mr. FIELDS. Mr. Lund, let me come back to you. Mr. Reilly also talked about if the Stearns amendment is passed, becomes part of law, that you would bypass affiliates with the terrible consequences that would ensue. Would you like to comment?

Mr. LUND. Well, I guess that is a little bit like have you stopped beating your wife. We have no plan and no interest in bypassing affiliates. The system works very well the way it is. We are happy with the network affiliate relationship.

And if I might go back just momentarily, Mr. Chairman, to speak to the economics again. The economics of the network station business are sometimes misunderstood.

The economics of owning a television network are somewhere akin to the economics of owning a supermarket. The margins are lousy. This is not a good business. The business is in the television station business.

Therefore, it makes no sense for a television network to pile more network programming on the stations it owns, which only diminishes that station's ability to do well in the community and sell time and be economically viable.

Mr. FIELDS. Thank you very much. I am going to recognize the ranking minority member, the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, very much. In a lot of ways the proposal before us is a very radical departure from the historical concern that our country has had about the power of a single media giant to control the agenda of a particular community.

As all of you know, in many cities in the United States today, there is one single dominant newspaper. Now, under this legislation, breaking all historical precedent, this bill will allow that newspaper to purchase two television stations in that community. That has never been allowed before.

It will allow them to purchase 10 or 12 radio stations in that community. Never been allowed before. It will allow them to pur-

chase the cable system in that single community. Never been allowed before. It will allow them to purchase the telephone system in that community. Never been allowed before.

Yes or no, is that a good idea or not? Down the line. Mr. Lund?

Mr. LUND. I think it is an impossibility. We are not going to have that kind of——

Mr. MARKEY. I asked you, is it a good idea or not?

Mr. LUND. A good idea for someone to own every single media outlet in that particular market?

Mr. MARKEY. Yes or no?

Mr. LUND. It would not be a good idea.

Mr. MARKEY. Thank you. Mr. Goodman?

Mr. GOODMAN. I don't believe that would be a good idea but I would——

Mr. MARKEY. Mr. Siegel?

Mr. SIEGEL. No.

Mr. MARKEY. Mr. Reilly?

Mr. REILLY. No.

Mr. MARKEY. Mr. Chapman?

Mr. CHAPMAN. There are safeguards here, obviously, with regard to local ownership of——

Mr. MARKEY. I am talking about the concentration of power. Yes or no?

Mr. CHAPMAN. No.

Mr. MARKEY. Mr. Eigner?

Mr. EIGNER. In terms of concentration power, no.

Mr. MARKEY. No.

Mr. Ferguson?

Mr. FERGUSON. In terms of concentration of power it would not happen because it is a bad idea.

Mr. MARKEY. No. Is it good public policy; yes or no?

Mr. FERGUSON. No.

Mr. MARKEY. No. Thank you.

Mr. Grossman?

Mr. GROSSMAN. No.

Mr. MARKEY. Mr. Schwartzman?

No. Okay. Thank you.

Next question. We are giving you a lot of benefits in this bill. A lot of people are concerned that it is going to further deteriorate the quality of television in this country. In the past week, the viewers in America concerned about their children watching television have seen Jerry Springer with a program, "Beautiful men who live as women;" Rolanda with, "Woman who use sex to control men;" Sally Jesse Raphael with, "Teenage girls with bad reputations;" Montel Williams with, "Cheating boyfriends;" Geraldo with, "Women who commit crimes against their men."

This is undermining, gentlemen, the moral fabric of this country. This programming running every single day into the minds of the children of this country is undermining the moral fabric of this country.

Let me ask you this, gentlemen: Do you believe that you have any responsibility to put children's television on your programming as a matter of law, and that we should have some minimum requirement for you to provide for alternative children's program-

ming sometime in the course of the day on your programming? Yes or no?

Should you have a minimum requirement, Mr. Lund?

Mr. LUND. I believe we have an obligation to put children's television programming on.

Mr. MARKEY. Should you have a legal requirement to do that?

Mr. LUND. Absolutely not.

Mr. MARKEY. No. Okay.

Mr. Goodman?

Mr. GOODMAN. No.

Mr. MARKEY. Mr. Siegel.

Mr. SIEGEL. No.

Mr. MARKEY. Thank you.

Mr. Reilly?

Mr. REILLY. No.

Mr. MARKEY. No.

Mr. Chapman?

Mr. CHAPMAN. No.

Mr. MARKEY. No.

Mr. Eigner.

Mr. EIGNER. No.

Mr. MARKEY. Mr. Ferguson?

Mr. SIEGEL. I am radio.

Mr. MARKEY. Radio.

Mr. Grossman?

Mr. GROSSMAN. We have an obligation, but no.

Mr. MARKEY. Mr. Schwartzman?

Mr. SCHWARTZMAN. Yes. And as I said in my written testimony, even if Congress were to legislate such a requirement, the renewal would be granted anyway.

Mr. MARKEY. Mr. Schwartzman, thank you.

Now, in terms of the incredible grants that are being given to you in terms of spectrum flexibility and other opportunities, do you believe that we should put any additional public interest responsibilities on you in order to ensure that the public does derive something from this additional concentration of power in the hands of the economic entities which you represent here today?

Mr. Lund?

Mr. LUND. I think we ought to do whatever we can do to make sure that free, over-the-air television continues as free, over-the-air universal television.

Mr. MARKEY. But no additional public interest responsibilities at all for you?

Mr. LUND. We have responsibilities and we take those responsibilities seriously.

Mr. MARKEY. Mr. Goodman?

Mr. GOODMAN. There are sufficient responsibilities at this point.

Mr. MARKEY. Mr. Siegel?

Mr. SIEGEL. I would agree.

Mr. MARKEY. Mr. Reilly?

Mr. REILLY. I agree, also.

Mr. MARKEY. Thank you.

Mr. Chapman?

Mr. CHAPMAN. I too agree.

Mr. MARKEY. Mr. Eigner?

Mr. EIGNER. I too.

Mr. MARKEY. Mr. Ferguson?

Mr. FERGUSON. Radio already has them.

Mr. MARKEY. Mr. Grossman.

Mr. GROSSMAN. I think the government has to control it to a certain degree to protect the lifeblood of over-the-air television.

Mr. MARKEY. Thank you, Mr. Grossman.

And I know your position, Mr. Schwartzman. And I thank you very much, Mr. Chairman. It is a nine-person panel and the only way that I am afraid I could have conducted my questioning.

Mr. FIELDS. There are two votes pending on the Floor. The committee stands in recess pending the return of the Chair.

[Brief recess.]

Mr. FIELDS. The subcommittee is called back to order.

The Chair will now recognize the distinguished gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. And I want to compliment you for having these hearings and I wanted to thank the distinguished panel, and particularly Mr. Dean Goodman who is from my home State of Florida.

Following Mr. Markey's presentation, I think many on this panel, and myself, have great compliments for the skills for which our good friend from Massachusetts brings questions to the Floor and how he couches them. But sometimes when he presents these questions, they are not really in touch with what we are talking about and we have people answering a question which is not really relevant to what we really have on before us.

So I think the thing I would like to do just as a quick brush, as I ask each one of you, do you think that this H.R. 1556 will bring this inordinate consolidation of power that Mr. Markey is talking about? Just yes or no. And I would like to start with Mr. Lund and go right down and give your answer.

Mr. LUND. I do not think——

Mr. STEARNS. Just a yes-or-no answer.

Mr. LUND. I have forgotten which way I am supposed to answer.

Mr. STEARNS. The answer is no.

Mr. LUND. No, it won't.

Mr. GOODMAN. No.

Mr. SIEGEL. No.

Mr. REILLY. Yes.

Mr. CHAPMAN. No.

Mr. EIGNER. No.

Mr. FERGUSON. No.

Mr. GROSSMAN. Yes.

Mr. SCHWARTZMAN. Yes.

Mr. STEARNS. Let me come back and ask each you, do we need safeguards in this area? We are trying to write a bill this weekend and I think it is important that we get down to brass tacks. Do we need safeguards? If each of you in maybe a sentence could address this. Any suggestions that you might have that could bring a focus on this problem?

Mr. LUND. No, I don't believe that we need safeguards. I believe the marketplace is a safeguard.

Mr. GOODMAN. I believe the marketplace is a safeguard. No, we don't need additional.

Mr. SIEGEL. In addition, you already have safeguards in the antitrust laws.

Mr. FIELDS. I think, if we could just ask Mr. Siegel if you would take the microphone, particularly for our stenographer and for the people that will be watching this by way of C-SPAN.

Mr. STEARNS. Mr. Siegel, go ahead.

Mr. SIEGEL. I thought maybe I was supposed to repeat that in the microphone. The answer is no, but I think the antitrust laws currently provide adequate safeguards.

Mr. STEARNS. Mr. Reilly.

Mr. REILLY. I think the answer is yes, because I believe the laws of economics will lead towards consolidation and reduction in the amount of diversity of programming there is in the United States.

And I think it is your obligation to make sure that the public airways are used in a way that provides for the greatest local and responsive service in their communities and I believe that the regulatory structure that we have got has done that and will continue to do that.

Mr. STEARNS. Mr. Chapman.

Mr. CHAPMAN. We support the provisions of the Stearns proposal.

Mr. STEARNS. Mr. Eigner?

Mr. EIGNER. I think we do have safeguards, but I believe that if we—that all media should be subject to the same safeguards both over the air and cable and phone companies.

Mr. STEARNS. Mr. Ferguson?

Mr. FERGUSON. Changing these rules will not change the fundamental fact that all radio stations have a license and are obligated to fulfill the rules and regulations of those licenses.

Mr. STEARNS. Mr. Grossman?

Mr. GROSSMAN. The concentration—really, the thing is localism and local ownership if possible. Today's economics allows money to funnel and the marketplace becomes the whole country. And you tend to dominate the media in one country—in one area with money coming in from another area. And true localism will disappear.

Mr. STEARNS. Mr. Schwartzman?

Mr. SCHWARTZMAN. We need to retain existing safeguards. I would observe that television and radio are thriving under current conditions. Today's Radio and Records, which I read on the way into the hearing today, reports radio stocks up on strong financial reports. The industry is thriving.

The industry has been able to consolidate and make these changes without any problems under existing law and there is no reason to change it.

Mr. STEARNS. Mr. Ferguson, did you want to add something to that?

Mr. FERGUSON. It is absolutely correct that new capital has come into radio because of the limited deregulation which has already occurred which, with all due respect to Mr. Schwartzman, he fought. The other thing is that the FCC was forced, in effect, to pass those duopoly rules because radio stations had already begun to develop LMA's in our business. And I am not sure that the FCC, on their

own, had LMA's not happened already, would have been moved to create the duopoly rules that are now creating a much more vibrant and responsive and locally responsive radio industry.

Mr. REILLY. May I just add one point about the prospect of using antitrust laws in what is basically a content-driven business is not appropriate. Antitrust law is designed to deal with enormous financial monopolies, not with monopolies of ideas, and I am not sure they would apply.

And in addition to which, the process for using those laws is remarkably inefficient and companies—it would take years and clog up the courts in the process of trying to adjudicate those differences.

Mr. STEARNS. Mr. Chairman, my time has expired. I would ask each of you, if you would submit written suggestions on how we could improve this, we would appreciate it. Particularly Mr. Reilly.

Mr. FIELDS. The gentleman from Pennsylvania, Mr. Klink.

Mr. KLINK. Thank you very much. I really am quite interested and I wish that we could go a full day with this panel, because I find some of these aspects very interesting.

Mr. Grossman, I just wanted to follow up on your point. I suppose, if I remember correctly from my days in broadcasting, that in your marketplace there are VHF stations that are owned by other entities.

Mr. GROSSMAN. Yes, sir, Miami, using my market, and we are in Florida——

Mr. KLINK. Who are the other companies that have major ownerships?

Mr. GROSSMAN. We have, including two stations in Key West, 15 full powered television stations.

Mr. KLINK. How many of those stations are carried on the local cable system?

Mr. GROSSMAN. All of them that are on the air. There is one not on the air and it is not on the local cable.

Mr. KLINK. Do you have any knowledge if they have to pay to be on that cable system.

Mr. GROSSMAN. No, sir.

Mr. KLINK. Obviously, not. But you are telling us that there is only one cable company that will talk to you, TCI, and it would cost you $1.7 million a year to lease your way on to the cable system; is that correct?

Mr. GROSSMAN. That is correct.

Mr. KLINK. I find that a little interesting, because we have had the small cable systems in here all this week and they said they want a level playing field. And we have had the small phone companies in here. They want a level playing field. And now we have got somebody who is an entrepreneur and wants to go into the local broadcasting.

And I noticed, by the way, too, that you said that you took TCI's published leased access rates and divided it by two. You are not trying to become a superstation and broadcast outside of the area that you would be licensed to serve?

Mr. GROSSMAN. As it happens, the Miami DMI is three counties about 250 miles long and basically most the population is in two of the three counties, Dade and Broward County. We are tuned and

we are an Hispanic station, which is about a half a million households.

Ninety percent of those households are in Dade County, 5 percent are in south Broward, and the other five are in the rest of the DMI.

With our low power, we cover 95 percent of the Hispanic population. I put a signal over my house, I have as good a picture as you are going to want. With all due respect to the full power, when you have 79 db at your receiver, it doesn't matter whether it is low power, high power, or in between power, you have a good picture, and that is it.

Mr. KLINK. What are you hearing from the cable operators?

Mr. GROSSMAN. Pardon?

Mr. KLINK. What are you hearing from the cable operators? Why don't they want to give you cable access?

Mr. GROSSMAN. The few that I have spoken with, they don't want to talk to you. They are not allowed to talk to me. They are full up. They don't want to add anything to their cable system. They are mad that they have to put the broadcasters on. They are disgusted with regulation, but they have salesmen out selling.

They are businesspeople and, in that sense, I can't blame them. They are out selling time. We have one cable system that has 69,000 homes, households. Fifty-five percent of those households are Hispanic.

They have three Hispanic television services on it. One is a must-carry from Key West, which fiber optics it up 150 miles and they are able to get on that system only because they are full power in Key West and it is in the DMI. Their power in Key West is about 4,000 watts and they only cover Key West, but they are on that cable system.

Okay. But 55 percent of the people want our service. We have over a thousand letters to that cable company. I can't even get the secretary to answer my calls. And I am willing to pay if she would talk to me. I am willing to do something. I have got the whole end of that county involved. Luckily, 60 percent of the people don't have the cable. So we are hollering.

Mr. KLINK. I will tell you, Mr. Grossman, what bothers me, and I am familiar because we have got, as you mentioned, Mr. Bruno in our area that I know. We had a recent startup. The situation is this: We are talking about deregulation. And we know in the banking industry and in the airline industry when we do deregulation, there can be unintended circumstances, if someone like yourself is locked out of the system and is not being allowed to participate.

I am wondering if there are not going to be other victims who are not allowed to compete on a playing field and I hope that, all around, we are creating a level playing field.

Mr. GROSSMAN. I think, from a practical point of view, for example, in Broadcasting & Cable last week, they had three pages of new programming sources that cable has. None of them provide any local service. The programming people that control the programming will sit in the head office in Pennsylvania, California, wherever, and control it. They don't trust their local people.

I guess they are similar to a lot of bankers. I have been on the other side where we didn't trust our junior officers and they have to come to us for everything. And it is the same thing. And the programming is not localized for the community.

Mr. KLINK. Chairman Fields, I thank you for including Mr. Grossman on the panel at my request. I appreciate it. And thank you for the cooperation you have given and I yield back my time.

Mr. FIELDS. The Chair thanks the gentleman.

The gentleman from Wisconsin, Mr. Klug.

Mr. KLUG. Thank you, Mr. Chairman.

First, an observation in the line of questioning if I can. And let me disagree with my colleague from Massachusetts that I don't think we need any further regulation in content or programming, whether it is children's programming or otherwise. As you get diversity in the marketplace, the marketplace will respond, just as we don't regulate content in newspapers or magazines.

Sports Illustrated was smart enough to design a Sports Illustrated for kids. And Mr. Hendricks, standing in the back of the room, from the Discovery Channel was smart enough to figure out that there was a niche for documentary programming. So I don't think we need to do any of that whatsoever.

Mr. Reilly, let me see if I can get you and Mr. Lund to pick a fight with each other. And since you are old friends, hopefully, it will be informative and entertaining. Mr. Lund earlier said that the network business is marginal. Running local television stations is pretty good. I suspect where the money really is is in generating programming.

And if you take all of those and essentially stack them and now you have got network operations running out of New York that not only control the national network but local stations. And, eventually, if we relax regulations further for programming, don't you essentially end up with a vertically integrated monopoly that not only dictates what times shows are going to be on but what shows are going to be on and increasingly put a squeeze on local affiliates to create any other kind of programming? And practically, as you suggested earlier I think, that you now have a situation where emerging networks are essentially trying to pull the ladder up behind them?

Mr. REILLY. I think that is the case. I think the economics drives you. Regardless of what the current business plans of a lot of our business partners may be at this point, times change. And I think if these regulations are relaxed, the economics will drive it towards the most efficient distribution system, which is to lock up and ensure 100 percent of the country as best you can so that you can invest money in programming in Hollywood or you can buy national sports and find the most cost-beneficial reward system.

When you look at what has happened to major league baseball in virtually every city in the country where it has moved primarily from broadcast television, free over-the-air television, to cable television, I think you see what kind of prospect programming will have in store.

I think the Olympics and other major sports events would follow. I think the prospect of combining the ability, for example, to combine multiple system operators along with networks, I think we

just heard a lesson in that where the economics of those cable systems are going to be to try to reserve the best programming for the cable subscribers, not for the over-the-air people who are getting it whether they buy cable or not.

Mr. KLUG. Mr. Lund, I want to follow up on the same line of questioning. I am not unsympathetic with your concerns that the networks have the flexibility to buy more stations, given the kind of changes we are seeing elsewhere in the marketplace. But if you look in Washington, DC, where we have five over-the-air broadcasters ABC, CBS, NBC affiliates, FOX and Paramount, if I run a production company in California, where do I go to sell my programming if essentially you and your other network ownerships have managed to lock up the programming stream? Aren't folks fundamentally locked out because you control the pipeline from the beginning to the end?

Mr. LUND. Well, we don't control very much of any one television station's time. There is a limited amount of time that we control. And I use control loosely—that the stations carry from the television network during the course of the day. There are 24 hours in the day and we provide some of the programming.

More importantly, or just as importantly, there is no inhibition on the part of any network affiliate that I am familiar with to preempt the network's programming if they feel that another program will better serve their community, will make more money, or will ultimately be better for their television station.

Mr. KLUG. Mr. Lund, I beg to differ. If you look, for example—and I think Mr. Reilly hits the nail on the head—at the increasing difficulty of major league sports teams to find an over-the-air commercial broadcaster to carry it. And obviously, given the problems CBS had with the shift to FOX ownership, people now have tougher affiliate network agreements.

In Wisconsin, for example, the people who put together the state boy's basketball tournament found, to their astonishment, they could not get it aired in the Milwaukee market because people had such tough binding negotiating agreements. The Milwaukee Brewers are having the same problem, right. The Milwaukee Bucks are about to find the same problem. Now, please, explain that discrepancy in terms of what you just said in terms of local flexibility.

Mr. LUND. I do not think there is a discrepancy there. Many television stations around America carry local football or local basketball or local baseball. We own television stations that carry local baseball.

We own a television station in Minneapolis that has a contract with the Minnesota Twins. I think if we talked to all the broadcasters around the country, this is not economically—this has not been a very good business for the broadcasters. It is not a question of not wanting to carry baseball because of the network. It just hasn't been a very good business.

Mr. KLUG. Thank you.

Mr. FIELDS. I thank the gentleman. The Chair will recognize the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. And a welcome to each one of the panelists.

Mr. Siegel, I noticed that your written testimony doesn't mention the issue of relaxing foreign ownership restrictions for U.S. broadcast stations and networks. What is your position on this issue? And do you believe there should be reciprocity with foreign companies before permitting them to buy U.S. networks and stations?

And it might be well just to go through the panel and hear the views of the others as well. I think this is a very important issue and I see an increasing activity on the part of this country where I think we really give ourselves away. And here we are in the earliest shapings of a new public policy for a new century. This is an important one.

Could you comment on that including remarks from the rest of the gentlemen? And I hope maybe in upcoming Congresses that we will see women in leadership positions in broadcast television. I can't help but notice that there aren't any, at least on this panel.

Mr. SIEGEL. In regards to women in leadership in broadcasting, we at the United Paramount Network have as chairman and CEO Lucy Sulhaney. But in terms of foreign ownership, we believe that anything that will increase the number of buyers for television stations and television station owners, that that will increase the value of the stations——

Ms. ESHOO. What does that mean, though? Do you support that there be reciprocity or not?

Mr. SIEGEL. In terms of foreign ownership first, we certainly support the notion of foreign ownership, and the reason for that is that the increase in the potential owners will increase the value of our assets.

In terms of reciprocity, we, you know, see that that is—we are indifferent. We are supportive of the issue of foreign ownership. If it means foreign ownership with reciprocity, that is fine with us.

In terms of issue of foreign ownership in the total scheme of things, our major concerns are the issues relating to safeguards and flexibility.

Mr. LUND. Well, I think that is a significant public policy issue that is difficult to deal with. But, yes, I think reciprocity is important. I think that that is something that ought to be considered.

Ms. ESHOO. Thank you.

Mr. GOODMAN. We concur. We support foreign ownership with reciprocity.

Ms. ESHOO. Thank you.

Mr. Reilly?

Mr. REILLY. I have to say at this point I have to take off my various association hats, because the associations I deal with don't have a position on that.

I personally think it is a dangerous issue or a questionable issue. And I certainly wouldn't entertain it without reciprocity as a possible trade chip so that American media interests can extend their holdings overseas. And that is the necessary card for admission. I suppose that may be a reasonable public policy trade-off.

Mr. CHAPMAN. I too must not speak for the local ownership coalition, but LIN Television has previously gone on record and testified before the Congress in support of lifting the 25 percent cap on foreign ownership with reciprocity.

Mr. EIGNER. On behalf of INTV, we really don't have a formal policy. Speaking for Tribune, we also do not have a policy, although I do feel that the more players there are in the market, that increases—with the limited supply of stations, it does increase the value of our businesses.

Mr. FERGUSON. I cannot——

Ms. ESHOO. Strictly reciprocity as well?

Mr. EIGNER. Yes.

Mr. FERGUSON. I cannot speak for the radio industry on this issue, but our company this year brought the first country music radio station to London, England. It was the first country music station in Europe full-time, an investment we made there and it was a wonderful broadening experience for us. And on that basis, personally, we would support reciprocity.

Ms. ESHOO. For the British as well.

Mr. GROSSMAN. I would support it, if we had reciprocity and the country we had reciprocity with had the first amendment.

Mr. SCHWARTZMAN. I am sorry. Representative Eshoo, first, I would note that H.R. 1555 will authorize changes in license renewals which will permit greater noncompliance with the FCC EEO rules and decrease the pressure to employ women in the broadcasting industry.

With respect to the question you asked about foreign ownership, there is a difference between ownership and control and investment. I described in my written testimony how section 310 of the Communications Act stopped the former white South African government from attempting to take control of American television stations with express purpose of propagandizing the American public in favor of apartheid about 20 years ago.

There is no problem investing. Indeed, communications lawyers in Washington regularly hold seminars and counsel their clients on how to get foreign investment into broadcasting. Japanese banks, German banks are among the major investment groups investing in broadcasting.

As we saw last week, up to 99 percent of one of the largest broadcasting companies in the country has been effectively controlled by Australian interests. There is no problem getting investment. And if investment is needed, it is possible and reciprocity should be afforded to that degree.

I don't think that should extend to control. I don't think we should turn over the control of the content of broadcasting stations which administer the equal time laws which are literally part of the electoral process, should not be controlled by foreign interests or foreign governments.

Ms. ESHOO. Thank you.

Thank you, Mr. Chairman.

Mr. FIELDS. The Chair now recognizes the distinguished Vice Chairman of the subcommittee, Mr. Oxley of Ohio.

Mr. OXLEY. Thank you, Mr. Chairman.

And Mr. Schwartzman, you are concerned about foreigners having any control over content of American television. Should the Federal Government, therefore, ensure that taxpayer money not fund foreign produced programming and documentaries on public television?

Mr. SCHWARTZMAN. As long as the licensee of a public television station is an American entity, I have confidence in their ability and their accountability to the Federal Communications Commission. The same is true for any foreign financed or invested programming.

What we are talking about here is licensing control of scarce public airways and placing somebody who is going to be responsible as a matter of law in charge of making those content decisions.

Mr. OXLEY. Does it give you concern that virtually all of the Hollywood studios are owned by foreign interests?

Mr. SCHWARTZMAN. No.

Mr. OXLEY. Why not?

Mr. SCHWARTZMAN. I have no problem with free trade. I have no problem with investment. We are the OPEC of programing in this world. We produce the best programming and it doesn't matter who owns it.

What I care about is who makes the editorial decisions. And we are licensing airways under schemes that make sure that somebody must account to the American people public for the programming decisions that are made and if they are foreign motion picture studios that are producing the programming, I have confidence that American citizens licensed by the Federal Communications Commission will not run programming that is inappropriate.

Mr. OXLEY. That would be the same with newspapers, then?

Mr. SCHWARTZMAN. Newspapers aren't licensed.

Mr. OXLEY. But they still have the ability to influence public opinion.

Mr. SCHWARTZMAN. Yes, they do.

Mr. OXLEY. But have you no problem with that?

Mr. SCHWARTZMAN. Newspapers are not licensed. If Reverend Moon wants to get a television license in Washington, he owns a newspaper. I don't mind him owning a newspaper; I won't mind if he owned a television station.

Mr. OXLEY. You are a strong proponent of diversity; isn't that correct?

Mr. SCHWARTZMAN. Yes. And I am sure you are, too.

Mr. OXLEY. Yes. And why wouldn't a foreign-owned station contribute to diversity?

Mr. SCHWARTZMAN. A foreign-owned station might well contribute to diversity. It might also——

Mr. OXLEY. You stated that you were afraid that Americans were being exposed to more foreign ideas and cultures. Do you object to Spanish stations on television?

Mr. SCHWARTZMAN. I am not sure I understand your question.

Mr. OXLEY. You have some concern—apparently the concern was in this apocryphal situation where you described the fact that South Africa might try to buy up all of the major networks, that if you were concerned about this, then why wouldn't you be concerned about Spanish stations?

Mr. SCHWARTZMAN. What confuses me is that a large proportion of Americans are Spanish speaking and many of them are American citizens.

Mr. OXLEY. So you support that concept?

Mr. SCHWARTZMAN. I support American citizens being licensed to hold TV stations and I support American citizens carrying pro-

gramming produced by foreign entities, because I have confidence that they are going to obey American laws in how they do it.

Mr. OXLEY. Your testimony was that 310(b) actually protected Americans from South Africans buying American broadcasting stations?

Mr. SCHWARTZMAN. Yes. It literally brought down the South African government in 1974. It was known as Moldergate. You shouldn't be talking about repealing section 310 if you are not familiar with that history.

There was an attempt made to buy the Washington Star and an attempt to buy television stations in Michigan through money funneled through Switzerland by the South African government. That is the kind of problem that can arise. Fortunately, section 310 protected us.

Mr. OXLEY. So it would only have been the people in Michigan that would be subjected to that kind of a propaganda, but all of the other 49 States would have been saved?

Mr. SCHWARTZMAN. I am sure Mr. Dingell will be glad to know that you are not worried about the people of Michigan.

Mr. OXLEY. Which brings us back, of course, to diversity and the incredible explosion of media outlets, which essentially makes 3(10)B an anachronism at best. What about Spanish culture? What about Canadian culture? Do we like to export American culture, but we are concerned about importing foreign culture?

Mr. SCHWARTZMAN. I don't think that Americans need to own foreign broadcasting stations in order to export their programming to it. We have been doing pretty well for many, many years.

Mr. OXLEY. Should they be denied the ability to do so?

Mr. SCHWARTZMAN. I don't think that Americans need to own foreign broadcasting stations any more than I think that nonAmerican citizens need to own American broadcasting stations. It certainly has not impeded us from having a vibrant export business in television programming.

Mr. FIELDS. We are getting close to getting good programming. Your answer is as deftly done as Mr. Markey asked questions.

Mr. Manton of New York.

Mr. MANTON. Thank you, Mr. Chairman. My first question is for Mr. Lund, and I think, Mr. Lund, you would agree that broadcasting has changed dramatically since the 1950's when the original three networks were unchallenged giants of the television world.

There is a vibrant competition in the video marketplace. As such, the current broadcast ownership restrictions seem to be antiquated, archaic and no longer justified.

However, some have argued that the repeal or even the modest relaxation of the broadcast ownership caps contained in the bill introduced by Mr. Stearns would threaten localism, but today 72 percent of broadcast stations are group-owned and 95 percent of those stations are owned by a company outside of the State of the local licensee.

Has localism suffered in the hundreds of stations that are owned by a nonlocal entity?

Mr. LUND. I said the other day in a discussion what do the Washington Post, the New York Times, McGraw-Hill, Cox, Hearst and The American Family Life Insurance Company have in com-

mon with CBS? The answer is they all own television stations in the top 10 markets. They are all group owners. It is inconceivable, and I would think that you would agree, that CBS has an ability to outnegotiate or deal heavy-handedly with any of these major corporations.

Mr. MANTON. As a New Yorker, I certainly can testify that New York broadcasters have strong and fiercely competitive local news operations and public interest programmings.

Do you believe that diversity and competition exist in the area of local news and information programming in New York and could any of the stations you own or operate in New York or anywhere in the country survive if you fail to satisfy the demands of a community for local programming?

Mr. LUND. As we said before, localism is good business. There is no blueprint under which you can do better with expanded network programming than with local programming. All of the markets in which we own television stations are fiercely locally competitive.

Mr. MANTON. Thank you, Mr. Lund.

Mr. Eigner, as we move on to a menu-driven video platform, I am convinced it could become difficult to simply locate basic over-the-air broadcast channels. H.R. 1555 includes provisions to prevent navigational discrimination.

Do you think these provisions are sufficient to ensure that customers will easily be able to select from among all programming provided on the video platform?

Mr. EIGNER. I can't say we are sure about it until we have a better feel for the must-carry and retransmission rules that are currently being contested within the courts. Without those rules in place, I am not sure that we feel comfortable with the video platform laws as the way they are outlined.

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

Mr. FIELDS. The Chair thanks the gentleman. The Chair will now recognize the gentleman from California, Mr. Cox.

Mr. COX. Thank you, Mr. Chairman. I would like to direct my questions to Mr. Schwartzman because I read with interest your testimony about the spectrum. Is it your view that the government, the FCC or someone else should exercise greater editorial control over what appears on the broadcast spectrum?

Mr. SCHWARTZMAN. No.

Mr. COX. And if we do not exercise editorial control, and I tend to agree with you that that is not particularly workable, how do we determine how to use the spectrum?

Mr. SCHWARTZMAN. What we do is we select individuals based on their character going in. We reverse the trend, which has been to allow convicted criminals, people with past records of violation of the law from getting broadcasting licenses in the first place and controlling the programming on those stations.

Once we select licensees who are of good character and sound qualifications, then we get out of the way and count on them to obey the laws, count on them to be truthful with the FCC and count on them to exercise their trusteeship responsibly.

Mr. COX. You criticized what you called the big giveaway of a huge hunk of spectrum that was set aside for high-definition tele-

vision. What would you have done? What would you do with that spectrum?

Mr. SCHWARTZMAN. I would permit existing broadcasters to mount transmitters and be proprietors of a condominium bit stream, which they would have one programming signal. And if they permitted multiple channel program feeds or other kinds of mass media programming, I would want them to lease at a fair price, along the lines of cable-leased access, that to diverse voices so that minority viewpoints, people from segments of the community whose voices have not adequately been heard could have editorial control over those additional program feeds and I also would require that that be made available to public broadcasting at incremental rates.

Mr. COX. What you just said sounds itself like editorial control.

Mr. SCHWARTZMAN. No, you would be selecting licensees who would in turn——

Mr. COX. Based on what it is you anticipate they are going to say.

Mr. SCHWARTZMAN. Well, this would be up to the broadcaster to select the licensees, the leasees in the situation I am describing and they in turn would be accountable to the FCC for what was broadcast. That is exactly what LMA's are, which I gather you have been supporting in your support of this legislation.

Mr. COX. I am just interested because you say a huge chunk of spectrum was set aside for high-definition TV, but it is increasingly clear that rapidly developing technology permits the use of this beach-front property for other uses, and the other uses——

Mr. SCHWARTZMAN. Are——

Mr. COX. [continuing] sound similar to what it is you just proposed, another use that is not HDTV.

Mr. SCHWARTZMAN. Well, the other uses could be NTSC-type of programming, as well as paging and all sorts of other services, and I strongly support flexible use. What you are being asked to enact in this legislation is giving that spectrum exclusively and entirely to existing licensed broadcasters simply because they are already there and extracting from them no additional service to the public in exchange and that is what I oppose.

Mr. COX. You might just as well, it strikes me, infer a different lesson, which is that since no one has yet used the spectrum for HDTV, perhaps the FCC was unable or inadequate to the task of predicting where the market was going to go, and maybe we ought to try to get out of that business altogether and let the market increasingly allocate that spectrum.

Mr. SCHWARTZMAN. I think that the FCC, under an advisory committee which has been administered by a distinguished Republican, former FCC Chairman Richard Wiley, has been far ahead of the rest of the world in figuring out the best way to use this spectrum and it is a testament to the FCC's process that the United States is coming out on top. It is a testament to giving the FCC the flexibility and the latitude to administer the spectrum rather than Congress micromanaging it.

Mr. COX. It does sound extraordinarily regulatory and extraordinarily like content control to this Member.

Mr. SCHWARTZMAN. Well, I am sure Mr. Wiley will be glad to discuss it with you.

Mr. COX. I yield back.

Mr. FIELDS. I thank the gentlemen.

The Chair now recognizes the gentleman from Texas, Mr. Bryant.

Mr. BRYANT. Excuse me, Mr. Chairman. I really have a hard time fashioning a question that isn't in effect just an expression of my own opinion after having heard the early questions this morning.

Mr. Markey's questioning of all nine of you twice really pretty much answered all of the basic questions in many respects. I would like, however, to at least probe a little bit this idea that if we take all the rules and regulations off, we can rely upon the goodwill of the institutions that own all these licenses to serve the public interest.

It is a fact when the FCC eliminated the requirements with regard to children's television that children's programming went straight down. When they got rid of the fairness doctrine, Mr. Ferguson, your industry went to enormous excesses putting—I am talking about the regular station owners—putting programming on the air that was totally one-sided and I really think by the most objective analyses has gone far beyond the range of fairness and so that one side is being told and not the other side.

I think there have been some pretty bad consequences as a result of that. Time after time, when we take all the regulations off, these institutions have gone to great excess and I don't know whether we can blame you for it. It bothers me very much, but you have a sworn obligation to try to serve the best interests of your stockholders.

Now, if we start with that, then we have to assume you are going to do whatever it takes to maximize value for your stockholders, which means that you are going to push these things to the limit just as you have in many areas such as programming.

The fact is I think most Americans feel somewhat powerless about the nature of a good bit of the programming that is coming into their homes today that the kids are seeing and no matter what you say to us today, well, "they ought not to let their kids watch it if they don't want their kids to see it." We can't help it. We are working. People are working out there. They are not hanging around the TV checking these programs out and you shouldn't have to censor primetime television.

In view of that, I would be happy to hear you refute the premise of my question. The question itself is how can you ask us to allow you to be able to pursue unrestrained as many combinations and as many take-overs and as many conglomerations of media power such as were described by Chairman Markey as this bill would permit?

I will let Mr. Lund begin answering the question.

Mr. LUND. Well, I don't want to fall back on an old saw, Congressman, and simply say that there are so many signals in the marketplace that the public will be well-served, although I think that is indeed the case.

We, like you, wrestle on a daily basis with our obligation to provide good programming. In the area of children's programming, our frustrations, and Congressman Markey and I have talked about this before, our frustrations, it may seem hard to believe, are as great as yours. We have tried, as have the other networks and many of the other television stations and my colleagues here, to provide, quote, "educational programming" to the children of America and with a minimal degree of success to get them to watch it.

We provide on the CBS television network a show called, "Beekman's Place," which is clearly an educational show in a good time period. We promote it and it is very difficult for that program to get an audience. So while this may not be an answer to your question, I can only tell you that we wrestle with these issues on a daily basis.

How do we provide better programming to the American public? Although I would say at the same time while we wrestle with it, I don't want you to infer that we are apologizing for it, because I think by and large the programming that is provided by the television broadcasters of America is good programming.

Mr. BRYANT. Well, I don't want to in any way deny the great, good things that you all have done along the way. I think it is fair to say, though, that, first of all, our job is to worry about the problems and, second, there have been enormous problems that have been created by the fact that you guys have been willing to go to almost any lengths to compete for market share.

It is up to us to see to it that competitors in the market don't have to go beyond the bounds of what is in the public interest in order to get market share and that is really what we are talking about up here. I could talk about the type of programming that is on.

We had a station in our market that very courageously did not air a very popular television program only to see its competitor take the same program and put it on the air. I don't see anybody explaining to me why we shouldn't just expect that you guys are going to do just absolutely the worst that is necessary to win this big battle if we take all these rules off, because in many respects that is what you have done in the past.

Mr. LUND. My colleagues can answer, but as Congressman Markey mentioned before a "Jerrry Springer Show," that he thought was awful, a "Sally Jessie Raphael Show" that he thought was awful. These, don't forget, are television shows that are syndicated and are available to be purchased by any given television station.

Mr. BRYANT. So what? They are purchasing them and putting them on the air. My time is up.

Mr. FERGUSON. Can I speak to the radio aspect of that?

Mr. FIELDS. Please.

Mr. FERGUSON. The radio industry was accused 10 or 15 years ago of running talk shows that were all too liberal. Now it is being accused of running talk shows that are all too conservative.

Mr. BRYANT. Let me jump in right there and say I think it is preposterous to suggest that what is going on right now has any comparison to whatever was happening 15 years ago. I jump in on you because I am about to be gaveled out of time here. I think it is clear the excesses of today are——

Mr. FERGUSON. My main point is there are 11,000 radio stations in this country and they provide a wide variety of views. One of the concerns that people have is that these rules will eliminate diversity of voices and choices. You know, you may not agree with some of the things that you hear, but the fact of the matter is that duopolization of radio stations has not silenced the number of voices. These just happen——

Mr. BRYANT. Mr. Ferguson, do you think you have an obligation to put the other side on the air?

Mr. FERGUSON. We do.

Mr. BRYANT. To put both sides on the air?

Mr. FERGUSON. We do.

Mr. BRYANT. I refute that. I don't think you can find any objective data to support that and I don't think anybody believes that.

Mr. FERGUSON. If you listen to KRNG in Tulsa or WSYR in Syracuse or WDBO in Orlando, significant news talk stations that we run, you will hear a multiplicity of views on that station.

Mr. BRYANT. You have one side that is on all day long every day all over the country—about 500 stations representing only one side of the question. I don't think that is fair.

Mr. FERGUSON. That is just not the fact.

Mr. FIELDS. Mr. Chapman, do you want to respond?

Mr. CHAPMAN. Mr. Congressman, I would like to address the children's programming. LIN Television 3 years ago in partnership with Disney produced a television program called, "Bill Nye, The Science Guy" and we put a million dollars in that and a million dollars was a lot of money. It was probably about 5 percent of the profits of LIN Television to produce that program.

It has become a model in terms of serving children's needs, both syndicated across the country on commercial television stations and here and across the country on PBS. We have never made a dime out of that. We didn't do it because the government told us to do it. We did it because we believed in our obligation.

Mr. FIELDS. The gentleman's time has expired. The gentleman from Ohio, Mr. Gillmor.

Mr. GILLMOR. Thank you, Mr. Chairman. I have a couple of questions for Mr. Lund which are fairly open-ended.

What are the most important priorities for you in terms of Federal Government action, financial interest, syndication rules, relief on the ownership restrictions or something else? That is a softball.

Mr. LUND. That is a softball. We would like them all.

Mr. GILLMOR. There is not one of those that is more important than the other?

Mr. LUND. I think they are all important for different reasons.

Mr. GILLMOR. Let me ask you in terms of your view of the future of free broadcasting. Do you think there is any threat to that in the future? We generally take network programming for granted now. Do you believe that the public will expect free broadcasting to continue to be widely available in the future?

Mr. LUND. Well, I think that the public expects that a free broadcasting system is going to be widely available. I think if this committee goes forward as we hope it does then the future of free broadcasting is, if not assured, at least has a better shot.

Mr. GILLMOR. Thank you. Thank you, Mr. Chairman.

Mr. FIELDS. Do you want to respond, Mr. Reilly?

Mr. REILLY. I would just like to say that television station affiliates have been the support of our networks in terms of relaxation of the financial interests in syndication rules. And we supported that all through the process and we feel that we have been supportive of trying to help the networks stay viable so that we think this balance between a national program service and our local distribution and program service serves the public interest by allowing that kind of programming, nationally produced programming coupled with a local view of what our publics want is the best way to try and serve the public interest.

Mr. SIEGEL. If I may just take 1 minute and respond to the question of whether free over-the-air television is in jeopardy, my answer to that question, Mr. Congressman, would be, yes, and the reason is that every other telecommunications industry is looking to our sole revenue stream, advertising, video advertising to enhance their businesses. And they intend by this legislation helping that to invade the video marketplace.

Our position is that is fine and we applaud this committee for providing adequate safeguards to—in our view, to protect us in that regard and also applaud the committee's bill in that it enables us to transition into the digital world, which is the world of tomorrow so that we similarly not only are protected from our—in our existing areas, but we are similarly going to be able to provide competition in the future areas. And that is imperative. Otherwise the basic business of free television is severely in jeopardy and we thank you for the inclusion and the provisions in this bill.

Mr. FIELDS. The gentleman's time has expired. The Chair will now recognize the gentleman from Texas, Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman.

I suppose that my interest is in seeing the widest possible range of programming made available to the greatest number of Americans. And that is an idealistic approach, I am sure. And follows that I substituted at SMU under Dr. Brooks, whose writing says the greatest good for the greatest number and that would work if we really lived in an ideal world where we presume decency and we presume fairness and we presume competition and sadly that is when the government has to get in when we have some greed in those places.

By the way, Mr. Schwartzman, I don't have any questions for you.

Yesterday, I believe, when one of the Bell Company panelists was addressing this group, I think in my question to him he answered he supported the Chairman's bill. But he had 4 or 5 pages of objections to it. And I see that here, for example, cable operators who I understand, Mr. Chairman, support your bill basically and they have been innovative through market-wide interconnects and clustering. They are powerful competitors for advertisers and I guess to Mr. Chapman I would ask this, with advertising being your sole source, I suppose, of revenue, how would the relaxation—you know local marketing arrangements have come to your aid somewhat, have they not?

In this bill, if we relax the duopoly rule, how would that benefit you or how would that benefit marginal or distressed stations and give me the other side of it, too.

Mr. CHAPMAN. Let me speak from my own experience, my company's experience. And it happens to be your hometown in Dallas-Fort Worth, I think channel 39 licensee is Pat Robertson. Last Friday night, as you know, there was an awful storm in Fort Worth and we were off the air with channel 5 for a period of time and we were able to switch that coverage over to channel 39. And as you know, we have an extensive news and weather forecasting department over at channel 5. Had we not had the ability to do this, quite frankly we would not be able to provide this important information to the marketplace.

It is through combining our resources that channel 39 in Dallas was, quite frankly, pulled out of an economic distress. At the time we became involved with them, back in June, the station had relegated its news coverage to 2-minute capsules and, as you know, at 7 o'clock tonight on channel 39 you are going to find half-hour news. Same thing at midnight again. It was through the combined efforts that we were able to do that.

On election night, for the first time in Dallas, Texas, we were able to do wall-to-wall prime time coverage continuously in the market on channel 39. These are good examples, I think, of how the marketplace actually benefits from the dual ownership and in this case the LMA, but the dual operation of two properties within the same market. I can give you other examples, but this was probably the one that you might recognize the best coming from the marketplace.

The other advantage, quite frankly, is to the industry as a whole. Now, whatever you think about America's obsession with the O.J. Simpson trial coverage, it is reality. People have a great deal of interest in that. It has driven cable audiences, quite frankly, higher. In Dallas, Texas, we have been covering that wall to wall. Again, this coverage, and the marketplace has embraced that through viewership.

Had we not had the ability to do the two of these together, quite frankly, this simply would not happen. So I believe it is one it was obviously good for over-the-air television in Dallas. Only 50 percent, as you know, only 50 percent of the market is cable so those other people would not be able to receive the coverage. And quite frankly, because they were able to see it free on over-the-air television, they did not have to subscribe or pay a cable operator for that service.

Mr. HALL. Mr. Reilly.

Mr. REILLY. The local television market, television business is really governed by two rules: The rules of physics and the rules of economics. Each market is capable of supporting X number of television stations because of the spectrum that is allocated that works in that market and they don't necessarily coincide. The economics may not support that. And in cases, as Gary has mentioned, where allowing a financially strapped television station to be consolidated up with a stronger one so that you can keep that voice on the air, it seems to me, it is in the public's interest to make sure that spectrum is used to provide diversity for the public interest, but to

draw from that to go all the within to the notion that any two television stations financially strong as they may be, should be allowed to combine and reduce the amount of diversity in the market, I think, is a very different story.

Mr. HALL. My time has expired. I thank the Chair.

Mr. FIELDS. I thank the gentleman for yielding back. The gentleman from New York, Mr. Paxon.

Mr. PAXON. Thank you, Mr. Chairman. I just want to note that philosophically I believe there should be no national broadcast ownership limit. After all, we don't limit AT&T to 25 percent of the Nation's long distance or TCI, for example, to 25 percent of the cable connections. I would just like to ask a couple of members of the panel, first, Mr. Siegel, what is your view on the ownership limits and your thoughts on this matter?

Mr. SIEGEL. Well, in terms of ownership limits, we think that there should be some change, whether it is the 35 to the 50. We think it should be incremental, but in terms of the issue that you raise, the point being that there is no constraint on Time Warner, there is no constraint on TCI. There is no constraint on Bell Atlantic. There is no constraint on USSB.

We are struggling in a world right now where our competitors are going to have a broader base upon which to spread their costs. And it is our view that there should be some change in the ownership limits. Whether 35 to 50 is the right change we are supportive of that, whether it is slower incremental grouping to that, we are supportive of that.

Mr. PAXON. Thank you very much. I have a second question and this I would like to direct to Mr. Lund. There has been a lot of talk about network and affiliate relations as part of the debate on ownership. I have just two or three quick questions. First of all, what powers from your perspective do the networks and affiliates have over one another and then who do you believe has the upper hand in this relationship?

Mr. LUND. Well, it always appears, Congressman, that it is a standoff. There doesn't ever seem to be a situation where one of us has more power over the other one. The affiliates always maintain and retain the right to preempt programming that they either don't feel serves their market or economically don't like as well as something else. The balance of power is—has historically been in both parties hands on an equal basis.

Mr. PAXON. I know that the question was raised earlier. There has been some discussion on this, but, again, are your affiliates required to air your programming?

Mr. LUND. No. No. They always have the right to not air network programming.

Mr. PAXON. Mr. Reilly, would you care to address these questions?

Mr. REILLY. Yes, Congressman. We do have the right to preempt local—network programming. But the fact of the matter is there are significant economic restrictions against that practice. And each one of—at least the bulk of the networks in their new network affiliation agreements have strengthened their economic incentive for us not to preempt programs and so while it is a right that we have and I believe it serves a significant value because the net-

works do, in fact, have to consult with their network affiliates and they have to in some ways listen to what our objectives are, the fact of the matter is wholesale economic preemption is not a viable option if you want to remain in business in the long term.

So I think the balance, as it stands at the moment with the networks securing 25 percent of the Nation's audience through joint ventures and other relations with other companies taking that up to as far as 35 or in Fox's case almost 40, coupled with the remaining number of affiliates creates a balance that moves programming a direction that is in the total national interest.

Mr. PAXON. I am just curious, Mr. Lund?

Mr. LUND. Ed mentions that there is an economic disadvantage to preempting network programming. There is indeed, because we pay in aggregate about $150 million to our affiliates to carry our programming. However, the facts of life are that any network affiliate will make more money by preempting an hour or a half-hour or some period of network programming foregoing that network compensation and selling spots in the replacement programming.

Last week, for example, in the middle of the hotly contested May schemes, as the media critics like to call it, a top 15-market CBS affiliation decided that on Sunday night they could do economically better by preempting, "Ghost," a movie that we paid a reasonable amount of money for and were running up against, "Jurassic Park," with little success I might add, but they thought they would do better economically by preempting "Ghost" and running some movie in their inventory. They did it. There was nothing we could do about it. They made more money.

Mr. PAXON. My time has expired. Thank you very much. Yield back.

Mr. FIELDS. I appreciate the gentleman yielding back. The Chair now recognizes the gentleman from New York, Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman. You know we have heard a lot this morning about diversity. And, of course, I think that diversity is important, but when I think in terms of many people that are left out because of no access, no access to capital, especially in terms of the minority community in the possibility of owning a radio station or a TV station has been diminished because of the Minority Tax Certificate Program has been eliminated, and also when I think about the fact that when you see some of the programs that are on and in terms of how people in the minority community are being projected, and I find it very disturbing.

And when I hear the fact that you talk about the ratings and I will be honest with you. I have been now for the last 2½, almost now 3 years now, I have been trying to find one black family that has a Nielsen box and I have not been able to do that and I now have others in the process of also looking and for the ratings to see in terms of why certain programs come on and go right off and you know we feel that basically anything that has any balance, any kind of positive programming for some reason or another doesn't stay on too long and if it comes on it doesn't stay. And most of the time it doesn't come. And, of course, when we talk about diversity, do you think about these kind of things in your diversity in terms

of when you talk about in terms of projecting people in a balanced kind of way?

I would like to, let me start with you, maybe, Mr. Lund and then run down the line. I think it is fair to ask—to say it to you because I must admit that, "Under One Roof," is something that I am very proud of and I think everybody I have talked to in my community, the black community, in particular, is very excited about that program in terms of—they think it has some balance, so I think the question that I raised, I raise it to you because at least you are doing something positive.

Mr. LUND. Well, thank you. We are proud of the show, too, Congressman. It is a positive portrayal of African-Americans and I would share your wonderment and your concern with whether or not the minority community is effectively represented. I don't know. I am not the statistician or the person to ask, but we do in our deliberations for network programming spend a lot of time talking about diversity and trying to find a balance in the programming ethnically, racially.

Mr. REILLY. Well, we certainly consider that in terms of the local programming that we produce, primarily news in terms of the people that represent us, the people that do the reporting, the people that anchor or news casts and it is certainly a consideration of ours, yes, sir.

Mr. CHAPMAN. Most definitely we do, both in terms of programming, also we believe that our position with regard to the ownership coalition one of the 16 companies that are part of this coalition, is Granite Broadcasting, the largest African-American owner of television stations in America.

One of the licensees that was in financial difficulty in Norfolk was a Hispanic licensee. Had we not actually joined forces their station, too, is in jeopardy of going off the air.

In terms of employment, we believe it very important. We have a black African-American news director in Norfolk. Up until recently, a general manager of ours, of course, in Norfolk, unfortunately NBC had to take him to Chicago to run that station. But we think about it constantly. And we believe that we act responsibly and in terms of our obligation, we take it very seriously.

Mr. EIGNER. The Tribune Companies, all our stations at the Tribune Company are certainly very concerned about diversity and make a strong effort in terms of developing diversity programming. On a corporate level, I have just noted a few, but the company produces and distributes the Soul Train music show with Don Cornelius together with the "Apollo Theater" in New York. We do the "Apollo Comedy Hour and" distribute those nationally. "Vernon John," "Lady of Soul," even the "Jesse Jackson Show" is available, was of prime concern and carriage on our station.

Beyond that, even on a local basis, KTLA, we attempted to develop a show called, "Comedy Compadres." At WPIX in New York, "Second Generation" was a Latino-oriented sitcom.

So I think that diversity in programming is very much a part of our make up and our desire to continue.

Mr. FERGUSON. On the radio side, the radio rating companies have taken special precautions and special procedures have been instituted to make sure that African-Americans and Hispanics are

measured and there are specific rules and regulations that they impose on themselves to make sure that happens. That can be seen, in fact, in most major urban areas. The number one and two radio stations in terms of ratings are stations that are programmed for and often programmed by black Americans.

Mr. GROSSMAN. Congressman, in low power, I happen to be President of the Community Broadcasters Association and a survey completed last year, there is 1,500 low power stations. Over 8 percent are black-owned, African-American black ownership. Diversity? That is diversity in ownership I am talking about.

As far as diversity in programming, there is 1,500 stations and, believe me, there is 1,500 different kinds of diversity of local programming. You name it. We have got it.

Mr. SCHWARTZMAN. I would like to make three brief points. First, the legislation before you would make it easier for broadcasters to violate the FCC's ownership rules, but also the FCC's employment rules. This is an industry which has historically developed minority ownership and programming through sweat equity, people who come up through the industry, and then move into management and then ultimately get to buy stations.

I can think of nothing that will stop the development of African-American executives in the industry more than allowing greater noncompliance with the EEO rules, which is in this legislation.

Number two, the changes in the ownership rules that would be permitted under the Stearns bill would make it impossible for small stations to—small owners to get into the market. The prices of properties would be bid up and it would make it more and more large national companies with fewer opportunities for minorities to purchase those stations.

Finally, as I have said at almost every hearing I have testified at involving broadcasting in the last 20 years, it is very dangerous to collect in one room some of the finest most responsible broadcasters in the country, people who I know like Dick Ferguson, people like I know at Tribune at CBS and have them come here and tell you what a good job they do because they do the best job and then they ask you to enact legislation that lets the very worst people in their industry, the people who don't come within a thousand miles of Washington get away with murder.

Mr. TOWNS. Thank you very much, Mr. Chairman. I would like to ask, Mr. Chairman, to be able to submit some questions to the panelists and to get their responses to them because I am very concerned about this whole issue of diversity and access to capital.

Mr. FIELDS. Without objection. The Chair would encourage the gentleman to submit questions very quickly and, hopefully, we can elicit responses very quickly. The Chair now recognizes the distinguished gentleman from Illinois, Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman. I just want to piggyback on my colleague from New York's line of questioning and I would like to just ask specifically to Mr. Eigner, you seem to have some involvement in this area, at least the Tribune Company, I understand. Am I correct in stating that it is your feeling that diversity in ownership of television station is desirable; is that right.

Mr. EIGNER. Yes.

Mr. RUSH. Do you have any suggestions especially in view of the fact that the tax credits have been eliminated for minority participation in ownership of TV stations, do you have any suggestions about how we can achieve more diversity in ownership of television stations? Considering the fact that we don't have the tax credits which drove, I understand, investors to seek out minorities as far as joint venture possibilities?

Mr. EIGNER. Well, obviously, we are disheartened that the lawyer was changed as everybody knows. We have a venture with Quest and Quincy Jones in a couple of markets. We were very thankful that was able to happen. I am not quite sure I know how to answer that question, to get more diversity in ownership beyond the fact that if the duopoly rule is lifted and stations are able or companies are able to own more than one station in a market, I think through joint ventures with minority interests they may be able to continue and expand.

Mr. RUSH. Mr. Schwartzman, do you have any suggestions in terms of how we might achieve more diversity considering that the tax credits have been eliminated which, again, drove the minority participation aspects.

Mr. SCHWARTZMAN. First, I should note that I have strong family ties to the south side of Chicago so I am very pleased to meet you, Congressman Rush.

Mr. RUSH. I know there was something about you that felt good, yes. Absolutely. All right.

Mr. SCHWARTZMAN. Second, the FCC should continue to enforce its ownership rules as it has in the past without any change in legislation and it also should pay much greater attention to ensuring that broadcasters comply with existing rules and regulations. Broadcasters who don't meet that standard should lose their licenses and open up opportunities for new entrants to come in who will be more willing to serve the public. That requires no change in existing law. It just requires a little more backbone on the part of the FCC.

That is the single most important thing that could be done for the short term. For the long term, as I suggested, I think the so-called spectrum flexibility provisions of the statute should be changed to ensure that there is opportunity for diverse editorial control over the programming feeds in a multiplex feed that could be possible in a digital environment and instead of that we are moving towards making existing broadcasters more and more powerful and less and less subject to bringing diversity into the programming.

Mr. RUSH. Thank you very much. Mr. Chairman, I yield back the balance of my time.

Mr. FIELDS. The Chair appreciates it. The gentleman from Massachusetts had a very quick comment.

Mr. MARKEY. I thank you, Mr. Chairman, very much. I think that the answer that most of the broadcasters gave to the foreign ownership issue is quite illustrative here because several of them answered it would be good because it would enhance the value of our stations if we were going to sell them.

I think that demonstrates the ultimate obligations which you all have in your present form, which is to ensure that there is an en-

92-967 O - 95 - 15

hancement of shareholder value to sell it to whomever was the highest bidder. Well, the truth is that if this bill passes, the highest bidder will become the telephone company.

The reason that I didn't use that in the initial illustration is that people today understand the newspaper in their hometown and how powerful it is. As this bill passes, the telephone company will be able to purchase all of you and the newspaper and be in cable and in telephone at the same time so the reality is that each regional telephone company, all seven of them are all each bigger than all of you combined. And each of them wants to get into your areas so my great fear is that each of you will fulfill your mother's dream of some day working for a secure company like the telephone company. And you will when we come back in 10 years, most of you will be running subsidiaries of telephone companies.

The only issue for us will be whether or not that telephone company controls all of the media in each region, in each city in America, including the newspaper. I think this bill is dangerous because we haven't yet dealt with that likely probability that you will fulfill your shareholder responsibility and when the telephone company offers a 50 percent premium on the share sell to them and wind up with this country wondering why there is not a diversity of opinion of voices of programming in this country in 10 years.

Mr. FIELDS. The gentleman just closed on the diversity of opinion. Just as there is diversity of opinion on this panel there is diversity of opinion up here. And our goal is to make sure that policy reflects the marketplace, that we come into a modern era and we think the operative word is flexibility because we know you face challenges that you didn't face 5 years ago. We appreciate very much your testimony today. It was enlightening.

We would hope if you have suggestions for this committee, those suggestions will come to us today or in very short order. We will be announcing later today that we will be holding a markup next Wednesday, May 17, beginning at 10 a.m.

As I have said before, I plan to move this legislation as fast as humanly possible. We think it is needed to get definition and certainty in the marketplace, but again I want to say to everyone how much we appreciate your testimony, and your presence here today. It is the intent of the Chair, recognizing the hour, to reconvene at 1:30.

[Brief recess.]

Mr. FIELDS. The Chair calls this hearing to order.

We have worked diligently to start as close as we can on time, and we certainly appreciate all of you being here.

As you may know, the House has concluded business today, so please don't misinterpret the fact that since there are not a lot of Members here that your testimony and your comments will not be shared with everyone. We consider this a very important juncture in the process, very timely.

As I announced at the closing of the last panel, we do plan to bring this legislation to markup in the subcommittee next Wednesday at 10 a.m.; and it is my goal to move the legislation as quickly as possible. We are certainly proud of the legislation as it has been introduced, but there is not such pride of authorship that we are not open to suggestions.

And that is the purpose of having this hearing, is to hear from people like you who are enlightened and who are in the marketplace everyday. So we appreciate you being here.

We will begin with Mr. Paul Weyrich, the President and CEO of NET, the political news talk network.

STATEMENTS OF PAUL M. WEYRICH, PRESIDENT AND CEO, NATIONAL EMPOWERMENT TELEVISION (NET), THE POLITICAL NEWSTALK NETWORK; JAMES SYNK, EXECUTIVE DIRECTOR, NATIONAL BURGULAR ALARM AND FIRE ALARM ASSOCIATION; ROBERT W. DECHERD, CHAIRMAN, PRESIDENT AND CEO, A.H. BELO CORPORATION, ON BEHALF OF NEWSPAPER ASSOCIATION OF AMERICA; CHRISTOPHER B. GALVIN, PRESIDENT AND CHIEF OPERATING OFFICER, MOTOROLA, INC.; GAIL THOMA PATTERSON, PRESIDENT AND CEO, PROXY MESSAGE CENTERS; TERRY COLBERT, PRESIDENT AND CEO, COMMUNICATION CENTRAL, INC.; STEPHEN KATZ, CHAIRMAN AND CEO, NATIONWIDE CELLULAR SERVICE, INC.; DONALD DEUTSCH, STRATEGIC STANDARDS, SYBASE, INC.; AND TOM GOOCH, EXECUTIVE VICE PRESIDENT, STORAGE TECHNOLOGY CORPORATION

Mr. WEYRICH. Thank you, Mr. Chairman. I hope that by sitting on the end here it doesn't mean that I have to pick up the check.

I appreciate very much the opportunity to testify today on H.R. 1555, the Communications Act of 1995.

Let me make it clear at the outset where I am coming from as President and CEO of National Empowerment Television, the political news talk network. We are a full-time, nationwide television network focused on national affairs.

As President of NET, I am neutral on broadcasting technologies. NET produces programming and not technology, of course. We reach about 11 million American households using all three common television transition technologies—direct satellite reception by owners of satellite dishes, cable transmission and over-the-air broadcasting. As new technologies come into service, I am certain that NET will reach viewers through them as well, so I have no brief to carry for any particular technology.

I do have an interest in seeing the widest possible range of programming, including NET, made available to the greatest number of Americans. I believe the public shares this interest; and, simply, the average American wants to choose his own programming from as many options as possible.

That interest is my first reason for supporting H.R. 1555. Currently, technological and regulatory limitations combine to restrict the programming options available to many citizens. Direct satellite reception provides the widest range of options, but satellite dishes are effectively restricted to rural areas by their size and zoning regulations, although the new smaller direct broadcasting dishes will reduce these restrictions. The cost of a satellite dish and the packaging of signals are also restrictions on this technology.

Much of America does not have access to cable television, and cable capacity is constrained where cable is available. Recent legislation re-regulating the cable television industry has further nar-

rowed cable programming options through provisions such as "must carry."

I must say that this cable reregulation bill has been, in my opinion, the single greatest deterrent to providing additional options to the American public which gets cable, and I hope that you will move on that as expeditiously as possible.

Many households still depend, for reasons of availability and cost, on receiving over-the-air broadcasts. In most cases, this provides only a small number of channels.

The Communications Act of 1995 will significantly increase Americans' television programming options in a number of ways. It allows the telephone companies to provide home video services. Since almost all American households have a telephone, this will increase the availability of programming choices. In addition, the act will streamline licensing procedures for broadcasters, encouraging new entrants into the market. And by reducing the regulatory authority of the FCC, it will eliminate a difficult, burdensome and expensive barrier to new entities of all sorts that seek to provide Americans with television programming.

Mr. Chairman, the current approach to regulating broadcasting, as embodied in the FCC, reflects a bygone era. And while I know that you are going to look at further legislation, since I had this opportunity to testify, I wanted to comment on that.

Of course, as you know, it was originally developed for radio, then applied to television, in a world where for many years there were only three networks. To continue to rely on it today is like relying on traffic regulations developed in the era of the horse and buggy. Those regulations stipulated that any self-propelled vehicle had to be preceded by a man on foot waving a red flag so as to reduce the risk of frightening the horses. The FCC is still largely concerned with frightening the horses when broadcasting is now in its highway age.

Not only is the FCC obsolete, it is a barrier to competition. Its rules suppress innovation, technology, new products and services. For the 21st century, a more streamlined, efficient and effective government agency can be supportive of free market forces and dynamic competition. Replacing the FCC is not only the logical outgrowth of this committee's desire to foster competition, it is vital for America's future.

A Federal role, of course, will continue to be necessary for allocating the spectrum performed by experts who understand spectrum allocation. But the rapid proliferation of technological options for transmitting programming means that the consumer is best served by the freest possible market.

Mr. FIELDS. If we could ask you to summarize.

Mr. WEYRICH. Certainly.

Well, the second reason for supporting this is that we need a smooth transition in the whole process, and we feel that this bill provides that transition. And although it doesn't go far enough, we do support it as a good first step.

Mr. FIELDS. Thank you very much. And, by the way, your statement will be included in its entirety in the record, as will the testimony of each speaker here today.

We are going to ask everyone to limit their remarks to 5 minutes, and at the end of 5 minutes I will ask you to summarize.
[The prepared statement of Paul M. Weyrich follows:]

PREPARED STATEMENT OF PAUL M. WEYRICH, PRESIDENT AND CEO OF NET

Mr. Chairman, distinguished members of the committee, I very much appreciate the opportunity to testify today on H.R. 1555, the Communications Act of 1995.

Let me make clear at the outset where I am coming from. I am President and CEO of National Empowerment Television (NET)—The Political NewsTalk Network. NET is a full-time, nationwide television network focused on public affairs.

As President of NET, I am neutral on broadcasting technologies. NET produces programming, not technology. Currently we reach almost 11 million American households using all three common television transmission technologies: direct satellite reception by owners of satellite dishes, cable transmission, and local over-the-air broadcasting. As new technologies come into service, I am certain NET will reach viewers through them as well. Therefore, I have no brief to carry for or against any technology.

I do have an interest in seeing the widest possible range of programming, including NET, made available to the greatest possible number of Americans. I believe the public shares this interest. Quite simply, the average American wants to choose his own programming from among as many options as he can obtain.

That interest is my first reason for supporting H.R. 1555, the Communications Act of 1995. Currently, technological and regulatory limitations combine to restrict the programming options available to many citizens. Direct satellite reception provides the widest range of options, but satellite dishes are effectively restricted to rural areas by their size and by zoning regulations (the new, smaller Direct Broadcasting dishes will reduce these restrictions). The cost of a satellite dish and the "packaging" of signals are also restrictions on this technology.

Much of America still does not have access to cable television, and cable capacity is constrained where cable is available. Recent legislation re-regulating the cable television industry has further narrowed cable programming options through provisions such as "must carry."

Many households still depend, for reasons of availability and cost, on receiving over-the-air broadcasts. In most cases this provides only a small number of channels.

The Communications Act of 1995 will significantly increase Americans' television programming options in a number of ways. It will allow telephone companies to provide home video services. Since almost all American households have a telephone, this will enormously increase the availability of programming choices. In addition, the Act will streamline licensing procedures for broadcasters, encouraging new entrants into the market. And by reducing the regulatory authority of the FCC, it will eliminate a difficult, burdensome and expensive barrier to new entities of all sorts that seek to provide Americans with television programming.

Mr. Chairman, the current approach to regulating broadcasting, as embodied in the FCC, reflects a bygone era. It was originally developed for radio, then applied to television in a world where, for many years, there were only three networks. To continue to rely on it today is like relying on traffic regulations developed in the era of the horse-and-buggy. Those regulations stipulated that any self-propelled vehicle had to be preceded by a man on foot waving a red flag, so as to reduce the risk of frightening the horses. The FCC is largely still concerned about frightening the horses, but broadcasting is now in its highway age.

Not only is the FCC obsolete, but it is also a barrier to competition. Its rules suppress innovation, technology, new products and services. For the 21st century a more streamlined, efficient and effective government agency can be supportive of market forces and dynamic competition. Replacing the FCC is not only the logical outgrowth of this committee's desire to foster competition—it is vital for America's future.

A Federal role will continue to be necessary for allocating the spectrum, performed by experts who understand spectrum allocation. But the rapid proliferation of technological options for transmitting programming means that the consumer is best served by the freest possible market.

That brings me to my second reason for supporting the Communications Act of 1995. While the free market is where we want to end up, we need a smooth transition to it. Programming producers such as NET need it, broadcasters need it and the public needs it as well, so that it has time to understand its options and choose wisely.

The more than half-century of Federal regulation of telecommunications has created realities that cannot be ignored as we move toward deregulation. One reality is the monopoly of the local telephone companies. Another is the great market power of the traditional national broadcasting networks. If we go immediately to a free market—a "level playing field"—these huge powers, nurtured over the years by government regulation, will dominate. No new network, including NET, would be able to compete. Therefore, if we want to maximize consumers' options, a level playing field should be our goal, but we should approach it in stages. That is exactly what this Act does.

Mr. Chairman, this Act offers the American consumer the benefits of the free market—lower prices, better service and a wider range of product choices—in a variety of areas. These include not only television, but also telephone services, communications equipment, electronic publishing and even security alarm services. It also provides for an orderly, phased process in getting to that free market, a process that gives both producers and consumers time to adjust to a new and very different situation. It is a well-conceived, well-crafted tool to extend the benefits of deregulation to virtually every American, because virtually every American uses one or more of these products or services. I hope the bill will receive the strong support of this committee and of the House.

Mr. FIELDS. Mr. Jim Synk, Executive Director, National Burglar and Fire Alarm Association.

STATEMENT OF JAMES SYNK

Mr. SYNK. Thank you very much and good afternoon. I am here representing over 13,000 predominantly small business alarm companies employing over 130,000 workers and serving every community across the Nation.

Let me begin by stating the alarm industry's support for the Communications Act of 1995. While we have some concerns, we think H.R. 1555 comes close to reflecting the agreement we reached last Congress in good-faith negotiations with the Bells. A full description of or agreement appears in my written testimony.

I think it is extremely important to remember that besides the small business highly competitive nature of the alarm industry there is one essential difference that distinguishes us from all other telecommunications services. We have developed the technical expertise necessary to protect life and the property of your constituents.

The alarm industry prides itself on vigorous competition, having resulted in not only a dramatic reduction, 40 percent, in the cost of installation of alarm systems but also prompt, reliable service that is so crucial to consumers, those consumers seeking more protection of their life and their property.

Currently, there are over 17 million homes and businesses which depend on alarm companies. We are concerned that if the telecommunications deregulation legislation does not include a sufficient transition waiting period, appropriate entry tests and adequate post-entry safeguards then the American consumer will be the one to lose. Furthermore, thousands of jobs will be lost.

The vast majority of alarm companies embody the American dream. They are family-owned small businesses with the average of about eight employees. They have often been handed down from parent to child. They were usually begun with a minimum of working capital and a willingness to work long, hard hours. The technical skills that have been derived typically have come from being in the military, law enforcement or the building trades.

Alarm companies do not fear competition. For us, that is an everyday fact of life where small companies are competing against a handful of national alarm companies. What we do fear is unfair competition.

The Bells already control how we provide our services to our customers. They also control the ability for us to hook into the network, the status of repairs and whether those technologies are even going to be available to us at all. As competitors, they would have every incentive to manipulate their control of their network to their advantage.

Since the average alarm company has only about 1 month in working capital, unfair competition will mean that most alarm dealers will be out of business before a complaint could be heard.

The economic vulnerability of an industry which predates phone service compels us to urge legislation that you would craft that gets it right. It is important that you get it right. Consequences of failure would be the loss of thousands of jobs, higher price to the consumer and deteriorating service to the consumers.

Therefore, we urge you to honor last year's agreements. If the main parties last year could agree, and these are the parties that had the major interest in it, why would Congress want to do anything different than that agreement?

We are especially concerned that H.R. 1555 would not only eliminate the VIII(C) test but also would reduce the number of transition years down from 6 to 5. We want the subcommittee to understand that 6 years last year was not a magic number but it was, rather, fewer years that were agreed upon in exchange for the DOJ-administered VIII(C) test. We believe that VIII(C) is particularly applicable to us because we are extremely competitive.

While we understand the Commerce Committee is taking a different path this year, we don't think we should have to lose twice. Therefore, we urge the subcommittee to restore the full 6-year transition period from date of enactment.

While we have no problem with access to alarm company customer lists being merged into your generic CPNI rules, we strongly insist that you work on those provisions to ensure that they remain in conference.

Our final concerns relate to Ameritech, the only Bell company that ignored last year's agreements and bought an alarm company. They acquired Security Link, despite having signed on an agreement to wait 6 years. We are not asking that Ameritech divest itself of Security Link, but we are asking for limits to Ameritech's alarm operations so that it doesn't gain unfair advantage over the other Bells or the present alarm industry.

My written testimony outlines the detail of our positions; but, briefly, there are three additional changes that we seek.

Mr. FIELDS. Mr. Synk, we would ask you also to summarize.

Mr. SYNK. First of all, we would like to see Ameritech's purchases frozen as of January 1. We would like to have a prohibition of Ameritech's use of logo, name and joint marketing; and that there be a denial of the incidental interLATA relief.

The alarm industry looks forward to working with you in the passage of this bill.

[The prepared statement of James Synk follows:]

PREPARED STATEMENT OF JAMES SYNK, EXECUTIVE DIRECTOR, NATIONAL BURGLAR AND FIRE ALARM ASSOCIATION

Mr. Chairman, good morning. My name is James Synk. I am the Executive Director of the National Burglar and Fire Alarm Association (NBFAA). I appear today to express the concerns, hopes, and aspirations of the more than 13,000 predominately small business alarm companies which employ over 130,000 workers and serve every community across the nation.

Let me begin by expressing the alarm industry's support for the "Communications Act of 1995." While we have some concerns which I will discuss, we think H.R. 1555 comes about as close as any legislation introduced this year to the agreement we reached with the Regional Bell Operating Companies last Congress.

The alarm industry prides itself on the fact that vigorous competition has resulted not only in a dramatic 40% reduction in installation costs, but also in the prompt, reliable service that is so critical to consumers seeking protection of their life, safety, and property. Currently, there are over 17,000,000 homes and businesses which depend upon alarm companies to provide protection against undesired intrusions and security against fire. The alarm industry is concerned that if telecommunications deregulation legislation does not include a sufficient transition waiting period, appropriate entry tests, and adequate post entry safeguards, then the American consumer will be the loser. Furthermore, thousands of jobs will be lost through unfair competition.

The overwhelming majority of alarm companies represent the embodiment of the American dream. By and large, they are family owned small businesses with an average of eight employees. Most alarm companies have been handed down from parent to child and were begun with a minimum amount of capital; a willingness to work long hard hours; and technical skills which were learned in the military, in law enforcement, or while working in the building trades.

Alarm companies do not fear competition. For the industry, it is an everyday fact of life. Small alarm companies compete successfully every day with a handful of national alarm companies. What we are concerned about is competing with the Bells. They totally control the means by which we provide our services to our customers; they control our ability to be hooked into the network; they control the status of repairs; and they control the decision of whether or not to make new technologies available. As competitors, they would have every incentive to manipulate their control of the network to their competitive advantage.

Since the average alarm company has eight employees and only about one month of working capital on hand, unfair competition will mean that most alarm dealers will be out of business before any complaint is heard by the FCC or the courts. This economic vulnerability of an industry which actually pre-dates phone services compels us to strongly urge you to make sure that the legislation you craft gets it right. The consequences of not succeeding here will be the loss of thousands of jobs and ultimately higher prices and deteriorating service for consumers.

The industry believes that, to the extent possible, the agreement that was reached last year by the parties at interest should be honored by Congress. If the private sector agrees, why would Congress want to alter what has been so hard to achieve in the history of telecommunications—a private sector agreement?

I would like to take a brief moment to review our agreement with the Regional Bell Operating Companies. The agreement was reached as a result of good faith negotiations which included extensive discussion and significant give and take by both parties. Each of the components was carefully reviewed and was merged into a framework which made sense for both sides. Specifically, we agreed to:

1. A five and one half year period before the Bells could apply for entry into alarm monitoring services (unfortunately a drafting error last Congress, which the Bells acknowledge, resulted in a five and one half year period before entry could be granted rather than applied for);
2. After the six year transitional waiting period, entry could only be granted once the Bells had satisfied two tests: First, a Department of Justice administered 8 (C) test, and Second, an FCC Public Interest test;
3. The FCC would be required, before granting access, to declare that it had the ability to administer all rules and regulations pertaining to the alarm industry (this was dropped in the House last year, but put in both this year's bill and last year's original bill);
4. The Bells would be specifically and permanently barred from access to alarm industry customer lists for marketing purposes;
5. There would be an expedited complaint process at the FCC which would require a cease and desist order to be issued within 60 days of a legitimate alarm in-

dustry complaint being filed and a final determination of a complaint within 120 days of the filing.

6. There was an agreed upon definition of alarm monitoring services which provided that the Bells could at any time provide monitoring for home health care services.

Thus, we are extremely concerned that H.R. 1555 would not only eliminate the 8 (C) test, but also reduce the number of transition years from six to five. We want the Subcommittee to understand that six years was not a magic number, but a compromise in return for a DOJ administered VIII(C) test. We believe that the VIII(C) test is particularly applicable to us because we are so highly competitive and highly vulnerable. While we understand that the Commerce Committee is taking a different path this year, we strongly feel that we shouldn't lose twice. We therefore urge the Subcommittee to restore the full six year transition period from date of enactment. The Subcommittee should remember that H.R. 1555 calls for a July 1, 2000 date certain, while H.R. 3626 linked entry to meeting specific tests. However, even in H.R. 1555, which is a major step forward over the Senate bill, there is no assurance that there will be widespread competition by the time the Bells are allowed to provide alarm monitoring services.

We also note that you have merged our specific prohibition on access to alarm company customer lists into your generic Customer Proprietary Network Information (CPNI) rules. While we think the Section 222 rules of H.R. 1555 address our CPNI concerns, we strongly urge you to insist on those provisions when you get to conference. At the very least, we urge you to make sure that the conference agreement includes the prohibition on access to alarm customer lists. This is a vital concern to us.

Our final concerns relate to Ameritech. Last December, Ameritech purchased Security Link, the nation's 14th largest alarm company. Yet, according to Ameritech, it entered negotiations with Security Link as early as May of last year, despite the fact that Ameritech had signed off on an agreement with us not to seek entry into the market for at least six years from the date of enactment. To date, every other Bell has lived up to their agreement and is willing to continue to do so.

Despite the fact Ameritech failed to live up to the agreement, the alarm industry does not seek to push Ameritech out of the alarm business. What we do seek is reasonable post entry transition rules to insure that Ameritech does not get an unfair competitive advantage over us or the other Bells who have lived up to their end of the bargain. Thus, we would like three other changes to H.R. 1555:

1. The bill does not prohibit Ameritech from continuing to purchase alarm companies prior to the date of enactment. Yet, our five year generic transition period involves a date certain of July 1, 2000. Having already violated its agreement with us, we believe that Ameritech should not be allowed to continue to purchase alarm companies until the date of enactment. Rather, we propose that as of January 1, 1995, Ameritech be grandfathered for existing purchases. As of May 8, 1995 Ameritech told us it had made no further purchases of alarm companies this year.

2. We believe that Ameritech should be prohibited from using its name, using its logo, and doing any joint marketing for its alarm subsidiary until it meets both the long distance test and the transition waiting period. After it meets those tests, whatever rules apply to all the Bells would apply to Ameritech. There is no reason to allow Ameritech to get a distinct competitive advantage over the other Bells while they wait to meet the applicable entry tests.

3. Finally, we are strongly opposed to Ameritech being granted incidental inter-LATA relief for alarm monitoring services. When Ameritech purchased Security Link, it was aware that the long distance prohibitions barred it from servicing customers outside the LATA. For that reason it left 30% of the accounts in a holding company. The current head of Ameritech's Security Link subsidiary told our members last month that he did not need incidental inter-LATA relief because his business plan is designed to set up monitoring stations within every LATA in which it does business. Thus, there is no reason to grant special long distance monitoring relief until Ameritech meets the long distance tests included in H.R. 1555.

That concludes my formal remarks. The alarm industry looks forward to working with you on perfecting our provisions and towards final passage of H.R.1555 this year. Thank you for the opportunity to express our concerns to the Subcommittee.

Mr. FIELDS. Mr. Robert Decherd, Chairman, President and CEO of the A.H. Belo Corporation.

STATEMENT OF ROBERT W. DECHERD

Mr. DECHERD. Thank you, Mr. Chairman.

I am here today in my capacity as the Chairman of the Public Policy Committee of the Newspaper Association of America and appreciate very much the opportunity to testify on behalf the NAA and its 1,500 member newspapers, the majority of which are daily newspapers that account for more than 85 percent of the daily circulation in the United States. Newspapers employ almost one-half million Americans in communities across the Nation.

First, I want to thank you, Mr. Chairman, and the subcommittee for your impressive achievement in creating a bill that encompasses all the competing interests in telecommunications. One of the most difficult issues to resolve, of course, has been developing a sound public policy for the transition of electronic publishing into a fully competitive and diverse market, one in which the Regional Bell Operating Companies, or RBOCs, and independent publishers can participate in a fair and on equal terms environment with a minimum of regulatory involvement. NAA believes that H.R. 1555 has succeeded in meeting that goal, and we support it.

Mr. Chairman, I would like to briefly indicate three reasons why NAA supports this legislation.

First, it appears that free market alternatives to the Bell's basic telephone exchange monopoly are feasible in the near future, provided that Congress fosters competition in local distribution, which we believe this bill will do.

Second, the separate subsidiary safeguard provisions for electronic publishing are an appropriate transitional mechanism that involves virtually no new government regulation.

Third, this legislation will promote new market entry by independent publishers and by Bell Operating Companies so that the American public can more quickly enjoy all of the benefits promised by the Information Age.

Let me expand briefly on these reasons:

As you are well aware, the electronic publishing and the local telecommunications industries have had a decade of vigorous growth and dramatic change. The promise of electronic publishing has begun to be realized, and the future appears to be even more exciting. A multitude of informational services—which include 75 newspapers now on line—are readily available to consumers.

This is just the tip of the proverbial iceberg. As technology becomes more affordable and Congress sets the ground rules, we expect an even greater increase in the variety and quality of on-line services available to consumers.

At present, one of the remaining bottlenecks to the full development and proliferation of electronic publishing is the local telephone exchange monopoly, which is controlled by the RBOCs in most parts of the country. However, newspapers see important changes on the way. We feel confident now that, in a few years, there will be real alternatives for the electronic distribution of news and other information in useful formats.

This competition may come from fiber-based metropolitan area networks, PCS and cellular systems, enhancements to existing cable companies, on-line systems that, as you know, are developing quickly across the country, or other services not yet on the drawing broad.

For many years, NAA has urged the Congress to remove the barriers to full competition and has strongly encouraged the telecommunications industry to provide us a choice with a distribution of our services and those of others. We are pleased to see that H.R. 1555 does just that. NAA supports the bill because it will create the market and the market conditions needed to allow electronic publishing to flourish.

While there are recognized risks involved, we believe the RBOCs have an important role to play in electronic publishing. Ideally, from our standpoint, the Bells shouldn't become content providers until local exchange competition has developed. However, our concerns in this regard can largely be met by the transitional safeguards that remain in place until local competition does become a reality.

To this end, as you know, NAA held extensive negotiations with the RBOCs which ultimately led to an agreed compromise on a safeguard package that would terminate in the year 2000. The heart of this compromise is reflected in section 272 of H.R. 1555.

Mr. FIELDS. Mr. Decherd, if we could ask you to summarize also.

Mr. DECHERD. We that believe a truly competitive telecommunications market is essential to the full development of a robust and diverse electronic publishing industry. Its achievement will bring greater diversity of services to consumers at lower prices and create more jobs for Americans.

We urge the committee and the entire Congress to expedite adoption of 1555.

[The prepared statement of Robert W. Decherd follows:]

PREPARED STATEMENT OF ROBERT W. DECHERD, CHAIRMAN, PRESIDENT AND CEO, A.H. BELO CORPORATION ON BEHALF OF THE NEWSPAPER ASSOCIATION OF AMERICA

Mr. Chairman and Members of the Subcommittee, my name is Robert W. Decherd and I am Chairman, President and CEO of A. H. Belo Corporation, headquartered in Dallas, Texas. I am also Chairman of the Public Policy Committee of the Newspaper Association of America. I appreciate the opportunity to testify on behalf of NAA and its 1,500 member newspapers, the majority of which are daily newspapers that account for more than 85 percent of the daily circulation in the United States.

I want to congratulate you, Mr. Chairman, and the Subcommittee for the impressive achievement in creating a bill that addresses all of the competing interests in telecommunications. One of the most difficult issues to resolve, of course, has been developing a sound public policy for the transition of electronic publishing into a fully competitive and diverse market, one in which the Regional Bell Operating Companies ("RBOCs") and independent publishers can participate on fair and equal terms with a minimum of regulatory involvement. NAA believes that H.R. 1555 has succeeded in meeting that goal, and we support it.

Mr. Chairman, I would like to briefly indicate three reasons why NAA supports this legislation.

First, it appears that free market alternatives to the Bell's basic telephone exchange monopoly are feasible in the near future, provided that Congress fosters competition in local distribution—which we believe this bill will do.

Second, the separate subsidiary safeguard provisions for electronic publishing are an appropriate transitional mechanism that involves virtually no new government regulation.

Third, this legislation will promote new market entry by independent publishers and by the Bell companies so that the American public can more quickly enjoy all of the benefits promised by the Information Age.

Let me expand on these reasons: As you are well aware, the electronic publishing and the local telecommunications industries have had a decade of vigorous growth and change. The promise of electronic publishing has begun to be realized, and the future appears to be even more exciting. A multitude of information services-including 75 newspapers on-line-are now readily available to consumers. This is just the

tip of the proverbial iceberg. As technology becomes more affordable and Congress sets the ground rules, we expect an even greater increase in the variety and quality of on-line services available to consumers.

At present, one of the remaining bottlenecks to the full development and proliferation of electronic publishing is the local telephone exchange monopoly, which is controlled by the RBOCs in most parts of the country. However, newspapers see important changes on the way. We feel confident that, in a few years, there can be real alternatives for the electronic distribution of news and other information in useful formats. This competition may come from fiber-based metropolitan area networks, PCS and cellular systems, enhancements to existing cable companies, on-line systems that are developing quickly, or other services not yet on the drawing-board.

For many years, NAA has urged that Congress remove the barriers to full competition and strongly encourage the telecommunications industry to provide us with a choice for the distribution of our services and those of others. We are pleased to see that H.R. 1555 does just that. NAA supports the bill because it will create the market conditions needed to allow the electronic publishing industry to flourish.

While there are recognized risks involved, we believe the RBOCs have an important role to play in electronic publishing. Ideally, from our standpoint, the Bells should not become content providers until local exchange competition has developed. However, our concerns in this regard can largely be met with transitional safeguards that will remain in place until local competition becomes a reality. To this end, NAA held extensive negotiations with the RBOCs which ultimately led to an agreed compromise on a safeguard package that would terminate in the year 2000. The heart of this compromise is reflected in section 272 of H.R. 1555.

The bill allows the RBOCs to provide electronic publishing services-but only if they do so through a fully separated affiliate. This separation requirement will make it more difficult for the RBOCs to engage in discrimination or cross-subsidy and much easier for any violations to be detected and corrected. Since the required separation of information content from basic telephone exchange service does not carry any significant efficiency penalty, the RBOCs will be able to compete with independent publishers on an equal footing. While the bill does not include certain specific non-discrimination provisions that were in the NAA/RBOC compromise, we are satisfied that the more general safeguards elsewhere in the bill adequately address our fundamental concerns.

It is important to note that section 272 establishes a largely self-executing framework of structural safeguards. It does not require the adoption of new rules by the FCC nor any regulatory proceeding to implement or to sunset the safeguards.

Finally, these provisions will serve the American consumer by creating a more robust electronic publishing market in which many new services will be offered. The bill will help remove the regulatory uncertainty that has clouded this industry for many years, thereby justifying the investment of significant capital for innovation.

The bill also contains crucial provisions to permit cooperation between the Bell companies and other electronic publishers. These cooperative arrangements were crucial to the NAA/RBOC compromise which forms the background of section 272. These areas of cooperation stay within the general structural safeguards, yet allow significant flexibility for creative business arrangements. It is particularly to be noted that the bill contains special provisions to make it easier for small, local electronic publishers to elect to participate in joint ventures with the RBOCs.

Mr. Chairman, a truly competitive telecommunications market is essential to the full development of a robust and diverse electronic publishing industry. Its achievement will bring greater diversity of services for consumers at lower prices and more jobs for American workers. We urge the committee and the entire Congress to expedite adoption of H.R. 1555. The bill's non-regulatory, structural safeguards are necessary to make the transition to the best safeguard of all competition.

Thank you for your time and attention. I will attempt to answer your questions.

Mr. FIELDS. Thank you very much.

Mr. Chris Galvin, President and Chief Operating Officer of Motorola.

STATEMENT OF CHRISTOPHER B. GALVIN

Mr. GALVIN. Thank you, Mr. Chairman. Given the time constraints of this afternoon, I will dispense with my formal talk—that has been prepared by the attorneys, anyway—and will talk about this issue as we have in other forums.

We thank you for the opportunity to testify here today on behalf on Motorola and the Telecommunications Industry Association and some of its manufacturers. We applaud the Chairman for the superb work that is being done and the underlying principles that are in this piece of legislation.

The fundamental concept of achieving local exchange competition before deregulation we think is key, and we know you are of like mind. We appreciate the support of the concept of parity, both manufacturing being treated the same way as long distance; and, second, we applaud the issue of checklists which create the opportunity for local competition again before the deregulation occurs.

I would like, though, to share one emphasis, if I may, on the concept of enforcement. Motorola is a company who has built part of its reputation on our ability as an American company to go to Japan and compete effectively on their home turf. And we have made suggestions in the written testimony that attention be paid to issues of information disclosure and having manufacturers have open access to network specifications and those kinds of things.

I will note in our experience in Japan in the early 1980's in building pagers that the issue with the Japanese in the pager example in 1982 was that they would provide the specifications on what to build for their paging system about 3 to 6 months late and give us 90 percent of the specification. And we had to actually use the U.S. Government in partnership to give us access to the specification so we could compete.

Second, there is the issue of global competitiveness. And it turns out, for whatever reason, there ends up being only one Regional Bell Operating Company providing local exchange competition, despite the well-intended approaches on this deregulation long term. That if the Bell companies then gather together seven companies, for example, to make their consortium of those who provide equipment, companies like Motorola or others potentially could be locked out of these potential situations.

And, therefore, we are advocating the nondiscrimination requirement on procurement that is, we think, fundamentally necessary to make sure that everybody has a chance. Clearly, if there are two or three or four viable competitors which we hope get realized with this deregulation this will not be a problem, but the rules are necessary.

So we have suggested things like separate affiliate subsidiaries, restriction of BellCore on joint manufacturing, and some of these what we call modest enforcement procedures be included in the bill in addition to the principles that are being realized. Because we have come to learn in Motorola's experience of going around the world and advocating these competitive policies be taken into account in regulation that self-interest sometimes supersedes the concept of self-policing; and, therefore, there is the necessity with the least amount of bureaucracy, with the least amount of regulatory impingement in this case, to build in some mechanisms for enforcement so that the dream of this legislation, which is lots of competition, ultimately gets realized.

Thank you for the opportunity.

[The prepared statement of Christopher B. Galvin follows:]

PREPARED STATEMENT OF CHRISTOPHER B. GALVIN, PRESIDENT AND CHIEF OPERATING OFFICER OF MOTOROLA, INCORPORATED

Mr. Chairman and members of the Subcommittee, I am Christopher B. Galvin, President and Chief Operating Officer of Motorola, Incorporated. I appreciate this opportunity to appear before you today to present Motorola's views on H.R. 1555 and related bills to reform the Communications Act of 1934.

My testimony presents Motorola's views, and I believe that it reflects the opinions of most manufacturers of communications equipment. In particular, the Committee may be interested in the policy position adopted by the Telecommunications Industry Association (TIA), of which Motorola is a member, and I have appended a copy of this position paper to my testimony.

Motorola is one of the world's leading providers of wireless communications, semiconductors and advanced electronic systems and services. Major equipment businesses include cellular telephone, including satellite communications, two-way radio, paging and data communication, personal communications, automotive, defense and space electronics and computers. Communication devices, computers and millions of consumer products are powered by Motorola semiconductors. Motorola was a winner of the first Malcolm Baldridge National Quality Award, in recognition of our superior company-wide management of quality processes.

Mr. Chairman, I want to thank you and your colleagues on the Subcommittee for your tireless efforts to develop legislation to reform the Communications Act of 1934. You are setting the telecommunications policies which will guide this industry into the next century. While you face contentious and complex issues, their resolution will mean continued growth and innovation in telecommunications, which is important to our future societal and economic well-being.

H.R. 1555 is a positive and comprehensive bill. It is good for manufacturing because it recognizes that local exchange competition must precede deregulation, including elimination of the MFJ line of business restrictions on manufacturing.

Motorola supports this pro-competitive thrust. It is evident that we share a common goal—open and robust competition in all communications markets and the replacement of government regulation with market competition. To that end, we also agree that to reach this goal, the conditions needed to foster robust local exchange competition must be created before any deregulation is appropriate.

We support the "check-list" approach, recognizing that it is an effort to balance certainty with effective protections for new local competitors, deferring to these carriers on the question of whether the list is complete.

We support your decision to condition elimination of MFJ line of business restrictions—both manufacturing and long distance—on individual BOC compliance with this "check-list." This sequence focuses attention and efforts on the threshold goal of fostering local exchange competition. It also places the timing of relief in the hands of those who will benefit from that relief.

Overall, H.R. 1555 is a important initiative, and I would be glad to work with the Committee to refine it and to move it forward.

Among the refinements we suggest, the bill's competitive threshold should be strengthened in order for local competition to protect the competitiveness of the long distance and manufacturing businesses. As drafted, the bill would permit BOC entry into these businesses before real, local competition may have begun. Real, and we believe meaningful, local competition must precede BOC deregulation, including elimination of the MFJ restrictions and of separate subsidiary and other safeguard requirements. Without this sequence, the ultimate goal of replacing government regulation with market competition cannot be successful.

A considerable period of time is apt to elapse before the measures taken by the bill can be expected to produce the actual, full and open competition we all hope will emerge. During this period of time, we can expect the market to transition as local competition takes hold and develops, much like we have seen in the long distance market. During this transition, safeguards must be in place to protect local exchange competitors and currently competitive markets such as manufacturing. The bill requires such safeguards, including a specific reference to operation of certain activities through a separate subsidiary. References to the manufacturing "affiliate" infer that this subsidiary requirement extends to manufacturing, but we believe the bill should be clarified by adding a specific reference to this requirement as it relates to manufacturing. BOC manufacturing must be conducted on a fully separated basis for so long as their local dominance remains.

The bill contains important safeguards in areas which are unique to manufacturing activities, reflecting the committee's appreciation, for example, that access to information concerning the network is vital to our business. We have several suggestions for refining these protections, including (1) a specific non-discrimination re-

quirement for procurement, (2) open access to network information when the BOC is dealing with an unaffiliated manufacturer, and (3) a prohibition on joint activities, including continued ownership of Bell Communications Research.

IMPORTANCE OF COMPETITION AND SAFEGUARDS

The manufacturing industry is an MFJ success story. It is a competitive business now, after a dozen years of relatively open accessibility to the local network and through it to local consumers. As you craft the legislation to replace this agreement, we ask that you remain mindful of its role in the development of the manufacturing sector.

The underlying principle of the line of business restrictions remains as valid today as it was in 1984; BOC entry into manufacturing cannot precede local exchange competition without serious risk of harm to the state of competition in the manufacturing sector. Accordingly, to the extent legislation permits BOC entry into restricted lines of business before the local market is fully competitive, certain rules must be in place to govern BOC conduct. this will be the only way to attempt to ensure that the past growth and success in manufacturing are not compromised in the years ahead by renewal of the monopoly-based discrimination which the MFJ has prevented.

Motorola is first and foremost a manufacturer of communications equipment. Over 67,000 U.S. Motorola employees are actively engaged in research, product design and development, production and other activities relating to the manufacture of telecommunications network equipment and customer premises equipment (CPE) for sale within, and increasingly outside, the U.S.

Motorola has been successful because of our innovations; we have been able to push the limits of technology; and without the MFJ our ability to pursue this operational approach would have been seriously hampered—as it was before 1984.

Our pioneering efforts in cellular technology, including operating one of the first two experimental systems, began in the 1970s, but it was in the 1980s and 1990s that this technology blossomed. Our continual improvement in cellular equipment produced the first portable phone, the first phone to weigh less than a pound, digital systems for cellular and PCS in the U.S. and around the world, mobile data equipment and services and our newest personal telephone, the MicroTAC Elite, which at 3.9 ounces is the lightest phone in the world and provides substantially longer battery time and important new features such as messaging. Many of you are aware of our Iridium system, which was recently licensed by the FCC and will be operational in 1998. We were the first company to develop a system of networked low earth orbit satellites for providing universally available, world-wide mobile communications, and the U.S. will be the first country to see the launch of operating systems.

The 1984 Consent Decree was a watershed event for communications manufacturing, because it liberated the industry from the dominance of the Bell System—a dominance which had stifled the potential in innovation and diversity which are trademarks for the industry today.

The source of that dominance was the control of the monopoly local exchange. The MFJ Court found that the control of the local network was used to advantage the system's wholly owned manufacturing operation in numerous ways, including denial of access to the network for connecting equipment, denial and untimely access to information about the design of the network without which manufacturers could not develop equipment or compete for local procurement contracts and disproportionate allocation of costs to the "captive" ratepayers, generally referred to as cost subsidies. The Court also found that these activities were accomplished despite the presence of federal and state regulation.

The MFJ line of business restrictions were imposed because of this history of abuse and because of the real opportunity for similar behavior by the successor BOCs, given the unchanged local monopoly and the limited ability of regulation to protect the market. As the Court stated:

> "There is a substantial likelihood that should the Operating Companies be permitted to manufacture . . . equipment, nonaffiliated manufacturers would be disadvantaged and the development of a competitive market would be frustrated. The Operating Companies . . . lack the competitive restraints that ordinarily prevent the typical vertically integrated companies from [subsidizing equipment]; *the absence of competition in . . . exchange telecommunications—immunizes these decisions from competitive pressures.*" [Emphasis added] U.S. v. AT&T, 552 F. Supp. 131 at 190 (1982)

The Court found that the equipment market would develop to its potential only if the local monopolists were not able to directly engage in manufacturing.

The BOCs are our good customers, and during the past decade, we have had access to the wired network and to the cooperation and data we have needed. As the scope of direct BOC business interests are changed by legislation, we believe it is important to establish basic rules for local competition and for BOC conduct in competitive businesses like manufacturing while the local market dominance continues.

The MFJ approach has been a prescription for tremendous success. This Committee is well versed in the MFJ, and the equipment industry has testified on several occasions about its beneficial effects—for our industry, for consumers and for the U.S. economy as a whole. So I will only highlight these benefits.

Since 1984, an open dynamic manufacturing market environment has meant significant growth in jobs, market size and scope, consumer choices and increased innovation in products and in services based on product developments, and substantial declines in product prices. In addition, we have seen increased productivity and efficiency in the economy as a whole, and our industry has become world-class competitors and technological leaders.

Motorola's own experience is illustrative. From 1984 to 1994, we have experienced a three-fold increase in annual sales revenue and a 500 percent increase in international sales.

The emergence of a more dynamic, competitive equipment marketplace in the U.S. has forced all American manufacturers to become more efficient and innovative in meeting the needs of their customers. As a result, we have become much better able to compete domestically and internationally. The dramatic improvement in the U.S. balance of trade in telecommunications equipment demonstrates the strength and vitality of the domestic telecommunications manufacturing sector. Indeed, since 1988, U.S. balance of trade in this area has improved from a $2.1 billion trade deficit to an overall trade surplus of $1.1 billion in 1994. The statistics for the technologically advanced "high-end" equipment are especially impressive, showing an increase from a $700 million surplus in 1989 to a $4.6 billion surplus in 1994. Exports now account for approximately 20 percent of domestic sales and trends indicate that exports and the trade surplus should continue to grow.

Today, the U.S. position in international trade in telecommunications equipment is stronger than it has been at any time in its history, and current trends indicate that continued improvement can be expected. For the years 1989-1994 exports of telecommunications equipment increased from $5.4 billion to $13 billion.

The industry's success supports the proposition advanced by Michael Porter in his book, *The Competitive Advantage of Nations,* that vigorous domestic rivalry serves to facilitate the creation and maintenance of "competitive advantage" in an industry.

LEGISLATIVE PRINCIPLES

As you proceed, we hope that you will consider the following points, many of which are already reflected in H.R. 1555.

Open competition in all markets: The ultimate goal of H.R. 1555, which we support, is to permit all companies to compete in all markets—as soon as and for so long as that competition is fair. Hence the question is not—and should not be—whether to permit the BOCs to engage in manufacturing, long distance and the other areas now restricted to them. Rather, the question is under what policy terms this entry will occur so that their entry increases the level of competition in these markets rather than stifling and reducing competitiveness.

Local competition before BOC entry: H.R. 1555 further reflects the important principle that local exchange competition must be permitted before the local monopoly carrier can seek elimination of the line of business restrictions. The only way for the Congress to ensure that legislative replacement of the MFJ preserves the positive market environment it has fostered is to require that the local bottleneck power is eliminated. The check-list is a positive approach and coupled with the direct voiding of the remaining barriers to local entry, the bill makes an important and compelling effort to "jump-start" the process of creating competitive local exchange markets.

The bill's requirement of one actual, facilities-based competitor is recognition that actual competition is desired before elimination of the entry restrictions. We recommend that the sponsors consider a more dynamic threshold, for example, one that looks to the geographic range of competitive offerings and to a larger number of actual competitors in each geographic market before permitting certification.

Transitional Subsidiary: The bill creates the opportunity for local exchange competition, and thereafter it is very likely that many years will pass before full and robust competition has developed even in the more substantial markets. The bill

permits BOC entry into manufacturing and long distance before local competition has developed to the level that it can effectively constrain market behavior, and therefore the bill contains transitional safeguards to protect both the emergence of local competition and the continued competitiveness of markets such as manufacturing.

However, we believe these safeguards need to be strengthened. Most important, the bill should make it clear that the separate subsidiary requirement applies to manufacturing.

While not a panacea or a perfect protection, a separate subsidiary is an important start in the effort to gauge BOC conduct of its dominant network position. The requirement has been used in the telecommunications area on many occasions, and it has been effective for its intended purpose.

Post-MFJ compliance has been difficult to monitor and enforce, with numerous examples of cross-subsidization and discrimination and of non-compliance with the MFJ non-discrimination requirements, the manufacturing prohibition, and other MFJ requirements. While regulatory efforts have been imperfect with the line of business restrictions in place, they would be impossible without a subsidiary requirement when the BOCs are permitted to enter these businesses.

Timely Access to Relevant Information: The bill clearly recognizes that access to network information in a fair and timely manner is critical to the competitive effectiveness of the manufacturing industry. However, several features need to be added to improve these protections. For example, it should be clear that "timely" access to information means contemporaneous, that disclosure must be non-discriminatory whether it is disclosed to an affiliate or to a preferred third party supplier, and that BOC equipment procurements must be open and non-discriminatory. Procurements must seek the best available product and ensure that independent manufacturers have equal opportunities to sell their equipment. In addition, the disclosure obligation includes all relevant network protocols and technical information as well as third party participation in standards setting and product certification processes.

These additions appear to be within the scope and intent of the bill, and we would be happy to provide language to accomplish them.

Joint Activities: The sponsors should include a prohibition on joint BOC manufacturing activities. Just as the bill limits the purchase by telephone carriers of in-region cable systems to promote diversity and ensure that entry means added competition, a restriction on joint manufacturing activities among the BOCs will promote network access and design and development diversity. It also will forestall the recreation of the pre-divestiture nationwide constraint opportunities.

Ownership of Bell Communications Research: Equipment manufacturers have routinely provided BellCore with proprietary information about their products, because this organization has been the product certification and network interface arm for the BOCs as they exercised their network planning and coordination functions. It would be fundamentally unfair for this organization now to be permitted to compete with the manufacturers from whom they have received competitive inside information.

In addition, the BOCs should not be permitted to maintain their ownership in BellCore when they enter competitive lines of business, given its access to competitors' proprietary information and given the opportunities for collusion posed by this umbrella organization. Rather, BellCore should be spun off as a separate company, which the BOCs already appear to be attempting, and BellCore should be prohibited from engaging in manufacturing in competition with those it once advised and supported.

Mr. Chairman, again I thank you for your leadership and for permitting me to share our views on this bill with the Subcommittee.

Mr. FIELDS. Thank you very much.

Ms. Gail Thoma Patterson, President and CEO of Proxy Message Center.

STATEMENT OF GAIL THOMA PATTERSON

Ms. PATTERSON. Thank you, Mr. Chairman and Members of the committee. I appreciate the opportunity to appear before you.

I am Gail Thoma Patterson, President and CEO of Proxy Message Centers, a full-service telephone answering service business. While small in comparison to the giants in the telecommunications

industry, Proxy, with 250 employees, is one of the largest companies in our industry and has been in operation over 72 years.

I am here today representing the approximately 3,000 telemessaging services throughout the country with gross annual revenues in excess of $750 million.

We believe that H.R. 1555 is promising. And there are some changes that still need to be made, but we are very optimistic that those can be made. I want to talk to you today about the solutions.

Until competition in the local telephone market becomes a reality, the viability of our industry depends on solutions in five specific areas:

Area number one, joint operations. The telephone companies can and do misuse the market power that they have developed from their noncompetitive local operations—such as jointly marketing their voice mail through their telephone order takers who answer service calls from telephone subscribers. While to be commended for what it tries to do on certain specific abuses, H.R. 1555 should limit further RBOC entry into our industry until the building blocks for sustainable competition are in place.

Area Number two, discrimination. The telephone companies can and do misuse their power by discriminating against competitors in favor of their own telemessaging operations. Many examples abound. In this area, the specific nondiscrimination provisions of H.R. 1555 do hold promise, but we urge you to make these provisions permanent rather than have them expire, as they do in the current draft.

Cross subsidization, area number 3. The telephone companies can and do misuse their power by subsidizing their own telemessaging operations. We know exactly what it costs to provide voice mail service, and the prices they charge are not realistic. A good example of this is the determination by the Georgia State Publicity Utility Commission that BellSouth's MemoryCall was subsidized.

Here, also, H.R. 1555 holds promise for the answering services. However, clarification is needed in that cross subsidies that are in-kind as well as cash or revenue would be covered, and the provisions would be made permanent.

Area number 4, CPNI. The telephone companies can and do misuse their power by marketing their telemessaging services using vital information about the ratepayers they have developed from their unique position as monopolistic providers of regulated telephone service.

H.R. 1555's protection of customer privacy provision, if properly enforced, will provide a needed solution for the misuse of CPNI. The major change there that is needed concerns the reality of customer-initiated repair and service calls. Those calls shouldn't provide the telcos with the opportunity to raid our customer base. The bill doesn't provide meaningful protection against this potential abuse, and we hope you will consider fixing this loophole.

Area number 5, meaningful remedies. Once we can get regulators' attention, we find that there is no effective process that gives us a chance at remedy. If there is a role for small business in telecommunications, then an expedited complaint procedure is needed. If small business has to spend hundreds of thousands to

seek a remedy, then that is no remedy. Only large corporations will have their day in court or at the FCC.

H.R. 1555 is to be commended for including an expedited complaint process for our industry, the telemessaging industry.

I would strongly urge to you do two things: First, do not let those procedures continue to be temporary, as the bill does now. Second, the provision should allow any small business the opportunity to file any complaint about a violation of the Communications Act, not just those rising under the new section 273.

In conclusion, I want to say that I have used my terms carefully when we have said H.R. 1555 holds promise. In the past we thought ONA held promise and found later that was a hollow promise. We thought that nonstructural safeguards held promise and found out later they were hollow promises.

However, it is a new day and a new effort. Our association stands ready to work with you and your staff to improve H.R. 1555 and help make the promises it holds a reality.

Chairman Bliley will publish an article in this month's Answer magazine, a trade magazine for our industry, in which he says, "To be sure, job number one is to ensure a level playing field for all competitors, including small- and medium-sized telemessaging firms."

We want to work with you in achieving that level playing field. Thank you.

[The prepared statement of Gail Thoma Patterson follows:]

PREPARED STATEMENT OF GAIL THOMA PATTERSON, PRESIDENT, PROXY MESSAGE CENTERS, INC., ON BEHALF OF THE ASSOCIATION OF TELEMESSAGING SERVICES, INTERNATIONAL

INTRODUCTION

I am Gail Thoma Patterson, and I am the President and CEO of Proxy Message Centers, Inc., a full-service telephone answering service business. We provide telephone answering, voice messaging, and inbound telemarketing to over 8,000 customers in three cities. While small in comparison to the corporate giants in telecommunications, Proxy, with 250 employees, is one of the largest companies in our industry, and has been in operation for 72 years.

I am testifying today on behalf of my company, and its employees and customers. I am also here representing the approximately 3,000 telemessaging services throughout the country with gross annual revenues of $750 million.

We believe that H.R. 1555 is promising. There are some changes that need to be made; but we are optimistic that those can be made.

The specifics of what I have to say about H.R. 1555 can best be understood if you know some key facts about our business and the problems that have brought us here today in pursuit of necessary solutions.

BACKGROUND AND PROBLEM

Our business involves integrating live operator answering services with electronic voice mail, supplementing that with offerings of paging service, 800 service, interactive and broadcast fax service, ordertaking, and other related services. We are a labor-intensive industry that has adopted, adapted, and advanced the state-of-the-art in telecommunications technology.

Efficient, reliable interconnection to the local network is essential to our operations. We succeed or fail based on how well our primary supplier—the local telephone company—establishes and maintains the connection between us and our customers. Make no mistake, the telcos are a dominant supplier. We pay 20 percent of our gross revenue for telephone service. In the old days, they viewed us as partners in serving the public. Unfortunately, that is no longer the case. Today, the phone companies view us as a burden and an impediment to their progress. However, from the consumers' point of view, we provide a choice. Without that choice

for the American consumer, the marketplace would have only one provider—the phone company—and that, simply, is no choice.

With one major exception, the telemessaging industry is exclusively small business in character. The 3,000 companies throughout the country average no more than 25 employees. The major exception, of course, is the local telephone utility. The telcos have entered our business only recently and then only where they can get leverage because of their public utility status, and only in segments of the market that are the least labor intensive, and therefore, the most profitable. Additionally, labor that is required is heavily subsidized. I know of no telemessaging example where a telephone company has entered our line of business and made a go of it outside of their government-granted service area, where they would have to operate without the crutch provided to them by the ratepayers.

It is ironic that while we, the independent telephone answering services, face monopoly power upstream from our major supplier, we confront intense competition downstream from among other small businesses—members of our industry. We have been a textbook example of competition for the 75 years our industry has existed. There is no place in the country where you can not open a Yellow Page directory and find two or more competing answering services.

At least for now.

I say "for now" because we have seen a rapid decline in the number of answering services beginning at the time that Bells got the authority to enter our line of work using the assets and personnel developed at ratepayer expense. According to the latest U.S. Bureau of the Census figures, we have seen 15 percent of answering service businesses close their doors between 1987 and 1992. The trend line should have been on the upswing instead of down, because of our ability to integrate new technologies (such as alpha-numeric paging). In short, our market is rapidly becoming less competitive, and the public will suffer because of that. They will suffer with fewer consumer choices, the absence of price constraints, and the inevitable curtailment of new technological development.

The means that the telephone companies have used are not fair and do not promote a healthy sustainable telemessaging market. Our trade association, ATSI, has documented the abuses that have occurred within our industry over the last several years. We have shared this information with committee staff, the FCC, and state regulatory agencies. In some cases, state regulators have been responsive, until they were preempted by the FCC.

With the limited time available, I want to talk today about solutions. If you or your staff would like to be further briefed about various problems we have encountered from the Bell Companies, either I or our industry's local representatives would be pleased to provide whatever information you need.

SOLUTIONS

I have given you a word picture of where our industry is. Competition in the local telephone market, along with a truly open network, with competitively priced access to related services, is the long term solution.

But paraphrasing the quote from Paul Samuelson, "solutions must be short-term, because in the long term we are all dead".

Until competition in the local telephone market becomes a reality, the viability of our industry depends on solutions in 5 specific areas:

1) *Joint Operations* The telephone companies can and do misuse the market power they have developed from their non-competitive local operations (such as jointly marketing their voice mail through telephone order takers who answer service calls from telephone subscribers).

While to be commended for what it tries to do on certain specific abuses, H.R. 1555 should limit further RBOC entry into our industry until the building blocks for sustainable competition are in place.

2) *Discrimination* The telephone companies can and do misuse their power by discriminating against competitors and in favor of their own telemessaging operations. Many examples abound.

In this area, the specific non-discrimination provisions of H.R. 1555 hold promise. I do urge you to make those provisions permanent, rather than having them expire, as they do in the current draft. There is no public policy rationale for encouraging network discrimination, and there is imminent danger to the consumer if it is allowed to continue.

3) *Cross Subsidization* The telephone companies can and do misuse their power by subsidizing their own telemessaging operations. We know exactly what it costs to provide voice mail service and the prices they charge are not realistic. (A good

example of this is the determination by the Georgia State Public Utility Commission that Bell South's MemoryCall was subsidized.)

Here also, H.R. 1555 holds promise for the answering services. However, clarification is needed in that cross subsidies that are "in-kind" as well as "cash" would be covered, and the provisions also need to be permanent.

4) *CPNI.* The telephone companies can and do misuse their power by marketing their telemessaging services using vital information about their ratepayers they have developed from their unique position as the monopolistic provider of regulated telephone service.

H.R. 1555's protection of customer privacy provision, if properly enforced, will provide a needed solution for the misuse of CPNI. The major change there that is needed concerns the reality of customer-initiated repair and service calls. These calls should not provide the telcos with the opportunity to raid our customer base. The bill doesn't provide meaningful protection against this potential abuse, and we hope you'll consider fixing this loop hole.

5) *Meaningful Remedies* Once we can get regulators' attention, we find there is no effective process that gives us a chance at a remedy. An example is a complaint filed at the FCC by a voice mail company in Maryland. At first the complaint was not even acknowledged. When a second follow up was made by this business, it was told that the complaint would be reviewed when Bell Atlantic was next audited. That could be a matter of years.

If there is a role for small business in telecommunications, then an expedited complaint procedure is needed. If small business has to spend hundreds of thousands to seek a remedy, then there is no remedy. Only large corporations will have their "day in court" or "day at the FCC".

H.R. 1555 is to be commended for including an expedited complaint process for the alarm and telemessaging industries. If small business is to continue as a participant in the telecommunications industry, it needs that kind of forum. I would strongly urge you to do two things: First, not let those procedures continue to be temporary, as the bill does now. Second, the provisions should allow any small business the opportunity to file any complaint about a violation of the Communications Act, not just those rising under the new Section 273.

CONCLUSION

I have used my terms carefully when I have said that H.R. 1555 holds promise. In the past, we thought that ONA held promise, and found later that it was a hollow promise. We thought that non-structural safeguards held promise, and found later that they were hollow promises.

However, it is a new day and a new effort.

Our association stands ready to work with you and your staff to improve H.R. 1555 and help make the promises it holds a reality. Chairman Bliley will publish an article in this month's *Answer* magazine, which is a trade magazine for our industry, in which he says "To be sure, 'Job 1' is to ensure a level playing field to all competitors, including small- and medium-sized telemessaging firms." We want to work with you in achieving that level playing field.

Meaningful and procompetitive provisions are necessary in any telecommunications legislation to ensure consumers the benefits small businesses, like answering services, can provide. H.R. 1555 goes a long way towards that end. Without effective solutions, the telecommunications marketplace is likely to become a battleground for warring titans, in which predatory actions will reduce—not increase—competition in the telemessaging market.

Mr. FIELDS. Thank you, Ms. Patterson.

Mr. Terry Colbert, President and CEO of Communication Central, Inc.

STATEMENT OF TERRY COLBERT

Mr. COLBERT. Thank you, Mr. Chairman.

I am President, CEO and Chairman of Communications Central, Inc., a publically traded company that installs and operates public pay telephones.

I am also Chairman of the American Public Communications Council, or APCC, a national trade association representing some 1,200 independent pay phone companies which operate more than

200,000 pay phones throughout the United States. These companies install and operate public pay phones in competition with each other and with the Bell companies' pay phone divisions.

My company, CCI, started in 1986 with five people operating out of the basement of a house. Today, CCI has over 230 employees and annual revenues approaching $100 million. We operate about 26,000 pay phones in 40 states.

Now, my company is not typical of the independent pay phone industry. Most of the companies in our industry have fewer than 1,000 pay phones, and many operate less than 100 phones.

I am here today to ask this subcommittee to address a long-standing structural problem that is keeping the pay phone industry from delivering all the benefits that competition should bring. To resolve this issue, we ask you to adopt a consensus approach in which APCC and all the Bell companies concur.

Pay phone competition has existed since 1984; but unlike most telecommunications competitors, we are trying to compete against a telephone company service that traditionally has been supported by other regulated revenue. And unlike virtually all other telecom competitors, we have had to stumble along without any safeguards from unfair competition. To this day, the Bell companies' pay phone operations are totally integrated with their regulated exchange services.

Because of these regulatory inequities, after 10 years of pay phone competition independent pay phone companies still serve only about 15 percent of the pay phone market, but our impact has been greater than market share. We have created hundreds of new companies and thousands of new jobs. Competition has ensured pay phone service to unserved areas, more efficient placement and maintenance of phones and new services like voice messaging.

While the industry has had some problems, we are addressing those problems. For example, we recently joined with the Bell companies and other affected carriers to propose a plan to the FCC to eliminate excessive operator service rates. Thus, pay phone competition is delivering real benefits and could provide many more if the industry structure is reformed.

To put the structural problem in a nutshell, the Bell companies are assured of recovering all of their costs for pay phone service, even if those costs must be subsidized by other regulated services. By contrast, independent providers have no assurance of cost recovery; and we must pay real money, 40 to 70 percent of our coin revenue, to our main competitors, the Bell companies, for essential network services.

This is a critical point. In most industries, the biggest line item in a company's financial statement is employee salaries. In our industry, the biggest line item is the phone bill sent to us by our largest competitor.

By charging high rates for the network services we need, while using ratepayer money to subsidize the low rates for their pay phone service to end users, the Bell companies can put us in a classic price squeeze. In fact, just 8 weeks ago the Washington State Utilities and Transportation Commission expressly found that independent pay phone companies in that State are caught in just such a price squeeze.

We have been asking the FCC to deal with this structural issue for a long, long time—for almost 7 years to be exact. But the FCC will not address the issue on its own, so Congress must act. To reduce unnecessary regulation and promote fair pay phone competition, the dual system of pay phone regulation must be replaced by a unified scheme under which all companies have a fair chance to compete.

But we are not asking to you find and impose a structural solution for us. Over many months we have worked hard with our adversaries, the Bell companies, to reach a common ground. We have reached agreement with the Bell companies on a consensus approach, and we are asking to you adopt that approach in H.R. 1555.

This consensus approach has five components:

First, the Bell companies must terminate any subsidies of their pay phones and cease any discrimination between their own and competitive pay phone service.

Second, there must be safeguards to ensure that subsidies and discrimination are, in fact, eliminated.

Third, a per-call compensation plan must be established to ensure that all pay phone providers are fairly compensated on the same basis for the same right to select the carrier.

Fourth, all pay phone providers will have the same right to select the prescribed interLATA or intraLATA carriers serving their pay phones.

Fifth, to the extent necessary, a mechanism would be established to ensure industry-wide support for public service pay phones.

As I have stated, APCC, representing the independent pay phone industry and the Bell companies, all concur on this approach. Further, this approach is fair to long distance carriers. Any legitimate concerns of long distance carriers can be addressed in FCC implementing procedures.

In conclusion, we are asking to replace the existing system of regulation which applies one set of rules to the Bell company pay phones and a different set of rules to independent pay phones with a unified structure in which all participants compete on equal terms. This change will reduce regulation and allow the public to finally reap the benefits of full and fair pay phone competition, industry growth, job creation, technological innovation and reduced costs.

Thank you for your time and attention. I will happy to answer questions.

[The prepared statement of Terry Colbert follows:]

PREPARED STATEMENT OF TERRY COLBERT, PRESIDENT, COMMUNICATIONS CENTRAL, INCORPORATED AND CHAIRMAN, AMERICAN PUBLIC COMMUNICATIONS COUNCIL

My name is Terry Colbert. I am President of Communications Central, Inc. (CCI), an independent provider of public pay telephones. By "independent" public payphone (IPP) provider, I mean a company that installs and operates public payphones and that is not affiliated with a local exchange carrier (LEC). One of the three largest independent payphone companies, CCI is headquartered in Roswell, Georgia, and operates approximately 26,000 payphones in 40 states. CCI has 230 employees and annual revenues exceeding $55 million.

I am also here in my capacity as Chairman of the American Public Communications Council, Inc. (APCC), the national trade association representing the inde-

pendent public pay telephone industry. APCC's approximately 1,200 members operate more than 200,000 public telephones throughout the country.

H.R. 1555 would establish conditions for the Regional Bell Operating Companies' (RBOCs) entry into long distance service, video programming, information services and manufacturing, and for entry by other competitors into local exchange service. While making these comprehensive structural reforms, Congress must not overlook one additional area where structural reform is long overdue—the area of payphone service.

This Subcommittee last focused on the payphone industry in 1989, when you reported the bill that became the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA). At that time, you focused on just one limited aspect of this industry—the issue of consumers' access to their preferred providers of operator services, and compensation of IPP providers for such use of their payphones. You did not try—and were not asked—to address the larger, more fundamental structural problem in the payphone industry. However, in the five years since TOCSIA, the FCC and state regulators have not been able or willing to solve this broader problem on their own. Therefore, we are asking you to address that problem today. The Senate Commerce Committee has begun to address the payphone issue in reporting out S. 652. Since then, APCC has reached agreement with the Bell Companies on a more comprehensive approach, and we are asking you to amend H.R. 1555 to incorporate that industry consensus solution.

Background of the Independent Payphone Industry

In the public payphone sector, unlike other telecommunications sectors such as long distance, information services, and business and residential telephone equipment, competition did not emerge until after the divestiture of AT&T in 1984. Before then, pay telephone service was provided only by the Bell Companies and other LECs. In the year of divestiture, the FCC authorized—for the first time—the interconnection to the public network of pay telephones owned by independent companies. *Registration of Coin Operated Telephones,* 57 RR 2d 133 (1984). In authorizing interconnection of independent payphones, however, the FCC did nothing to change the existing structure of the Bell Companies' payphone operations, which remained totally integrated with their regulated network operations. As a result, fundamental competitive inequities were created, as I will discuss shortly.

Since the FCC did *not* authorize independent payphone companies to make use of the network intelligence that controls the Bell Companies' own payphones, the new competitors developed the technology for a "smart" pay telephone instrument. "Smart" payphones contain sufficient computer intelligence to replicate most of the traditional pay telephone functions of the LECs with little or no support from the LEC's network, other than basic "dial tone" services.

During the next few years, competitive public payphone service was authorized in virtually every state. For the first time, premises owners—airports, truck stops, convenience stores and other businesses where payphones are installed—had a choice of vendors of payphone service. IPP providers, typically small to medium-sized businesses, saw an opportunity that looked similar to other competitive opportunities in the telephone equipment and service resale markets—an opportunity to provide pay telephones more efficiently than the Bell Companies.

What many did not realize was that the payphone business was different from other competitive telecommunications businesses. The Bell System's long distance and telephone equipment offerings traditionally were priced high enough to generate "contribution" to other regulated services, and thus provided a price "umbrella" under which competitors could comfortably fit. The Bell System's pay telephone operations, by contrast, traditionally were *not* expected to generate "contribution." If anything, payphone service was viewed as a "subsidized" service whose low rates are supported by Bell Companies' other operations. The emergence of payphone competition may be the first time any new entrant to the telecommunications field tried to compete against a subsidized telephone company service.

Nevertheless, independent payphone providers have made some progress in competing against the telephone companies. They have invested roughly $600,000,000 in infrastructure, with virtually all of it purchased from American manufacturers. Over the last ten years, by sheer persistence, independent providers have managed to capture roughly 15 percent of the embedded payphone base—some 300,000 to 350,000 phones. Considering the barriers to competition, and the fact that they started from zero market share, this achievement is substantial. Yet, the other side of the coin is that the Bell Companies and other LECs have managed to retain 85% of the market, even after ten years of competition. By any standard, the Bell Companies remain overwhelmingly dominant in the payphone market in their respective territories. The growth rate of independent companies' share has slowed and the

85% share of the payphone market retained by Bell Companies and other LECs is far larger than their share of virtually any other competitive telecommunications market.

The reason the payphone market lags behind the progress made in other competitive telecommunications markets is because the basic structure of the Bell monopolies' participation in that market has not changed since 1984. In other competitive markets, the threat of Bell Company dominance was addressed by structural remedies such as divestiture (long distance, telecommunications equipment), separate subsidiary requirements (cellular telephone service), or, at a minimum, nonstructural safeguards (CPE, enhanced services). In the case of payphones, the major structural problem has never been addressed at all.

When the FCC "opened" the network to interconnection of IPPs, it allowed the RBOCs to continue offering pay telephone service as an integral part of their regulated monopoly local exchange operations. *Tonka Tools, Inc.*, 58 RR 2d 903 (1985). The RBOCs' payphone operations were never subjected to the FCC's rulings in *Computer II*,[1] which required the Bell Companies to separate, or "unbundle," their provision of all other terminal equipment from their basic monopoly exchange services, or to any other FCC rules designed to ensure parity of treatment between Bell Companies and their competitors. Further, the FCC left to the states the authority to regulate most aspects of payphone service, including the regulatory conditions under which the Bell Companies offer their payphone services, as well as the rates and conditions for IPP providers' interconnection of their payphones to the Bell Companies' exchange networks. *See, e.g., Universal Payphone Corp.*, 58 RR 2d 76 (1986). State regulators allowed the Bell Companies to "bundle" their payphone services with their local exchange operations, since pay telephone service has historically been viewed as a part of a LEC's obligation to provide universal service. *See, e.g.*, New York State Public Service Commission, Case No. 28601 (Order released March 29, 1984). For regulatory purposes, Bell Company payphone service is treated no differently than other monopoly services.

This is unfortunate, because payphone competition has brought numerous benefits, and has the potential to provide many more. Competition has increased the incentives of all participants—Bell Companies as well as IPP providers—to be responsive to the needs of payphone users. For example, the presence of IPP providers has ensured that payphones are more available to the public in inner city locations that historically have been underserved due to vandalism and employee safety concerns, and in many rural locations where the LEC has chosen to take payphones out of service. In addition, competition has helped to ensure that payphones are conveniently placed and effectively maintained. Sophisticated computer-controlled networks allow IPP providers to remotely monitor payphones at each location, ensuring that the home office is promptly alerted to trouble conditions. This technological advance, coupled with the willingness of many IPP providers to offer extended hours, and even seven-day-a-week service capability, enables IPP providers to reduce maintenance costs and to minimize down-time. Yet another positive result of payphone competition has been the development of new services and conveniences for callers—such as voice messaging, bilingual operators, and acceptance of commercial (Visa, Mastercharge, etc.) credit cards at payphones.

In addition to benefits, there have been some problems associated with payphone competition. In response to complaints of some consumer abuses, Congress enacted TOCSIA to ensure that consumers can access their preferred carrier from payphones and other public telephones. While the access issue has been largely resolved, unreasonably high prices continue to be charged for operator services at some payphones. To resolve this lingering problem, which affects some LEC payphones as well as some independent payphones, a coalition consisting of APCC, several Bell Companies, competitive access providers, and the Competitive Telecommunications Association (the leading long distance industry trade association) recently submitted a proposal to the FCC requesting the FCC to adopt and enforce price ceilings for operator services. The FCC is already responding by taking aggressive action against rate gouging.

The Structural Problem

The ultimate objective that Congress should pursue with this legislation is shared by all responsible participants in the payphone industry—improved service to the public. For payphone service to reach its full potential, Congress must address the

---

[1] *Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer II")*, 77 FCC 2d 384 (1980), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

fundamental underlying problem—the dual system of payphone regulation. Under this system, the Bell Companies have been assured of recovering their costs for providing payphone service, even if that means subsidizing their payphone operations from their other regulated accounts. Since the Bell Companies generally do not charge their own payphone operations, even on paper, for services provided, there is no meaningful check on whether those companies are operating efficiently or profitably.

By contrast, IPP providers have no cost-recovery guarantee and must pay real money for every input used. Indeed, IPP providers make a large payment—typically 40% to 70% of their coin revenue—to their principal competitors, the Bell Companies, for the use of the exchange network. By charging substantial rates for these essential exchange services, while subsidizing low retail rates for payphone service to end users, the Bell Companies can subject their competitors to a classic "price squeeze." As a result, independent public payphone providers have been, and are currently, at a tremendous disadvantage. One example of this "price squeeze"—which we believe characterizes (subject to minor variations) all relationships between RBOCs and IPP providers operating in their territories—is well described in a decision rendered only eight weeks ago by the Washington Utilities Transportation Commission (WUTC). This decision is being submitted as an appendix to my testimony. The WUTC expressly determined that, based on US West's practices in providing service to IPPs, IPP providers in Washington "are subject to a price squeeze in the public payphone service market." *Northwest Payphone Association v. U S West Communications, Inc.*, Docket No. UT-920174, *Order Granting Complaint in Part* at 24 (WUTC, March 17, 1995).

The "price squeeze" is one example of the inequities caused by the dual system of payphone regulation. There are other, less obvious examples:

The RBOCs pay substantial commissions for local, intraLATA and even interLATA calls to location owners who allow an RBOC payphone on their premises. By contrast, the RBOCs do not offer comparable compensation—or, in most cases, *any* compensation—to IPP providers who send the same traffic to the RBOC network.

When fraudulent calls are made at an IPP, the IPP provider can be billed by a long distance carrier for thousands of dollars in calls that bypassed the payphone's coin collection mechanism and thus generated no revenue for the IPP provider. LEC payphones, by contrast, are not assessed any charges for interconnection or use of the network, nor are they held liable for costs of fraudulent calls.

RBOCs are able to disseminate IPP providers' customer proprietary information to the RBOCs' own payphone operations. Since the payphone line must be obtained from the RBOC, the RBOC's payphone division immediately knows where a competitors phone has been placed. The RBOC then may try to persuade the location owner not to allow installation of the payphone.

A RBOC may install its own payphone at an adjacent location in an effort to reduce the competitor's profitability. The resulting unprofitability of both payphones hurts the RBOC less than the compelitor because the RBOC's payphone costs can be recovered from other regulated services.

Apart from the major competitive problems it creates for IPP providers, the dualregulatory regime and the associated "price squeeze" have hindered IPP providers' efforts to address the problem of excessive pricing at payphones. Some IPP providers feel they must make up in operator service revenue for the extremely thin operating margin that the "price squeeze" imposes on them for coin calls.

These critical structural issues in the payphone industry have gone unresolved for years. In July, 1988, the independent payphone industry petitioned the FCC to address these very issues. *In the Matter of the Public Telephone Council, Petition for Declaratory Ruling that Bell Operating Company Pay Telephones Are Customer Premise Equipment for Regulatory Purposes*, filed July 18, 1988. *Today, almost seven years after it was filed, that petition is still pending. The FCC has never taken any action whatsoever on that petition.*

The Solution

A restructuring is long overdue. Fortunately, a practical solution is at hand. S. 652, the telecommunications bill adopted by the Senate Commerce Committee, explicitly addressed the competitive conditions in the public payphone industry. The payphone provision that was included in S. 652 prohibits cross-subsidy of RBOC payphone operations. Further, the bill prohibits the RBOCs from preferring or discriminating in favor of their own payphone operations. Finally, the FCC is directed

to address the issue of appropriate safeguards for RBOC payphone operations, including whether a separate subsidiary is necessary.

Building on the foundation established in the Senate bill's provision, we have reached agreement with the RBOCs on a comprehensive approach to establishing, at long last, safeguards for fair and equal competition in the payphone industry. APCC's first preference was for legislation that applies a separate subsidiary requirement to RBOC payphone operations, equivalent to the requirement that H.R. 1555 would establish for electronic publishing services. Certainly, we believe that a provision similar to that contained in S. 652, requiring the FCC to address the separate subsidiary issues, is a minimum requirement. But, in the interest of developing legislation on which the industry as a whole can agree, we are prepared to accept a different approach. We have met with the RBOCs to seek common ground, and we have resolved our conflicting interests in a consensus approach.

The consensus for legislation reached by APCC and the RBOCs contains five basic components. First, RBOCs must terminate any existing subsidies of their payphones by exchange and exchange access revenues, and any discrimination in the treatment of their own and competitive payphone services must cease. This component is virtually identical to the principle embodied in S. 652 as reported by the Senate Commerce Committee. It is a fundamental principle which already applies to virtually every other telecommunications sector that depends on the local exchange "bottleneck" and its inclusion in H.R. 1555 would end the utterly anomalous situation resulting from regulators' unique failure to apply basic protections to the payphone sector.

Second, there must be safeguards to ensure that subsidies and discrimination favoring RBOC payphones are in fact eliminated. At a minimum, these safeguards must mandate that RBOC payphone operations must be removed from the regulated accounts associated with local exchange services, and that the RBOCs must unbundle all goods, services, facilities and information made available to their affiliated payphone subsidiaries and make those same goods, services, facilities and information available to independent public payphone providers on reasonable, nondiscriminatory terms and conditions.

Third, in place of the existing ad hoc mechanisms for supporting payphone service, the FCC would establish a per-call compensation plan to ensure that all payphone providers are fairly compensated for every use of a payphone. This provision would take the principles recognized in TOCSIA's compensation provision, and the FCC's decisions implementing that provision, and apply those principles broadly to all uses of payphones and to LEC as well as independent payphone providers. The concept is simple: all users of a payphone (except emergency callers and users of services for the hearing-impaired) should make some contribution to the upkeep of that phone. Adoption of this principle is a critical reform. It would relieve RBOCs of any need to draw subsidies for their payphones from non-payphone services or to seek cost recovery through any regulated revenues, and it would relieve IPP providers of any undue dependence on revenues from operator services. It would establish a basis for pricing payphone service in a way that is fair to both competitors and consumers.

Fourth, existing restrictions on payphone providers' selecting the presubscribed interLATA or intraLATA carriers serving their payphones should be removed. This component would not require any change in the schedule established in other portions of the bill for RBOC entry into interLATA service or for other competitors' entry into intraLATA service. It merely ensures that the owner of a payphone (be it RBOC or IPP provider) can select the carriers serving that phone among whatever carriers are authorized to provide interLATA or intraLATA service.

Fifth, the FCC would determine whether it is necessary to support the maintenance of payphones at "public service" locations, *i.e.,* locations where payphone service would not otherwise be available. If the FCC decides that such support is necessary, then a mechanism would be established whereby all payphone providers, LEC and independent alike, bear their fair share of the burden of providing such payphones.

Incorporating this approach into H.R. 1555 should produce a single, unified structure under which all participants in the payphone market compete on equal terms. RBocs' payphones will no longer be supported from general ratepayer revenues. Regulation could continue, but uniform rules and conditions would apply to all payphones. Since all payphones will be self-supporting, the public can finally reap the benefits of full and fair payphone competition—industry growth, job creation, technological innovation, and reduced costs.

As discussed above, this approach has been agreed to by APCC and the seven Bell Companies. Further, we believe this approach is fair to long distance carriers. They would be unburdened from the subsidy currently flowing to Bell Company and other

LEC payphones from access charges levied on all long distance calls. While the proposal's compensation component also would put an end to the "free ride" that long distance carriers and their subscribers currently enjoy on most long distance calls originating from payphones, it is entirely fair and reasonable to require compensation for the use of payphones to originate such calls.

Further, allowing all payphone owners to freely select the interLATA and intraLATA carriers serving their payphones does not create any significant danger to competition in long distance markets. With effective safeguards to eliminate subsidization of the Bell companies' payphone operations, the Bell Companies' ability to select the carrier serving their payphones cannot be abused to harm long distance competition.

Conclusion

These steps to establish fair and equal competitive conditions in the public payphone industry would encourage technological innovation, increase the availability of payphones, and ultimately reduce costs for all telecommunications users. Consumers would benefit from a fully competitive payphone industry just as they do in countless other American business sectors.

Mr. FIELDS. Thank you, Mr. Colbert.

Mr. Stephen Katz, Chairman and CEO of Nationwide Cellular Service.

STATEMENT OF STEPHEN KATZ

Mr. KATZ. Mr. Chairman, Members of the subcommittee, good afternoon, and thank you for the opportunity to express our views on H.R. 1555.

Nationwide Cellular Service is a company which began operating as a nonfacilities-based carrier or reseller in 1984, about the same time as the first cellular system was turned on in the United States. Today, Nationwide Cellular Service is the largest and only publicly-traded nonfacilities-based provider of cellular service in the United States, with a customer base of approximately 270,000 subscribers.

We are here representing the 100-plus cellular resellers nationally who collectively provide service to approximately 4 percent of the United States market.

Nationwide Cellular Service would like to applaud the Chairman and the subcommittee Members for their efforts to create a more competitive marketplace for telecommunications services, and we strongly support the concepts promoted by H.R. 1555. However, H.R. 1555, in its current form, fails to address the fastest growing and arguably the most important telecommunications service of the 21st century: wireless.

Today in the United States, there is one wireless phone for every 10 people. By contrast, there are 5.5 wireline or standard phone lines for every 10 people. By the year 2000, it is estimated that there will be six landline phones for every 10 Americans and almost 4 wireless phones for every 10 people in the United States.

While H.R.1555 imposes a number of open access requirements on wireline local exchange carriers which will force the competition, it does not currently impose the same or similar requirements on wireless carriers. Respectfully, there are two compelling reasons to include wireless if one wishes to have real competition:

First, duopoly. Currently, there are two cellular license holders in every market—a duopoly—a duopoly that looks and acts much like a monopoly. To prove this point, rates for low-volume cellular service customers today are approximately—in the top 30 mar-

kets—are approximately one-third higher than they were in 1988. By contrast, long distance rates have fallen by approximately 40 percent in the last 11 years.

Additionally, 1 minute of local cellular airtime routinely costs between 35 and 50 cents per minute or about twice the cost of a coast-to-coast long distance minute. This while several major cellular carriers have posted 30 to 40 percent pretax profits.

One might reasonably ask why? The answer is, because they can.

Second, much-anticipated competition from Personal Communications Services, PCS, has been blunted by the results of the spectrum auction. AT&T, GTE, the seven Bell Operating Companies and WirelessCo, the Sprint consortium, are the same cast of players from whom the cellular duopoly grew. They now control 106 of 120 available wireless licenses in the top 30 markets.

In other words, essentially, there are no new entrants; thus, little stimulus to change the status quo. What is needed in the application of H.R. 1555 to wireless.

Wireless competition hinges on three simple and accepted concepts: Number portability, unbundled rates and nondiscriminatory interconnection. Failure to encompass wireless in H.R. 1555 disenfranchises 25 million users today and perhaps as many as 100 million users by the end of the decade and, ultimately, predetermines that rates will be higher, services, features and functions fewer, and competition to the controlling license holders almost nonexistent.

Thank you again for this opportunity.

[The prepared statement of Stephen Katz follows:]

Prepared Statement of Stephen Katz, Chairman and Chief Executive Officer, Nationwide Cellular Service, Inc.

Mr. Chairman and Subcommittee Members. My name is Stephen Katz and I am chairman and chief executive officer of Nationwide Cellular Service, headquartered in Valley Stream, New York. Founded in 1984 as a start-up company, I am proud to say that today Nationwide, which serves more than 270,000 subscribers in eight markets, is by far the largest reseller of cellular service in the U.S. and the 13th largest cellular service provider overall.

Nationwide applauds the Chairman's efforts and those of other subcommittee members to modernize national telecommunications policy to meet the new and ever changing communication technologies. We wholeheartedly support the concept that robust competition, not stringent regulation, should determine the technologies and services that will be available to consumers, and at what price. As currently drafted, H.R. 1555 imposes a number of "open access" provisions on local exchange carriers that are designed to create competition in the local loop. These provisions, including nondiscriminate interconnection, network unbundling, number portability, and unrestricted resale, will give new entrants a reasonable chance to compete against the facilities-based carriers in the provision of local telephone service. This competition, in turn, will provide the necessary market forces to reduce prices and generate new and better services for consumers. Traditional price regulation no longer should be required.

Unfortunately, H.R. 1555, which could very well govern telecommunications policy well into the next century, contains one glaring oversight—it virtually ignores wireless technology which may dominate 21st century telecommunications. H.R. 1555 imposes a number of "open access" requirements on landline local exchange carriers to create competition yet imposes no similar requirements on wireless local exchange carriers. For Nationwide and other resellers, as well as for millions of wireless consumers, this oversight will cause tremendous harm.

The cellular industry is dominated by the country's largest telecommunications carriers. Indeed, a partial list of the biggest cellular carriers reads like a telecommunications "Who's Who"—AT&T, GTE, Southwestern Bell, BellSouth, Bell At-

lantic, AirTouch (PacTel's cellular spinoff), NYNEX, Ameritech, US West, and Sprint.

More importantly, by regulation only two carriers are licensed to provide facilities-based cellular service in each geographic service area. This duopoly market structure has provided these carriers with a windfall in terms of their ability to charge consumers excessive service prices. Rates for local cellular calls, for example, regularly exceed $.50 per minute—nearly twice the typical per-minute charge for a cross-country long distance call. The situation is even worse for low-volume customers. According to a survey commissioned by the National Wireless Resellers Association, the best available rates in the top 30 markets for a half-hour of cellular airtime, a relatively modest amount, actually rose nearly 33 percent between 1988 and 1994.

Nationwide and other cellular resellers around the country have also been victims of the cellular duopoly. In the long distance market, where facilities-based competition is comparatively strong, carriers actively seek out resellers to distribute their services. In the highly-concentrated cellular market, however, facilities-based carriers have no such incentives to engage resellers. In fact, in a duopoly market the opposite incentive exists, resellers are not encouraged since they represent the only possible source of real competition, price or otherwise. Consequently, facilities-based carriers, by keeping "wholesale" prices high and raising other barriers to entry, such as high initial deposits on service, have made it very difficult for cellular resellers to exist in most markets,

The other tactic carriers have employed to prevent resellers from offering price competition is the absolute refusal to provide interconnection. Recently, Nationwide and a handful of other resellers approached various carriers with requests to connect our own switches to their networks. With interconnection, resellers could control more network functions and offer consumers an array of services which are unavailable today. Also, if allowed to interconnect at fair, unbundled rates, resellers could reduce retail prices substantially. In not one instance, however, has a reseller interconnection request been granted. In California, where the state Public Utilities Commission in August, 1994 mandated interconnection, the carriers' have to date refused to provide interconnection at unbundled rates. Today, there still is not a single switch-based cellular reseller in the entire United States.

By comparison, the current interexchange market contains scores of switch-based resellers. These service providers, together with facilities-based carriers and hundreds of switchless resellers, comprise a competitive mix that has caused long distance rates to drop by nearly 40 percent since 1983. This level of competition simply does not exist in wireless and consumers continue to suffer financially as a result.

Although the Federal Communications Commission, by auctioning spectrum for Personal Communications Services, is attempting to end the cellular duopoly, the potential for PCS to provide much-needed competition for the incumbent cellular carriers is questionable. The recently completed PCS auctions saw the largest cellular carriers capture the lion's share of the Major Trading Area PCS licenses—those expected to give cellular licensees the most intense competition.

AT&T, GTE, the seven Bell Operating Companies, and WirelessCo (the Sprint consortium) now control 106 of the 120 cellular and PCS/MTA licenses available in the top 30 U.S. markets. At best, it is wishful thinking to expect the same carriers who have operated in cellular's duopoly markets for the past decade, and who have coexisted peacefully over that period with only a modicum of price competition, to suddenly change their *modus operandi* and begin to engage in full-scale price battles.

The policies that will ensure robust price competition in the wireless segment of the local exchange, as well as fair rates and a higher quality of service for consumers, are the same "open access" policies that H.R. 1555 proposes for the landline side of the local exchange. These include: nondiscriminate interconnection, rate unbundling, number portability, and unrestricted resale. The same logic which holds that these provisions will create competition in landline services applies with equal force to wireless services.

As the Chairman explained upon the introduction of H.R. 1555, the key objective "is to create a competitive market for *all* telecommunications services." Unfortunately, a significant segment of the local exchange network—wireless service—is excluded from the bill's competitive provisions. At the very minimum, the Subcommittee must correct this oversight by applying the bill's competitive measures to the largest wireless service providers, as is consistent with other provisions in the legislation. At the very least, wireless local exchange carriers who, together with their affiliates, have in the aggregate nationwide 500,000 landline and wireless access lines installed should be subject to H.R. 1555's competitive provisions. The threshold is identical to that set in other sections of H.R. 1555 (Sections 242(d) and 222(d)) and would exempt small, mostly rural, wireless carriers from the legislation's com-

petitive measures yet still benefit the vast majority of consumers of wireless local exchange service.

This approach will ensure that a multitude of telecommunications service providers have the opportunity to compete in a wireless marketplace which today is dominated by a handful of major corporations. By requiring the country's largest cellular carriers to provide interconnection and unbundled services, the measure will enhance the ability of smaller wireless carriers to compete by providing access to the existing network infrastructure. In addition, these requirements create a new category of wireless service provider—switch-based resellers.

According to the Federal Communications Commission's 1993/1994 edition of "Statistics of Communications Common Carriers," more than 1,300 companies provide local exchange service in the U.S. Of these companies, just 18 are estimated to own wireless networks *and* have in the aggregate at least 500,000 landline and/or wireless access lines installed nationally. Under the proposal we suggest, only these firms would be required to provide interconnection and unbundled access to their wireless networks in accordance with H.R. 1555.

In summary, the Subcommittee has the opportunity to usher in a new era of competition in telecommunications that will include wireless services and bring a more affordable and higher quality of service to consumers. All that is needed is to apply H.R. 1555's competitive provisions to all segments of the local exchange network.

That concludes my prepared statement. I will be happy to answer any questions.

Mr. FIELDS. Thank you.

Mr. John Hendricks, Chairman and CEO, Discovery Communications.

STATEMENT OF JOHN S. HENDRICKS

Mr. HENDRICKS. Thank you, Mr. Chairman. I appreciate the opportunity which you and the Members of the subcommittee have given me to share my views on this important—make that vital telecommunications legislation you have introduced.

As the founder and CEO of Discovery Communications, I have had the experience of building two national cable television services, the Discovery Channel and, more recently, the Learning Channel. Discovery Communications is a vertically integrated cable programming company with four shareholders—myself and three companies—which have interest in cable systems, Cox Cable, Newhouse and Telecommunications Incorporated.

These corporate investors took a big risk with me back in the mid-1980's, a gamble that Americans might see value in a channel devoted to documentary entertainment, science, nature, history, culture and human adventure. The Discovery Channel had the good fortune to be launched in 1985, just 1 year after the 1984 Cable Act which deregulated the cable industry.

The Discovery Channel grew rapidly at low cost to consumers during the window of deregulation from 1984 through the passage of the 1992 Cable Act which, regrettably, reregulated the cable industry. That 8-year window of deregulation from 1984 to 1992 unleashed the power of the American marketplace. Cable operators were able to adjust service rates to pay for new channels which consumers found of great value—Discovery, C-SPAN, American Movie Classics, Nickelodeon, CNN; and many other alternative viewing choices grew dramatically during the deregulatory climate and returned great value to consumers who funded their development through increased basic and enhanced basic subscription fees.

On the other hand, the Learning Channel, our newer service, has struggled under the yoke of regulation that has perverted the marketplace environment.

The FCC sets the pricing of new channels introduced on basic and even expanded basic service. The government-set price per channel is prescribed by formula that equals 20 cents per channel per subscriber per month, regardless of wholesale pricing and channel quality.

In other words, cable operators are permitted to collect only 20 cents per subscriber per month, no matter if the new service is free and low quality or costs 10 cents and has high quality. Who could blame a cable operator whose revenue has been beaten down by regulation who chooses to add a low-quality service and pocket the whole 20 cents? But this is pure and simple marketplace perversion caused by needless government intervention.

While the Learning Channel has fared better than other new services, we suffered losses totalling $65 million over the last 4 years in developing the service. That is over four times the investment required for launching the Discovery Channel. We are fortunate to have the financial backing to have weathered the regulatory storm. Others have not.

In conclusion, my thoughts on the telecommunications bill which have you introduced is that it did not meet my personal hopes that it would immediately remove all package price regulations beyond basic or at least for newer services like the Learning Channel. However, your bill moves in that direction by eliminating rate regulation once a teleco competitor has been authorized. While this does not immediately produce the ideal situation for quality programming development, it offers all of us a dependable light at the end of the tunnel.

In your wise consideration of all the competing issues from the many industry segments, you have sought to strike a balance and I think you have succeeded in charting a balanced course in the public interest; and for this reason I support H.R. 1555, the Communications Act of 1995.

[The prepared statement of John S. Hendricks follows:]

PREPARED STATEMENT OF JOHN S. HENDRICKS, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, DISCOVERY COMMUNICATIONS INC.

Mr. Chairman, Members of the Subcommittee, my name is John Hendricks and I am the founder, chairman and chief executive officer of Discovery Communications Inc. Discovery is a privately held multimedia company which manages and operates The Discovery Channel and The Learning Channel, as well as businesses in home video, interactive video, publishing, merchandising and international program sales and distribution.

I appreciate the opportunity to appear before you today to share Discovery's views on federal telecommunications policy, including H.R. 1555, The Communications Act of 1995. As a programmer, Discovery is in the marketplace every day seeking to increase the distribution of its program services to consumers. Not surprisingly, Discovery is particularly interested in those provisions of the bill that affect the distribution of video programming. Thus, I will focus my comments on those aspects of the bill that directly affect our business.

Discovery believes that recent technological advances have led the American public to the brink of the "third revolution" in television. The first revolution was the creation of "television on demand" provided by commercial broadcasting in the 1940s and 1950s. This was followed by cable television's offering of "genre on demand"—entire channels devoted to documentaries, education, sports, news, movies and other niche programming services. Now, technological advances, including digital compression technology, offer the promise of maximizing viewer control to the point American consumers can have "programming on demand"—the ability to see the program you want and when you want. Indeed, we at Discovery have been at the forefront of enhancing consumer control over their viewing opportunities

through the development of "Your Choice TV," a technologically advanced program packaging and delivery system that will permit virtual video-on-demand and enable consumers to navigate quickly and confidently through the abundance of new services that will soon be available.

Your efforts are vital to the creation of this "third revolution." As a programmer, Discovery believes that the goal of the legislation should be to create an environment designed to ensure that the widest possible range of programming is delivered to the broadest possible audience. If there is one critical element needed to create this environment it is capacity. Without the existence of sufficient capacity, entrepreneurs will not be willing to risk their capital by investing in new programming. Conversely, the provision of capacity for programmers will help to maintain a healthy and dynamic program marketplace that will, in turn, spur the investment that is needed to continue the development of the "Information Superhighway."

As important as the provision of sufficient capacity is the need to ensure that standards are developed that will allow programmers to obtain access to all consumers.

With these broad goals in mind, I turn now to H.R. 1555, The Communications Act of 1995. Given Discovery's perspective it should not be surprising that Discovery fully supports the bill's efforts to establish additional outlets to reach consumers. The creation of the video platform proposed in the bill will not only foster competition with existing distribution technologies but will promote the development of competition among the various programmers and packagers utilizing the platform. An important component of the video platform requirement, of course, is the need to ensure that sufficient capacity is created to carry quality program services and that *consumers* be given the ability to choose the services they want. As mentioned, Discovery believes that the availability of capacity will provide incentives for investment in programming and infrastructure.

Discovery is also pleased that Congress recognizes that telephone company entry into the provision of video programming raises special concerns that need to be addressed. Discovery believes that the requirement of separate subsidiaries is a good start, especially coupled with the requirement that the FCC adopt rules to ensure that carriers do not discriminate among programmers with regard to carriage and to ensure that rates, terms and conditions for carriage are just, reasonable and nondiscriminatory. It is important, however, that a mechanism exists for continued oversight to ensure that the video platform develops as intended by Congress.

Moreover, the goal of nondiscrimination should extend to the menus and directories that consumers will use to gain access to the myriad program offerings that will be available on the video platform. It does no good to be on the video platform if consumers are hindered in their ability to find your program service.

Discovery also supports the application to telephone companies of designated rules designed to regulate cable. Discovery believes, however, that, to the extent these rules are imposed, they should be applied in a way that does not create advantages for one competitor over another.

In discussing this bill, it would be difficult for me to complete my presentation without at least some reference to the provisions seeking to deregulate, at least to some degree, cable rates. I understand from reading the papers that this issue has generated some degree of controversy. As a programmer, I am not well situated to argue the needs for and merits of any particular set of regulations. However, as a programmer, I can tell you that rate regulations directly affect the programming business. If rates are too low, the incentives of distributors to increase capacity in their plant will disappear. This in turn directly affects Discovery's and other programmers' willingness to invest in quality programming. Accordingly, Discovery believes that any rate regulations must provide sufficient incentives to invest in plant and new technologies that will enable distributors to upgrade the distribution network and increase the quantity and quality of programming and other services available to consumers. Ultimately, the best way of achieving this is through increased reliance on the marketplace.

In closing, I would once again like to reiterate my hope and belief that the proposed legislation will achieve the desired goals of increasing investment in plant, promoting competition in the distribution of video programming and enabling consumers to gain access to the programming that they want to see.

Mr. FIELDS. Thank you very much.

Mr. Don Deutsch, Director, the Sybase, Inc.

92-967 O - 95 - 16

STATEMENT OF DONALD DEUTSCH

Mr. DEUTSCH. I am the Director of Strategic Standards Planning for Sybase. Sybase is a client-server, database and related software tools vendor, a company that didn't exist 10 years ago and today has approximately a billion dollars in revenue.

I am also appearing today on behalf of the Alliance to Promote Software Innovation and the Business Software Alliance.

I would like to thank you for giving us the opportunity to testify today on behalf the leading American software and computer companies on the issues raised by the Communications Act of 1995, H.R. 1555.

American ingenuity and creativity are driving the worldwide information marketplace. We in the software industry know that, to thrive, new information technologies and systems need wide dissemination and use. We recognize that achieving this goal requires enabling consumers to send and receive information from a variety of sources.

We, therefore, are enthusiastic supporters of H.R. 1555. We believe this legislation would promote the development of a new national information network by increasing competition among telecommunications service providers, providing substantial benefits to consumers of information services.

We are concerned, however, that elements of H.R. 1555, principally section 248, may lead to greater intervention by Federal regulatory agencies in a broad range of technologies, not just points of interconnection with public telecommunications networks.

We are concerned that section 248 may be interpreted as directing or encouraging regulatory authorities to establish standards for highly competitive and heretofore unregulated computer and software products, private networks and information services. It would be truly ironic if, in doing the laudatory work of deregulating the telecommunications industry in the attempt to bring competition and innovation, if you regulated a previously unregulated and arguably most competitive segment of the United States industry, and that is the computer software industry.

Although connectivity with and among public telecommunications networks is essential, it is equally important not to impose cookie-cutter conformity on information appliances and services which would stifle innovation and prevent the full development of the information marketplace.

There are over 14,000 companies in the United States in the business of making software. We produce over 10,000 products, and the industry has been growing at over 20 percent per year. As anyone knows who has been into a computer superstore, the price of software is coming down.

Also, we believe that the marketplace is imposing capability on all of us. Our customers are demanding that we make our products interoperate with other vendors' software products.

Needed standards are now, and have been in the past, efficiently set through the marketplace and voluntary industry efforts.

I have chaired for over 15 years the United States committee that sets standards for the language that interfaces to my product and my competitor's products. We have a mechanism in place today, without regulatory authority, that is active, aggressive and

puts together standards that well serve the industry and the public.

A term that has been discussed and we feel somewhat misused is the term of openness. If openness is used to describe the ability of anyone to connect with a public telecommunications network to ensure that these network operators cannot use their technology to prevent others from connecting to their network or the ability to acquire information appliances from vendors unaffiliated with a network operator, we have no problem with that use of the term open.

We have some problem with the use of the term open when it means compelling vendors with proprietary interest to provide their technology for free or for a nonmarketplace determined price to their competitors.

A distinct minority of the software industry would have the term open mean that they would be allowed to use or clone others's technology to make their products function or behave in the same way as their competitors' products. They want to do this without incurring financial or legal liability.

For this reason, we oppose the use of the term interoperability in the bill because we feel the term is being misused. We feel open can mean specifications where no intellectual property right is involved. We also feel that open can mean a situation where intellectual property rights are provided in a marketplace determined rate to competitors alike.

Mr. FIELDS. Mr. Deutsch, we ask you to summarize also, please.

Mr. DEUTSCH. Simply put, we don't want to eliminate intellectual property rights. That is not necessary to achieve interoperability. And, basically, we want to let the American ingenuity and innovation that is demonstrated today in the software industry continue, and regulating standardization isn't the way to do it.

Thank you very much.

[The prepared statement of Donald Deutsch follows:]

PREPARED STATEMENT OF DR. DONALD DEUTSCH, DIRECTOR OF STRATEGIC STANDARDS PLANNING, SYBASE, INC., ON BEHALF OF THE ALLIANCE TO PROMOTE SOFTWARE INNOVATION

Mr. Chairman: My name is Don Deutsch. I am the Director of Strategic Standards Planning for Sybase, Inc. I am appearing today also on behalf of the Alliance to Promote Software Innovation (APSI) and the Business Software Alliance (BSA).

I would like to thank you for giving me the opportunity to testify today on issues raised by the Communications Act of 1995 (H.R. 1555). The member companies of BSA and APSI include, Adobe Systems, Inc., Apple Computer, Inc., Autodesk, Inc., Bentley Systems, Inc., Computer Associates, Inc., Digital Equipment Corporation, GO Corporation, Intel Corporation, International Business Machines Corporation, Lotus Development Corporation, Microsoft Corporation, Novell, Inc., and over 60 other companies.

This important piece of telecommunications legislation is of special interest to American software and computer companies because it constitutes a critical building block in the now emerging national information infrastructure. The bill has broad implications for the ways Americans will use public telecommunications networks and services to take advantage of the increased availability of network based information storage and retrieval systems.

For this reason, we support H.R. 1555. This legislation would benefit consumers of information services by significantly improving competition and lessening regulation of the telecommunications industry.

We want to draw your attention to one key element of reform legislation. We recognize that for computers and software to perform as true information appliances, end users must be able to connect their tools and devices with networks providing

public telecommunications services. Thus, we believe that ensuring interconnectivity with these networks is an indispensable element of a dynamic and competitive telecommunications system. Interconnectivity requires that both information providers and appliance suppliers (consisting of computers and software) can connect with public networks, and that consumers can use those appliances to exchange information across telecommunications networks without degeneration.

We also recognize that achieving these goals requires true consumer choice among devices used to access information. To that end, we support the goal of ensuring that such devices can be independently procured from unaffiliated retail or other third party vendors for authorized access to the services of telecommunications network service providers.

We believe the appropriate areas for regulatory oversight are providing for interconnectivity and for consumer choice in information appliances. Efforts that exceed these goals, can have the unintended effect of causing regulatory intervention where it is not needed, and where none now exists.

We know from experience that private sector initiatives can effectively establish needed standards, and that it would be a mistake to include any specific mandate on standards-setting of information appliances and services in the telecommunications reform bills now being drafted. Standards in our industry have been, and are being, developed efficiently through private voluntary efforts, driven by marketplace dynamics and consumers' demands. Technologies incorporated in these standards are regularly licensed on commercial terms. We fear that changing this system, by directing the regulation of the operation of information appliance and services, would lock us into today's technologies, retarding the efficient evolution of interactive information systems.

The U.S. information industry is now leading the way to an age of pervasive information. We have one undisputed advantage: we Americans do a very good job of applying our imagination and energy to developing innovative solutions through the application of technology.

The American software and computing industry is a vivid illustration. In the last five years, every governmental, academic and industry study of technologies that are key to America's future has identified the vital role to be played by the software industry. Software is characterized by both rapid technological innovation and widespread use in downstream markets. Software innovation improves the competitiveness of other industries which utilize software products to make themselves more innovative and competitive. The benefits of continuous software innovation permeate much of the American economy.

With these general comments in mind, let me state our views on the Communications Act of 1995. A central goal of H.R. 1555 is to promote the development of a true national information network, by increasing competition among telecommunications service providers. We fully support this goal.

Achieving this end requires connectivity among networks, as well as between appliances and services with those networks. But to achieve this second goal, in certain instances, principally Section 248, the proposed legislation implies that a necessary element may be intervention by Federal regulatory agencies in a broad range of technologies, not just points of interconnection with public telecommunications networks. We are concerned that Section 248 may be interpreted as directing or encouraging regulatory authorities to establish standards for highly competitive, and hereto unregulated, computer and software products, private networks and information services.

We *strongly object to* government intervention in setting standards for the way information is created, processed and used by consumers in their homes or offices with the aid of computers and software. We believe such regulatory intervention to be unnecessary and likely to cause harm to our industry.

Three basic considerations lead us to these conclusions:

- First, overly broad regulatory proceedings could undermine the incentive of companies to invest in new technologies—technologies subject to protection under our Federal intellectual property laws.
- Second, setting rigid standards too early in the development of the national information infrastructure would lock us into technologies which ultimately will retard the efficient evolution and use of these networks.
- Third, we fear that regulatory intervention could drastically change today's successful, open, voluntary, private-sector-led, consensus standards development process in the important technology area of the information marketplace.

Regulated standardization in our industry in not a good thing.

For example, regulation has kept television screen resolution/picture clarity, as measured by numbers of pixels, constant for decades, at about 300,000 pixels. By

contrast, over the past decade, without regulation, picture quality for personal computer screens has evolved dramatically, increasing 15 fold in just 10 years, from just 130,000 pixels in 1984, to over 2,000,000 in 1994. This transition has resulted from a steady supplanting of existing technologies by newer and better systems, about every 24 months: from CGA (1984), to EGA (1986), to VGA (1989), to SVGA (1991), to EVGA (1993), to VHR (1994), to SDTP (1995). In 1984, PC screens lagged behind conventional televisions: they were fuzzy, mostly monochrome and suitable for displaying only text. Today they are substantially sharper than televisions, can display a virtually infinite range of colors, and are fully capable of displaying graphics, images and full motion video.

Semiconductor chips are a second preeminent example. Over the past five years, newer and faster chips have displaced existing products every 18 to 24 months. Had regulators intervened five years ago, the results would have been disastrous. For example, if regulations had established the then-best technology, Intel's 286 semiconductor chip as the "standard", faster and more powerful chips such as the Pentium, Alpha and the PowerPC would never have been developed, and the information marketplace would not be developing today. Similarly, substantial inefficiencies and market imperfections would have resulted if innovators were required to seek regulatory permission before they could market these faster and more powerful technologies.

Our companies devote a huge amount of time and resources to developing new technologies. Their success in the marketplace is directly related to their ability to provide superior products which gain broad consumer acceptance. A critical element of this mix, is being able to distinguish these products from those of competitors, based on performance, features and quality. Effective intellectual property protection for these innovative technologies is a critical element. We believe the "open" and compatible systems are being implemented and can involve both nonproprietary and proprietary technologies.

A term often misunderstood in this context is the concept of "open". This term is used in a variety of correct and incorrect ways. It involves at least two separate issues: (1) the ability of anyone to connect with public telecommunications networks, and to ensuring that these network operators cannot use their technology to prevent others from connecting to their network; and (2) the ability to acquire information appliances from vendors unaffiliated with the network operator. In the context of H.R. 1555, these are addressed through provisions on interconnectivity, and Section 203, on "Competitive availability of navigation devices". Our industry supports both of these "open" concepts.

The term "open" is also used in an incorrect way: to justify compelling companies to share key components of their software or their hardware technologies with their competitors for free, or for non-market-place determined licensing fees. To advance this perverse sense of "open", some have argued that regulators should step in to mandate such forced divestiture of key technologies—the very technologies that differentiate one product from another—through FCC mandated regulation.

These arguments are often justified on the basis of the need to achieve "interoperability". While this term has meaning in the field of telecommunications, it has no such specific meaning in the computer industry. In the telecommunications context, "interoperability", is generally synonymous with "interconnectivity", the ability to connect with the network of the telecommunications service provider, and to send and receive information (voice, data, video, etc.) once connected. As already noted, such interconnectivity issues are addressed in great detail in H.R. 1555. The goal of that language, which we support, is to prevent the telecommunications network owners from using their technology to lock others out from connecting to their network.

In the context of the software and computer industry, however, interoperability has no such specific meaning. A distinct minority of the software industry would have this term mean that competitors can "use" (clone) each others' technology, to make their specific products (implementations) function and behave in the same way as products which are successful in the marketplace. They champion interoperability—and the corresponding regulated standardization—as a means to acquire their competitor's technology without incurring financial or legal liability. For these reasons, we object generally to using the term interoperability in the bill.

As importantly, these arguments fail to recognize the goal of being "open" can be met in two ways: both fully consistent with the principles of this legislation. "Open" can mean specifications where no intellectual property right is involved in connection with the use of the interface. Or, "open" systems can consist of technologies where some form of intellectual property is involved in connection with the use of that technology, thus permission is needed for use, but such permission is readily

available to all vendors, service providers and users on marketplace established terms through contracts, licenses or other voluntary means.

Although some interests claim that standards setting in this area is so important that it overwhelms any and all intellectual property considerations, the evidence does not bear out the assertion. Following this prescription is a formula for certain failure. Without protection for intellectual property, entrepreneurs and companies would have no incentive to take the risk of investing in research and development, because they would be forced to share the fruits of their efforts without fair compensation. Abolishing the incentive of intellectual property rights in key technologies to the development of the information marketplace will not promote the formation of new companies and industries; it will have just the opposite effect, discouraging entrepreneurs who would not be able to benefit from their own creative efforts and inventions. The computer industry has a history of intense competition, amazingly fast technological advancement, and widespread entrepreneurship. The ability of an individual to start with one good idea and build a successful company is based on protection for intellectual property. To remove intellectual property protection for key technologies in which U.S. companies have an international competitive advantage, is to throw away that advantage and allow the appropriation of these inventions by foreign competitors.

We believe that H.R. 1555's goal of ensuring that all users can have access to networks can be best achieved through marketplace dynamics and industry led voluntary standards setting activities. The role of government should be limited to ensuring connectivity with the public telecommunications network.

We reach these conclusions based on experience. The technology in the computer and software industries is changing at an unprecedented rate. From a business perspective, the precise contours of the future of the information marketplace are still uncertain. No one individual, company or even industry can be sure how the many technological and economic choices are going to take shape. The challenge for the government and private sector in the successful development and deployment of information technologies is that nothing be done, particularly in the context of the requirement or establishment of standards, that might accidentally "fossilize" technology at yesterday's levels or prejudice the rights of intellectual property owners.

There is vast experience and evidence to show that standards for critical interfaces have been and can be established successfully without trampling intellectual property rights. Today's prevailing marketplace driven voluntary, private-sector-led standards development process provides for access to standard interface specifications through contracts, licenses or other voluntary means. In the marketplace, business considerations dictate that for products to succeed they must be implemented by a diverse and wide array of applications and users. Moreover, in the voluntary standards setting process, for a standard which incorporates technologies protected by intellectual property rights to be adopted, the owner of the rights involved must voluntarily agree to license the intellectual property on reasonable and nondiscriminatory terms. These processes produce agreed and sustainable results through consensus building. This policy is followed by all the principal national and international standard setting bodies.

The existing standards process produces fair results and allows competition to flourish, while providing inventors and innovators the incentive they need to invest money, take risks, and devote time and effort to create new technology. These important benefits are realized without the need for government intervention. The intellectual property policy common to all major standards setting organizations appropriately balances the needs of users and the rights of technology creators. There is no need to change this policy.

Simply put, eliminating intellectual property rights is not necessary to achieve interoperability. Standards have been, and are being created for the computer and communications industries without government control, mandates, or deadlines. The marketplace and voluntary consensus standards setting have produced timely results. There is no evidence to suggest that the private sector will somehow stop creating timely standards for the NII where the market demands it.

CONCLUSION

We appreciate the opportunity to appear before your subcommittee to present our views on key elements of the now pending Communications Act of 1995 (H.R. 1555). Competition in local telephone services, and increased competition in long distance services, will provide substantial benefits to all Americans. Our member companies, the leading American software and computer makers, strongly support these principal objectives of H.R. 1555.

A tremendous number of successful standards have been established in the marketplace and through the open, voluntary, private sector led standards development process. Imposing government control on the private sector standards setting process will not speed this process and may create barriers to the development of standards.

Mr. FIELDS. Thank you very much.

Mr. Tom Gooch, Executive Vice President for StorageTek.

STATEMENT OF TOM GOOCH

Mr. GOOCH. Thank you, Mr. Chairman and Members of the subcommittee. On behalf of the Storage Technology Corporation and the Computer and Communications Industry Association, CCIA, of which I am a member, I would like to thank you for this opportunity to testify today on this very important bill.

Storage Technology designs, manufacturers, markets and services worldwide information storage and retrieval systems for computer systems and networks. StorageTek has worldwide sales in excess of $1.8 billion. We are headquartered in Louisville, Colorado.

CCIA is a trade association representing a broad cross-section of the computer and communications industry. CCIA has exhibited leadership in promoting the goal of open systems and interoperability. CCIA member companies have aggregate sales in excess of $180 billion.

We appear before you to address an issue which we believe is vital to the successful development of the national information infrastructure. That issue is interoperability. In terms of information, interoperability is the transparent access of digital data between elements of an information network. These elements are supplied by a wide range of manufacturers. They include computers, telephony devices and interconnecting infrastructures.

We believe that digital data would be a factor in the future of most written and verbal communications. This information is most valuable when it can be sent and received without the requirement that the sender and receiver have identical equipment. To accomplish true information interoperability, all sources of information need to support open, nonproprietary interfaces.

This is a basic premise of NII, a network, of networks connecting multiple sources of data. Clearly, if successfully deployed, NII will have a tremendous positive effect on the U.S. economy. When you think of this ability to access information, think of your ability to access electricity. Electricity is taken for granted. When we plug in any appliance we know that we can seamlessly run our appliances. This is because our standards and specifications have been set both for the interconnect of our appliance to the power grid and for the electricity in terms of standard voltage and frequency. The effect of these open, interoperable standards and specifications has been to promote, not hinder, the dramatic economic growth of this Nation in the 20th century.

Another useful analogy is railroad track gauge. One can imagine the deleterious impact various track widths, in lieu of a standard, would have had on the transportation industry. Imagine traveling by train from New York to Los Angeles and arriving in St. Louis to discover a different track width had been installed in Los Angeles overnight. This is what a data traveler might discover on the NII absent open interface standards and specifications.

What will information interoperability mean to the consumer? Interoperability will spell openness which in and of itself will facilitate innovation. Open interfaces will allow many companies from the very small to the very large to participate and prosper in this new information age.

The result will be wider selection of higher quality, better performing products at lower prices. In this open environment, products must compete based on their perceived value to the consumer and not on their access capability to the infrastructure.

Clearly, the United States is well-prepared to lead in this exciting information frontier. We have been asked what role should government the private sector and interoperability play. The last question is perhaps the easiest to answer. Interoperability in the form of clearly defined and published interfaces and standards will provide the foundation and the rules for plugging into the information superhighway.

Who has the expertise? Who has the funds? Who will reap the rewards? The answers to these questions provide the best answers as to the role of government versus the private sector. The private sector has the expertise and the funds to build the infrastructure. And the private sector, in terms of profit motivation, has the most to gain from the information superhighway.

That said, there is an important role for government to play. The government should set the stage by clearly articulating the vision and mission of the information infrastructure. It should encourage the private sector to develop the necessary standards for critical interfaces to facilitate the deployment of the NII in a competitive and timely manner.

The government should promote unobstructed entry by ensuring that interfaces that are critical to the interoperability of the network be made freely available. The exception being, if a patent already exists on a critical interface, then the interface information may need to be licensed. However, it is paramount that technical information relating to these interfaces be available on reasonable terms and conditions demonstrably free of discrimination.

In conclusion, Mr. Chairman, Members of the subcommittee, neither StorageTek nor CCIA wants the government to regulate competitive markets and stifle innovation. We are seeking government action to promote interoperability and consumer choice.

Thank you very much, and I would be happy to answer any questions you may have.

[The prepared statement of Tom Gooch follows:]

PREPARED STATEMENT OF TOM GOOCH, EXECUTIVE VICE PRESIDENT, STORAGE TECHNOLOGY CORPORATION

The United States has played many leading roles during history. Roles that have made Americans proud and prosperous while establishing and maintaining a well-deserved worldwide reputation for entrepreneurship and innovation. This is especially true in terms of technology. We are now faced with an important issue. An issue which will greatly influence the global information age. The issue is interoperability. What position will we take?

In terms of information, interoperability is the transparent access of digital data between a wide variety of sources. These sources, supplied by a wide variety of manufacturers, include computers, personal computers, intelligent televisions and telephony devices. Digital data is the future of all written and verbal communication/information. Information is most valuable when it can be sent, received, understood and modified without requiring the sender and the receiver to have identical equip-

ment. To accomplish true information interoperability, all sources of data need to support open, non-proprietary, interfaces. This is the basic premise of a national, or global, information infrastructure (NII), a network of networks connecting multiple sources of data. Clearly the NII, when fully deployed, will pave the way to the information superhighway, which will, in turn, have a tremendous impact on the U.S. economy.

When you think of this ability to access information, think of the ability to access electricity. Electricity is something we take for granted. When you plug in an appliance, you know it will be able to access the local supply of electricity. This is due to the fact that all appliances, at least in this country, are made to conform to a certain "interface" standard. Unfortunately, this standard is not a global one. But, that's a different story.

What will information interoperability mean to the consumer at work, school, or home? Interoperability spells openness and this, in of itself, will speed up innovation. Open interfaces will allow many companies, from the very small to the very large, to participate and prosper in this new "information" frontier. Open interfaces will allow for the development of "plug and play" components.

Components that will work in the overall scheme of things. As a result, there will be a wider selection of higher quality, better performing products at lower prices. Products will compete, not on the basic information access capability, but on price, quality, reliability, ease of use and "optional" features. For the information superhighway to work, access has to be easy and affordable.

Going back to the electricity example, when a consumer is purchasing a VCR, the price, a particular feature or simply "ease of use" might be the most important buying criterion. The ability to access electricity or to use a "standard" VHS video tape, are not considerations. Because of these standards, VCR manufacturers have been able to concentrate their efforts; i.e., their research dollars, on enhancing features and improving quality and reliability. Who wins? The consumer wins. Industry wins. A greater selection of better products at lower prices translates into higher product acceptance and usage.

Standards are absolutely necessary if the information superhighway, a vast collection of high-speed networks capable of transparently connecting millions of diverse users, is to become a reality. Standards will speed the way in terms of improved products at affordable prices. The superhighway will change the way we do business, the way we buy products, the way we learn, and the way we access entertainment.

Clearly, the United States is well positioned and well prepared to lead in this exciting information frontier. What role should the government play? What role should the private sector play? What role should interoperability play?

The last question, perhaps, is the easiest to answer. Interoperability, in the form of clearly defined and published interfaces and standards, will provide the foundation and the rules for plugging into the information superhighway. Upon this foundation, numerous suppliers—if not hampered by license fees—will then be able to provide additional building blocks (i.e., products and services) to supply additional functionality. The very nature of the architecture, will ensure healthy "supplier" competition which, in turn, will get us from where we are today to where we need to be in the future. The bottom line: interoperability will accelerate the development of, and ongoing improvements to, the information infrastructure as long as public interfaces are open and nonproprietary.

Who has the expertise? Who has the funds? Who will reap the rewards? How do we make it a reality as quickly as possible? The answers to these questions, perhaps, provide the best answers to the questions regarding the role of the government versus the role of the private sector.

The private sector has the expertise, the wherewithal, and the funds to build the infrastructure. And, the private sector, in terms of profit motivation, has the most to gain from the information superhighway. Clearly, it's never wise to have the government provide something that the private sector is more than willing and able to provide on its own.

That said, there is a vital role that the government should play. The government should set the stage by clearly stating the vision and the mission of the information superhighway and the required infrastructure. It should also actively encourage the private sector to develop the necessary "standard" interfaces to facilitate the development in a competitive and timely fashion. At the same time, the government should promote unobstructed market entry by ensuring that the interfaces and standards, which are critical to the interoperability of the network, be made available license free. The exception being, if a patent already exists on a critical interface, then the interface information may need to be licensed. However, it is then absolutely paramount that technical information relating to these critical interfaces

be available on reasonable terms and conditions demonstrably free of discrimination. Finally, the government should look for creative ways that it can be supportive of the efforts of the computer and communications industry, i.e. promoting interoperability.

The government should, however, refrain from unnecessary regulation that will slow the efforts down. Technology is moving very rapidly. The last thing the government should do is stifle innovation.

Mr. FIELDS. Thank you, Mr. Gooch.

Since this is Friday afternoon, let the Chair ask Members—I think that one Member on our side has a plane.

Members on this side, does any have a pressing schedule? Three o'clock, Mr. Hall. Same plane.

And on the panel I know we have Mr. Decherd, who has a time constraint. Same plane they are on. You all can ask your question on the plane.

Anyone else? Does anyone else have a pressing——

Mr. Weyrich, do you have—what is your time?

Mr. WEYRICH. I was hoping to be able to get out of here by 3 o'clock.

Mr. FIELDS. Let me suggest this. I am going to yield my position to Mr. Barton; and if is there not a problem with anyone on this side, I will then yield to Mr. Hall. And my suggestion after that would be if there are any questions specifically for Mr. Decherd or Mr. Weyrich, perhaps we should—if there is not—we are acting in the total spirit of cooperation and consultation.

Does the ranking minority member have a question?

Mr. MARKEY. I have never been on a jumbo jet to Dallas with the entire delegation talking to their biggest media interest, so this could be interesting for all of us.

Mr. FIELDS. The Chair will recognize the gentleman from Texas, Mr. Barton.

Mr. BARTON. I thank the Chairman and my two Republican colleagues for yielding, since they have probably sat here all day, and I am going to come in and do a rabbit in and out. I appreciate it.

I have two questions for Mr. Katz.

Currently, only about 10 percent of the population has cellular service. With the market at this size, if we were to include your suggestion and add the same provisions for wireless services as are contained in this legislation for wireline carriers, what would be different about your business? How many jobs would be created? Would it substantially increase the customer base in the short run?

Mr. KATZ. Mr. Congressman, in short form, that answer would be we have proven as an industry an elasticity of demand, thereby if we could lower prices, we could, in fact, create a greater demand more quickly. By doing that we would create more ubiquitous service and ultimately more jobs both here and nationwide as well as other folks in the industry so it would be a positive.

Mr. BARTON. That is not quite as definitive an answer as I had hoped. Can you be more definitive? Do you have an order of magnitude, how many jobs would be created and do you have an idea of—you say it is a price elastic market.

Would you lower prices and, if so, do you have a range of the savings you think you could offer as a reseller?

Mr. KATZ. According to surveys that have been done in California, it is our belief that prices would come down approximately 30 percent.

Mr. BARTON. Thirty percent.

Mr. KATZ. Right, as a general number, assuming fair and just pricing. That would create a significant number of additional subscribers and using approximately 1½ employees per thousand subscribers, therefore the expansion would be on that basis.

Mr. BARTON. Okay. If you were granted nondiscriminatory interconnection, network unbundling, number portability, and unrestricted resale, I just want to tie down this price reduction. Do you feel pretty confident about that 30 percent price reduction if you were given these additional capabilities?

Mr. KATZ. In some markets it would even be greater. Yes, the answer is very, very confident about the price reduction.

Mr. BARTON. You want to give us a number of how much greater? Fifty percent?

Mr. KATZ. It depends upon a couple of issues. Number one what the prices are in the given market at the time and as I indicated some—in some markets they are 35 to 40 cents and in New York, let's say.

In California, they are above 50 cents per minute, so therefore depending upon the commensurate reduction that we would see in various markets as a percentage, we would be lowering prices accordingly and the reason for the reduction is if we do buy the unbundled service, we could then buy the product which is the air time or radio frequency at a lower rate than we are currently paying, a dramatically lower rate.

Mr. BARTON. Thank you, Mr. Chairman. I yield back the balance of my time. I appreciate the courtesy of the members on the committee for letting me ask those questions.

Mr. FIELDS. The gentleman from Texas, Mr. Hall.

Mr. HALL. I thank the Chair and I will try to be brief, too. And I do want to ask Mr. Weyrich a question and I want to ask Mr. Decherd a question. I hope I get to because Joe will get to ask his on the plane because they will probably both be up front.

I thank the panel for giving your time and it is really a pleasure to sit here as we assist this good Chairman in writing a telecommunications bill to have input from very successful and giving people. I take part of my time to express that to you.

Mr. Weyrich, you have a rather unique situation. You spawned or cut the cord on NET and you pushed it with your unusual determination, your organization working 20 hours a day and a lot of prayer. What does this bill do for you for someone like NET?

Mr. WEYRICH. I think this bill ultimately will make this channel, as well as many, many other channels, available in many more communities, because the more deregulation there is, the more choices there will be, the more different kinds of carriage there will be and the more possibilities that this channel and others will be able to be carried.

Mr. HALL. Thank you.

Mr. Decherd, I think, as you know, the legislation sunsets a separate subsidiary requirement for the RBOC in the electronic publishing business on June 30 of the year 2000.

We probably will still be working on upgrading and improving and correcting and changing this bill at that time. What are your thoughts about that date and whether or not it is too soon or it should be extended. Generally, what is your feelings on that?

Mr. DECHERD. Mr. Hall, we think the date is realistic. As I mentioned in my testimony, there have been rapid advancements for newspaper publishers and others who want to create electronic publishing services to accelerate the probability of competition at the switch.

There are alternatives to the switch coming on every day and if there isn't sufficient competition by that time or coming up to that time, NAA and others, I am sure, will apprise the Congress of that and I think there will be time to take appropriate action then.

Mr. HALL. I would like to know from the others their ideas about that, but we just don't have time to and the Chairman is going to let us submit letters and questions to you.

Mr. Decherd, also the bill repeals ownership restrictions on broadcast stations, but permits FCC to place some limitations on TV audiences by addressing the cap. And I think that is 35 percent which would increase to 50 percent in 1 year.

What is your general feeling about that, about those figures and if you would, in general, what is your feeling about the progress of this legislation?

Are we stampeding it? Are we going a little too fast? Should we ease up and be a little more sure? Is Newt going to load Bob Dole up with something he can't handle, or what is the situation?

Mr. DECHERD. I certainly can't comment on the last question, Mr. Hall. We think that the ambitiousness of this bill merits as much deliberativeness as this subcommittee and the House can give to it. These are very important issues that are going to affect all the industries represented here for decades to come and also the many interests you heard from this morning.

Our company operates even network-affiliated television stations. We are part of the Television Operators Caucus, which Mr. Reilly also represented this morning. We believe the caps, if raised at all, should be raised gradually and that along the way we should take a good hard look at what the real effect is on diversity in marketplaces across the country.

Mr. HALL. And just with a nod of the head is that the general feeling of most everyone else? We are in a hurry, but we are not in such a hurry. We want to do it right and effectively and do it while we have got a good Chairman leading us. I think it is a tribute to the Chairman that most of you come with different feelings, different attitudes, different needs that you are supportive of, but you have got some suggestions and that is the way we write legislation.

Mr. Chairman, I thank you very much and I will ask the Chair if you will excuse us.

Mr. FIELDS. I thank the gentleman. Let me just, again, depart just a moment from what has been our operating procedure and see if Members have questions for Mr. Decherd. And, Mr. Weyrich, I didn't understand what your time commitment was.

Mr. WEYRICH. Three o'clock.

Mr. FIELDS. If there are questions for Mr. Decherd or Mr. Weyrich. Well, Mr. Decherd you are excused as long as you take our two good friends to the airport.

Mr. DECHERD. I promise to get them home. I appreciate the privilege.

Mr. MARKEY. I have one question here.

Mr. FIELDS. Yes.

Mr. MARKEY. Thank you, Mr. Chairman, this is to Mr. Decherd, if he could, just to give us your sense of how open the information highway has to be for newspaper and other information providers in order to ensure that you could compete against a telephone company if they were providing a similar information that would be in newspaper form, but yet on the screen?

Mr. DECHERD. We think it has to be wide open and that is why we have focused on competition at the switch as our primary concern, the whole issue of discrimination testing. The separate subsidiaries, we believe, address that issue sufficiently and as you know, this bill provides for scenarios in which newspaper companies or individual newspapers could have joint ventures with the Bell operating companies.

We think it is a way for them to participate. It is an efficient use of our respective capital as well as our technological capabilities and on our side it preserves our real franchise, which is the ability tc assemble, edit, package and disseminate enormous amounts of information.

Mr. MARKEY. Should the FCC have a role in ensuring that it is wide open and that you are able to compete equally with a telephone company or a cable company providing the very same service that you and thousands of other newspapers across the country would want to provide across the electronic highway?

Mr. DECHERD. I think those tests are going to be determined State by State.

Mr. MARKEY. Do you believe the FCC should be there as a backstop, though, nationwide because a lot of this will be regional in terms of their desire to roll out a service.

Mr. DECHERD. We would like to see it as far out of the hands of the FCC as possible.

Mr. MARKEY. Thank you.

Mr. FIELDS. Mr. Decherd, Mr. Weyrich, thank you very much. We now have another time problem with Ms. Eshoo, so Ms. Eshoo, we will recognize you for 5 minutes.

Ms. ESHOO. Thank you, Mr. Chairman. From a West-Coaster I appreciate that and thank you to all the panelists that are here today.

Mr. Chairman, I would like to ask first for unanimous consent that I submit for the record a statement of a Mr. Kenneth Oshman, who is the Chairman, President, and CEO of Echelon Corporation.

Mr. FIELDS. Without objection.

[The prepared statement of Kenneth Oshman follows:]

PREPARED STATEMENT OF M. KENNETH OSHMAN, CHAIRMAN, PRESIDENT & CHIEF EXECUTIVE OFFICER, ECHELON CORPORATION

Mr. Chairman and members of the Subcommittee, I am Ken Oshman, Chairman of Echelon Corporation, a Silicon Valley company involved in distributed control

networking and home automation. I very much appreciate the opportunity to present my views on H.R. 1555, The Communications Act of 1995.

My testimony focuses on the accelerating convergence between the communications and computer industries, and the implications of this important market development for federal regulatory policy. I recommend that the Subcommittee revise H.R. 1555 to make dear that the Federal Communications Commission should avoid regulating the computer industry, and that technical standards in technologically robust markets, such as computers and home automation, should be derided by the marketplace, not government fiat.

Let me say at the outset that the bipartisan effort that produced H.R. 1555 represents a watershed in American efforts to unleash the forces of competition to bring price reductions, service enhancement and technological innovation to all segments of the communications marketplace. The Chairman and the many original cosponsors of the bill, both Republicans and Democrats, are to be commended for reaching agreement on a set of legislative policies designed to speed elimination of regulatorily protected monopolies from the American communications industry.

What is missing from the bill, unfortunately, are provisions that safeguard competitive markets from regulatory excesses. This is a particularly important issue for the computer and high-technology industries. Computer and information processing companies, which historically and successfully have operated largely free from government oversight, are increasingly becoming involved in communications markets. As computing power and innovation continue to increase, we will only see more integration of the computer and communications industries, with applications ranging from the Internet, to telecommuting, to medical and database-retrieval services, all of which will be delivered on a scale that is orders of magnitude faster and more diverse than today.

The convergence of the computer and communications industries is in the news every day. As just two examples, consider Apple Computer's petition to the FCC for allocation of spectrum for wireless mobile computing, and last week's announcement that Intel and AT&T have joined forces to create a new, high-speed network technology for personal computer communications. These and related developments illustrate that the "information superhighway" will have far broader uses than 500-channel television and interactive entertainment media. As we move forward toward a National Information Infrastructure, we must be careful not to deter competition and innovation in these sorts of "converging" applications with unnecessary or counterproductive regulation.

The convergence of computers and communications creates a very real risk that government regulations directed toward the communications industry will either be oblivious to the resulting effect on the computer industry, or worse, regard those negative impacts as mere "collateral damage." One of the principal dangers is that regulators may have a propensity to regulate computers, at least as they are used in communications, whether regulation is needed or not. By the same token, communications companies, and their Washington trade associations, that have dealt with the regulatory process throughout their corporate lives are adept at using (and abusing) the system to "game" the process and secure a competitive advantage for their industry. A third risk is that although regulators are familiar with communications issues and technologies, they "don't know what they don't know." Most government agendas (including the Federal Communications Commission) have very little "on-site" experience with the computer and high-tech industries.

Regulatory treatment of interoperability and technical standards illustrates these risks. In the computer industry, open and vigorous competition is the model for dealing with interoperability issues. Over the past decade, the personal computer market, the LAN (local area network) market and the computer storage media market have all developed substantial interoperability from the operation of market forces, either through industry adoption of a *de facto* standard based on a market leader, or as a result of voluntary industry standards setting. There are no mandatory government standards for personal computer operating systems, for PC disks or for CDs and CDROMs. They aren't needed—because the market has moved rapidly to interoperability—and regulations would only have overridden the tremendous technical advances and innovation in the industry.

Consider what would have happened if the government had tried to standardize PC operating systems in 1980 or 1982, in the early days of the industry. We would have had a standard—and "interoperable" products—but at a huge price. There never would have been Windows™ or the Macintosh,® which had yet to be invented, or perhaps even DOS, which had only just been introduced. So the cost of standardization would have been foreclosure of the technological innovation that has made America the world leader in personal computer technology and, especially, software and communications. This should teach us that governmental efforts to set

technical standards are apt to backfire. One example of this problem is HDTV, where the United States still lacks a standard despite more than a decade of FCC study and proceedings.

Let me give you a current example involving my company, Echelon. As the founder of ROLM Corporation—which the Subcommittee members probably know better than Echelon—I am used to dealing with FCC regulations. But it never occurred to me that the FCC would try to use communications regulation as the justification for standardizing technologically emerging markets outside of its communications jurisdiction. Unfortunately, that's exactly what is happening in the FCC's ongoing rulemaking implementing Section 17 of the 1992 Cable Act on cable television equipment compatibility. And Echelon's regulatory problem shows that claims of "interoperability," frequently used to justify proposals for government-mandated technical standards, often translate in reality into requests for a government-sanctioned monopoly.

As I mentioned before, Echelon (which was formed in 1988 by Mike Markkula, one of the original founders of Apple Computer, Inc.) participates in the home automation market. This is a market in its infancy, in which many different companies and groups are competing to develop technologies for remotely controlling and programming operation of home appliances such as security systems, lights, audio-visual equipment, heating/air conditioning systems and the like. Yet the FCC is seriously considering a proposal to include just one of the many competing home automation systems as part of a standard for cable television "set top box" compatibility.

This approach would require that one particular home automation protocol be built into every "cable ready" television set and VCR sold in the United States, with devastating results. One competitor would have a government-protected monopoly, and Echelon would effectively be foreclosed from selling its home automation products—which are very successful in Europe, Japan and other places overseas—in its own country. Even worse, an unnecessary government standard would prematurely override competition and technological innovation in the emerging home automation market, with American consumers losing freedom of choice and paying higher prices as a result.

I am not saying that the FCC is intentionally trying to squelch home automation competition. But I know that the Commission—at least until recently—did not completely understand the broad scope of the proposed cable television equipment standard and its potential effect on market competition. This illustrates that the risk of government damage to the marketplace, whether from unintended consequences or because regulators inadvertently enact overbroad standards, is growing. This is especially true now, as the computer industry finds itself moving closer and closer to communications, and hence to the FCC.

I believe that the Communications Act of 1995 needs to deal directly with this problem. Many executives in Silicon Valley are concerned that H.R. 1555 appears to wrap computer technology into the FCC's regulatory authority by requiring FCC rules for what the bill calls "navigation devices" a term that may encompass computers which are used as an interactive interface to data, video or voice services. I urge the Subcommittee to reexamine this provision and clarity that the Commission's "competitive availability" rules should not be a toe-hold for broad FCC regulation of the computer industry. Even from a communications perspective, the FCC has not regulated customer premises equipment for more than a decade, and should not be chartered to do so now just because computers can double as telephones and telephone answering machines.

An equally important issue for computers and interoperability is not what is in H.R. 1555, but what is left out. There is no recognition that the computer and information processing markets are already highly competitive—we don't need deregulation in order to *create* competitive computer markets, but to *preserve* them. That is, the market is working fine in the computer industry, and we just need to make sure that government leaves the computer marketplace alone. Nor is there anything in the bill that shields the computer industry from intrusive FCC regulation, or that provides a policy directive to the FCC for its decisions on matters of technical standards. The personal computer industry may well be a model of how technological innovation can benefit consumers where the government lets industry work out technical and standards issues on its own. Although initially many computer products were incompatible, the market has rapidly moved towards almost complete interoperability.

These are *very dangerous* omissions. Since we know that the Communications Act is only rarely amended and virtually never overhauled, a bill that divests or limits the Commission's regulatory authority over some communications markets in favor of competition, but that does *not* offer equal protection to the computer industry, is clearly not one establishing a level playing field for these converging markets. I be-

lieve that the Subcommittee should address this oversight by setting policy goals and specific criteria for the FCC to apply in facilitating, adopting or authorizing technical standards applying to the confluence of computers and communications. A presumption in favor of competition for equipment interoperability is especially appropriate where technological innovation is rapid and the markets involved are emerging and dynamic, rather than mature and static. In the computer industry, this is the rule, with typical product lifecycle measured in months, not years, and with new technology giving rise to new markets, rather than the reverse.

The policy principles for shielding the computer industry and other emerging markets from overbroad and unnecessary regulation should hardly be controversial.

First, in computers and related markets, the law should incorporate a strong presumption against FCC involvement in standards, with government standards authorized only if there is a clear market failure.

Second, permitted FCC standards in any market should take a minimalist approach, and should be as narrow as possible in order to maximize technological innovation and competition.

Third, the Commission's jurisdiction over cable set-top box compatibility standards under Section 624A of the Communications Act should be strictly limited, with the FCC instructed to leave other industries and products, such as home automation, alone.

Fourth, in crafting its cable compatibility regulations, the Commission should accord substantial weight to the importance of facilitating marketplace competition for "interface equipment" and other forms of CPE, avoiding any direct or indirect disadvantage to the computer industry.

Mr. Chairman, Echelon has been working with your staff and those of several other Subcommittee members on an amendment to H.R. 1555 that would implement these changes. On behalf of Silicon Valley and the entire computer industry, I urge this Subcommittee to use its re-write of the Communication's Act of 1934 as a vehicle to shield the computer and high-tech industries from the risk of governmental overregulation, particularly on the issue of interoperability and technical standards.

If technology is the engine of the American economy, Silicon Valley represents the fuel injection system for that engine. We need to keep the system clean in order to ensure that American consumers enjoy all the horsepower the computer industry has to offer. It would be a policy shame, and an economic tragedy, if inadvertent or misguided government policy hamstrung the computer industry by applying outdated, overbroad or unnecessary regulations to the convergence of computers and communications.

Ms. ESHOO. Thank you very much and we do have copies that we will distribute for the members and the staff.

I have one question to ask of Mr. Gooch. You gave the example of train tracks and the important goal of ensuring that trains can pass over different tracks. But do you believe it is one thing for the government to set steady standards for track width and quite another to require that the government actually compel a company to divulge the composition of materials in its rails and its technology deployed to make the rails and that they lie exactly parallel, because that is what I hear you saying.

Mr. GOOCH. I do agree that the government should not be involved in issues such as you describe setting specifications for material and the value-added content of products and services.

Ms. ESHOO. So you agree with the former description and not the latter.

Mr. GOOCH. Yes. Our view is that the critical interfaces, and I believe the critical interfaces is an excellent starting point, would be those four described in the computer systems policy project published last year would be an excellent starting point for determining how the various elements of the information infrastructure mesh seamlessly together.

We do not believe the government should be involved in requiring internal to products, hardware or software that they follow any

particular specification in terms of how they add their value internal to their products.

Ms. ESHOO. Can you just briefly describe for me what you view the FCC's role should be in this?

Mr. GOOCH. I believe in areas where there is a lack of competitiveness in a market segment there may be a role for the FCC.

Ms. ESHOO. Do you support the language in the bill on interoperability, including the language on the navigational devices?

Mr. GOOCH. I prefer not to go further at this time in comments than to say that we support the bill in terms of fostering a spirit of competitiveness and at the same time we believe government would have a role legitimately in providing an open forum in which industry can negotiate and arrive at standards to achieve interoperability in the future and failing industry's ability to arrive at such standards there may be a role, limited role of arbitration for government in insisting that such standards be adopted.

Ms. ESHOO. Are there others from your background that support what you just stated?

Mr. GOOCH. Yes, I believe there are.

Ms. ESHOO. Can you tell us who they are?

Mr. GOOCH. It is the position of the Computer Communications Industry Association.

Ms. ESHOO. Thank you. Thank you, Mr. Chairman for allowing me to ask my questions at this point and have a great weekend.

Mr. FIELDS. I thank the gentlelady.

The gentleman from Washington, Mr. White.

Mr. WHITE. Thank you, Mr. Chairman. I would like to ask you a couple of questions, Mr. Deutsch, on this issue of interoperability, which I think is very important. You made a point that you thought Section 248 of the proposed bill encourages the government to get involved in this area and I would have to agree with you that it probably does encourage them more than you would like. Once you give them an inch they tend to take a mile.

I would like to ask you if you have examples of standards that are set by the industry without any government oversight or intervention that have worked.

Are there examples that you can think of where industries maybe not even the software industry have successfully set standards that have worked well?

Mr. DEUTSCH. Yes. I believe I can respond in the software industry, as a matter of fact. I have chaired for 17 years an X-3 standards committee, X-3 H-2 that develops standard for the database language SEQUEL. Database language SEQUEL is the language that is used to interface to my product and my primary competitors' product.

This standard has been accepted as an American national standard, as an international standard. It has been adopted by the Federal Government as a Federal information processing standard. The U.S. National Institute of Standards and Technology operates a conformance testing activity which basically lets Federal agencies know that our products, in fact, conform with this standard and this standard is arguably one of the most significant standards of the last 10 or 15 years.

It was developed wholly through voluntary participants of database software vendors, large users, and has been evolved over a period of time to lead the marketplace.

Mr. WHITE. Let me ask you this. What kind of software does your company make?

Mr. DEUTSCH. We make database software. We make software application development tools and related products.

Mr. WHITE. And your company is about 10 years old.

Mr. DEUTSCH. Ten years old. Ten years ago it was two guys.

Mr. WHITE. If 11 years ago the government had set a standard for the industry for database software, would your company exist?

Mr. DEUTSCH. No. In fact, I think there is a good chance that the entire area of client server software wouldn't exist.

Mr. WHITE. Let me ask you this question. I have got this laptop computer that I can't really hardly get any work done without. I have got a Microsoft Windows system on here. I have also got a bunch of other software. Word Perfect system. Word Perfect, if you go in and click the right buttons, it will translate any document from Microsoft Word or from any of the another word processing programs so they work on Word Perfect.

I have got a Polaris information manager on here, which is a small company in California that manufactures that. Is there any government agency that sets any of the standards that allows all of this to work together on my computer?

Mr. DEUTSCH. Not to my knowledge. I wouldn't be surprised if there are standards such as the character and coding standard and other standards which are used on your computer that the Federal agencies participated in a voluntary process in establishing, but no Federal agency imposed any of those standards to my knowledge. It is the marketplace that caused Microsoft Word and Word Perfect to recognize that customers want to be able to move their documents back and forth and so the vendors responded.

Mr. WHITE. I have got Microsoft Word at home on my home computer. I have taken this home, put a disk in this computer and take it off and put in my home computer. You are saying this is not something that was government-mandated. It was just the marketplace that did that.

Mr. DEUTSCH. Yes, indeed.

Mr. WHITE. We have big players in this industry and is it necessary to have government supervision so they don't overrun the small players? I suspect you consider yourself a competitor of big players. Are you willing to compete in the marketplace or do you want the government to help you?

Mr. DEUTSCH. This is an extremely competitive marketplace and there is no question that we spend every waking hour of our business day concerned about some competitors that are very much larger than we are. However, we are not desirous of the government to assist us in this.

In fact, we don't believe we would exist today if the government had been involved. I am sure we have competitors that see us as a big competitor today. So the computer software industry is arguably the biggest success of my professional life. We have an industry where we dominate the worldwide marketplace and it is be-

cause of the innovation we have allowed to go on and I would hope that we wouldn't stymie that.

Mr. WHITE. I certainly agree with you on that. I guess my time expired. I may try to come back to this at a future time.

Thank you, Mr. Chairman.

Mr. FIELDS. Thank you very much. The Chair would like to recognize the distinguished ranking minority member, Mr. Markey of Massachusetts.

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

I would like to begin with you, Mr. Gooch, and just lay out a little bit for everybody the fork in the road that we are at right now, back when Mr. Deutsch or others were starting up their companies in a garage, wherever they might have been, we weren't in the potential of having one wire control everyone's entry into even everyone's home.

To a certain extent, they didn't go into people's home. You had to buy the software with a stand-alone computer. So a lot of what we are talking about thus far doesn't really relate to where we are today, where one telephone company for an entire region might control the way in which access is gained into homes and if they partnered with one software company, to set the proprietary or nonproprietary standards for a single information service.

Let's say that telephone company purchased Prodigy and that was going to be their favorite product and they thought they could be the one information service going into every home. Now we have got a different situation from people having to go down to the store and purchase their software as it is heading over the wire.

So the issue isn't really whether or not as we move to this common carrier model whether or not we want there to be people in the garage, a couple of guys or a young man and a young woman or two young women. The question is whether or not these older companies that have now made it really want these newer ideas to be able to compete with the one idea that they might have in partnership with the telephone company.

My problem with them is they are big business people now. This not a guy in a garage sitting here any longer, Mr. Deutsch. He is a very wealthy man, as are most of the people who are in the successful part of this industry. My concern is for the two people in the garage today, the thousands of them across this country, the thousands of future software companies, their ability to destroy the economic advantage which Mr. Deutsch has today.

I want him to feel a lot of pressure. I don't want him to be able to partner or anyone to be able to partner for that matter with any telephone company or common carrier to keep out the thousands of companies that will want to get on line and reach the millions of consumers.

Could you give us your sense, Mr. Gooch, of how the smaller companies, the smaller participants will view those kinds of partnerships if there isn't some kind of backstop, some kind of FCC protection, which is can intervene short of an antitrust suit that you would have to bring in order to ensure that they are economically viable and that they have a stake in going out and risking their own capital to get into a market that could be closed.

Mr. GOOCH. Thank you, Mr. Congressman. I would be delighted. The practical aspect of enforced standards by a large holder of market share, in fact, is to consume the otherwise useful capital of small entrepreneurial startups. In my view they are hurt worst.

If a corporation who has dominance in an industry can arbitrarily and unilaterally change standards overnight at their whim, these small startups who find themselves inevitably with scarce capital and limited time in which to hit a market window find in the 11th hour if someone has arbitrarily changed a standard on them that they have to consume their precious capital in trying to discover intricacies in some arbitrarily changed standard. And then either compete with very expensive intellectual property lawyers in trying to extract information or take engineers who today can typically be costed at between $100- and $150,000 each and take them off of projects that are adding value to the industry and to the consumer and put them instead into the nonvalue-added activity of discovering changes in interfaces and standards and specifications.

Mr. MARKEY. Let me say this, Mr. Gooch, my concern is that, yes, there would still be a residual right of individual companies to bring antitrust cases against a telephone company partnering with a huge software company that would then have a stake?

Keeping out the thousands of other software companies who, by the way, don't exist today so they can't testify, we are trying to create that industry. We are trying to quadruple and 10-fold increase the number of software companies out there rather than seeing consolidation in a small number of companies partnering with regional telephone companies.

My problem is that they could bring antitrust suits, but the vindication would be posthumous. They might win a suit for $10 million 10 years from now because it would be posthumous, because their ability to create a $500 million or $1 billion company would have been stifled because the FCC would not have been there to offer protection.

I will add parenthetically, the same thing was true when the MCI and Sprint were trying to get on line. They could not do it until the FCC ensured there was interoperability so the smaller companies could get on and compete. The FCC has to be the referee to protect the smaller companies and I think we can do it consistent with the larger already existing companies' desire to be productive and grow in this new era.

Mr. FIELDS. Do you want to respond, Mr. Gooch?

Mr. GOOCH. Yes. You touched earlier on what I believe is a vital distinction. There is a quality of difference, in my view, in the nature of the computer industry taken place over the last 10 years.

If you look at growth in the large traditional mainframe glass house computing environment, the bloom has been off the rose there since 1987, 1988. However, the industry itself has not stopped growing. It is growing at an even greater rate in the midrange desktop and workstation client server environment.

That environment, unlike single, large mainframe enclosed under one set of covers, is a distributed computer. It is vitally important that standards be hammered out such that every market competitor can access that distributed computer model without prohibition from arbitrary standards and changes by market shareholders.

Mr. MARKEY. I think that is the competitive model, sir, and I think you have laid it out for us and I think before the end of the day, all will come to embrace that competitive model for the smallest companies, the innovative and the young, somewhat, who otherwise could be walled out in the future. Thank you.

Mr. GOOCH. Thank you.

Mr. FIELDS. The gentleman from New York, Mr. Frisa.

Mr. FRISA. Thank you, Mr. Chairman.

Mr. Katz, I would like to ask you some questions being that Nationwide is a constituent company located in my district and also thank the Chairman for extending the courtesy for allowing you to testify on rather short notice.

As you have testified, you are very interested in the cellular telephone business. You have been actively involved in that business for some 10 or 11 years now and have grown quite a successful company. And you are seeking to apply similar provisions that are included in 1555 with the wire-based part of the industry to the wireless?

There are a number of questions that have come up from others who are currently in the industries, some of them, I think, are very logical questions and I think other ones, frankly, probably geared toward guarding a business that is there and that is understandable as well.

I thought possibly we could go through a series of these concerns, get them on the record so that we, as a subcommittee, can then weigh them with some of the other testimony we have received previously in an effort to do what is best for all of your customers, both yours and your competition's, as well as our constituents.

Firstly, the FCC recently reported several weeks ago a rule that refrained from opening up the duopoly. Could you then comment on why you think they are incorrect or correct?

Mr. KATZ. Well, as I understand it legally, we currently have the rights of interconnection. We have the rights to interconnect to facility as—all facilities-based carriers, be they wire-lined or wireless. We have pressed to have that right and have gone to a—through an FCC process and hopefully they will, in fact, grant us the approval to interconnect. That is a slow process.

We would hope that in the telecommunications bill, H.R. 1555, you folks would deal with it more rapidly and more universally and find a consummate kind of solution.

Mr. FRISA. Okay. Another issue that has been raised is that one of the reasons for the duopoly is a limited amount of spectrum.

Mr. KATZ. Well, there are no issues with respect to spectrum capacity today. As a matter of fact, by adding additional technologies, which have come on line in the past few years, CDMA, TDMA, all of these will allow for enormous excess capacity in our industry. So capacity is no longer a constraining issue.

Mr. FRISA. Okay. And how would you respond to the contention that duopoly is still competition?

Mr. KATZ. Well, if you look at the pricing in almost every major city throughout the United States, you will notice that there is virtually no price competition. As a matter of fact, there is very little price competition even on features and functions because the industry is growing at about a 40 percent rate annually.

The duopoly license holders apparently feel there is no need for them to do anything other than continue to support their current cost and speed and therefore prices have not gone down in the last 5 or 6 years, notwithstanding the fact that their underlying costs for long distance services and other services have, in fact, gone down. That is why they are making candidly rather large profits in the aggregate.

Mr. FRISA. Well, generally speaking, I don't have a problem with large profits.

Mr. KATZ. Generally speaking, this is the American way, but when you are granted a license and you are a duopoly, and your pricing allows you to bring to the bottom line 35, 40 percent pre-tax, I am not sure that that fosters competition.

Mr. FRISA. What about the fact that, and I agree with this concern, that those duopoly companies throughout the seven regulation regions have made significant investments, capital investments in terms of facilities in terms of software and R&D and that to merely open it up would allow you to benefit and profit from their investment?

Mr. KATZ. We are not suggesting that they shouldn't be paid fairly or equitably or justly for their capital investment or an ROI. We are suggesting there are very few industries which operate on 40 percent-plus pre-tax after expensing their marketing expense.

Mr. OXLEY [presiding]. The gentleman's time has expired. The gentleman from Texas.

Mr. BRYANT. Thank you, Mr. Chairman. Welcome, Mr. Galvin and Ms. Patterson. Ms. Patterson, you are from small business and Mr. Galvin from big business, you expressed concern in your testimony about subsidiary requirements with regard to Southwestern Bell in my State or the RBOCs in the rest of the country under their various names.

That concern seems to weave its way through the testimony of a number of different groups. What is your concern, Mr. Galvin, with regard to the separate subsidiary requirements you have addressed? You are pretty strong and pretty big and world-wide. I would think you would be immune to just about anything now.

Mr. GALVIN. First of all, Mr. Congressman, thank you for being a customer. We think that the answer to this issue is—again, in my verbal testimony, I applaud the competition first and deregulation and the checklist and the parity that has been built into this concept that is to be applied.

We have found in our experience of advocating pro competitive rules around the world that the devil, so to speak, if there is any to be. Is in the details in this instance and so when it comes to the discussions that have occurred so far on establishing network standards between the manufacturers and those that will operate the networks, in this case that the same people doing that within the same entity can cause problems.

In this instance we have seen it happen in other markets like Japan in this instance, but that there are different cost structures for the entities that are designing network systems versus those that are competing in manufacturing in this case and if there is going to be competition in the manufacturing side of the business,

a separate subsidiary and all the appropriate costs matched to that we think is a cleaner way to do it.

If one is going to establish cost structures for State regulatory agencies, that has to be broken out in some relatively clean way in this instance. So it is our opinion, again, based on what we have seen, that this provides for a cleaner mechanism and less tendency for cross-subsidization that then there is a bit of an imbalance because most manufacturers like us don't have preexisting monopolies and the cash flow associated with those monopolies in our business.

Mr. BRYANT. Your particular concern is with regard to manufacturing?

Mr. GALVIN. Yes.

Mr. BRYANT. Ms. Patterson.

Ms. PATTERSON. Our particular concern would be in more the service side of the industry whereby I think the bill addresses the fact. It says that revenue or cash would be covered, but we think there should be other provisions because they can do a lot of things with their personnel.

For example, in our case they could call up and on an inbound call and say do you want to hear about a service and yet it us our customer calling up because the phone company is our vendor. We feel it needs to be things—be enhanced other than just cash or revenue to be expanded to prevent cross-subsidization. So I guess it is just in the detail and in the enforcement.

I think maybe the broader language is there, but when you get down to it, there are other things that impact us and we would like to make sure that it addresses those issues also, otherwise it could be—we want it to be more broadly interpreted.

Mr. BRYANT. Ms. Patterson, you have said in your testimony that the telephone companies can and do misuse their power by marketing their telemessaging services using vital information about their ratepayers. Could you give us an example of what you are talking about?

Ms. PATTERSON. Yes, because we are dependent on the phone company for many of the features that make our industry, if you are familiar with our industry, viable and certainly the phone company, we are very close in partnership in many ways because they provide us the capability to do these things, but if they can take the information about usage on the phone system or the fact that this client—customer is a client of ours and has usage because they have access to those records and then take it over to an area where it is not regulated and use that, it just—it seems that it is not fair because they are a vendor and our competitor and we probably don't mind them being our competitor, but when they are our vendor and they can use that information in other ways, that is harmful to us.

Mr. BRYANT. Mr. Synk, would you like to elaborate on that?

Mr. SYNK. Thank you, Mr. Chairman. We have much the similar feeling as has been expressed by Ms. Patterson. We have seen examples in certain locales where the phone company has offered services like derived channel or ISDM and what they have done is indicated to certain of our dealers that they will be the select dealers and they will be the ones who will be the winners or the losers

and what they have done is changed the rates and changed the entry fee also after it has been offered initially.

In addition to that, they have gone out, this is a type of service which allows the company to understand if there has been a line cut or not and they have publicly gone out and advertised the fact that there is a vulnerability with your phone service detecting this type of a line cut. That then has jeopardized many of our companies who are delivering service and it has also endangered the public. So we have seen those kinds of situations and I guess that is the reason why we are here about cross-subsidization.

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

Mr. Synk while you have got the microphone, with respect to Ameritech, you oppose the company being allowed to purchase any more alarm companies before the July 1, 2000 entry date, as I understand it. It is our understanding that you do not oppose Ameritech simply adding customers. Where should we draw the line under this proposal?

Mr. SYNK. Well, what our suggestion is, is that the acquisition of Security Link occurred back in December of 1994. And what we are suggesting is that we have a cut-off date of January 1, 1995.

I have talked to the people from Ameritech. They have not made any further acquisitions this year and we don't think that they should be in a position where they are rewarded for making this acquisition because it gives them a leg up against the other RBOCs and it also gives them a competitive advantage over our companies as well.

Mr. OXLEY. What if it is part of the Ameritech business plan to get into that business. It is obvious that the RBOCs are going different ways in their different business plans. Why is this any different. Why shouldn't they be permitted to make a business decision and, indeed, why should someone in your business object to someone, a competitor of yours, for example, agreeing to sell their company to an RBOC.

Mr. SYNK. I guess we have the same kind of situation as telemessaging. We are using the telephone lines and they are the link between our customer and ourselves, see, a little bit different situation. We don't mind fair competition. We don't mind big companies being out there because we have competed with big companies before, but when that company controls the link between you and your customer and has the ability to interact with that customer very easily, that could make it very, very difficult for us.

Besides that, I think you also have to take into consideration that the other RBOCs are not in a position where they can compete and they have agreed to that and so did Ameritech last year and Ameritech should not be, I don't think, given any special treatment or consideration because they violated the spirit of the agreement.

In fact, that makes me kind of nervous, the fact that we had an agreement and they turned around and used it in a different fashion to get a time window so they get a leg up on the other RBOCs. That is exactly the kind of performance and the kind of thinking that scares me as a representative of small companies.

Mr. OXLEY. Do you think it scared the people that owned the company that sold the assets to Ameritech?

Mr. SYNK. I think that was mentioned in one of the other testimonies this morning. You could be good for a very limited number of people to sell their company and get a very, very fine return because Security Link was not a very profitable company, so from our perspective, yes, it was good for those shareholders, but is this good for the public at large and is it something that is good for those 13,000 companies out there, the 130 jobs that are in the alarm industry today?

It is not even fair to the other large RBOC companies. If you look at Ameritech, they have a cash flow within 1 year that is about $12 billion, okay. That is like that gorilla, wherever that gorilla wants to sit, it is up to them because they are very, very big. We are small companies. I think that is what we are concerned about.

Mr. OXLEY. Mr. Katz, I am going to tell you since I am in the Chair I am going to take the prerogative of asking one more question, Mr. Katz.

I wanted to ask you a question on your proposal. We are dealing with a telecommunications deregulation bill today. Your proposal, as I understand it, would require a complicated regulation of each unbundled equipment—component of cellular service.

The FCC, as I understand, has rejected that approach and has indicated that they don't think it is an operational possibility and indeed with the advent of PCS and the like, that the whole concept that you seem to be advocating is probably outdated at best. Would you care to respond?

Mr. KATZ. Certainly. I think in my remarks, if I may, just to harken back to those for a moment, I indicated that amongst the Bell operating companies, GTE, the Sprint consortia, and AT&T, in the top 30 markets, the same folks bought the PCS licenses, not necessarily the same companies but those are the—that is or those represent the group of newer cellular providers or PCS providers, in addition to which PCS is a few years away.

It is highly unlikely that that group will foster price competition. They haven't in almost every other city in the United States. As far as unbundling rates, there is nothing—unbundling the services, from an engineering point of view, there is no difficulty in interconnecting switches. Ericsson has passed on a project that we have and I would be happy to provide you with that information.

[The information follows:]

92-967 0 - 95 - 17

Date: 7/25/95

VIA FAX

Mr. Harry Midgley
Midgley & Associates
15600 Ash Drive
Overland Park, KS 66224
(913) 897-0763 fax

Dear Sir:

Ericsson is pleased to inform you that the technical field trial conducted to confirm the commercial operation for a reseller switch has been completed. All call scenarios were performed successfully as per the test plan with the exception of a reseller to reseller mobile call handoff that was directly attributed to a defective mobile phone. This test call was completed successfully several times during the pre-trial test and therefore is certified as valid.

The call connect times for certain call scenarios were determined to be excessive because the trial system configuration included routing these calls through the Ericsson Private Branch Exchange (PBX). This routing and excessive call connect time would be eliminated in a normal call scenario.

Roger Boivin
Director, Strategic Accounts

Doc#: RB-95060

Classification:

Ericsson Inc.
Radio Systems
740 East Campbell Road
Richardson, Texas 75081

Telephone: (214) 952-8800

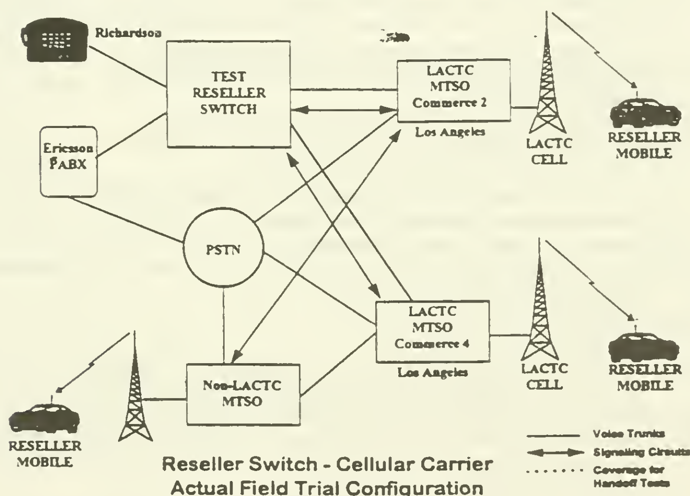
ERICSSON

REPORT — Sheet 1(3)

Prepared	Subject responsible	Document No		
S GIBBS		EUS/R/MT-95 023		
Approved	Checked	Date	Rev	File
J TOKARZ		07/24/95	PA2	/TSS

RESELLER TEST REPORT

Ericsson Radio Systems, in cooperation with the Cellular Resellers (Cellular Service, Inc., Comtech, Inc., Nova Cellular West, Inc., and Nationwide Cellular Service, Inc.) and the Cellular Service Providers (Los Angeles Cellular Telephone Company (LACTC) and McCaw Cellular Communications, Inc. (McCaw)), configured a reseller switch in their Richardson, Texas facility to demonstrate it's operational viability.



Reseller Switch - Cellular Carrier
Actual Field Trial Configuration

The figure shows the actual implementation. One comment must be made concerning the use of the Ericsson PABX in these trials. The phone numbers provided by the reseller were not "live" numbers in the North American Numbering Plan. The numbers were only activated in the LA Commerce 2 and Commerce 4 MTSOs, the Reseller Switch (Ericsson Test Bed), and the Ericsson PABX. As a result, exchanges in the Public Switched Telephone Network (PSTN) could not deliver calls to those numbers. In order to demonstrate calls to a reseller mobile, a "real" number, assigned to the Ericsson PABX, was called, then the PABX translated the number to the assigned Reseller mobile number. Calls were then delivered via the Reseller switch.

A summary of all test procedures performed is listed below. Those tests marked "Skipped" could not be performed for the reasons indicated.

7.1 Home Subscribers (Reseller)
- 7.1.1 Reseller Mobile to Reseller Mobile
- 7.1.2 Reseller Mobile to Mobile in existing cellular network
- 7.1.3 Reseller Mobile to Land
- 7.1.4 Reseller Mobile to Land
- 7.1.5 Land to Reseller Mobile

7.2 Test of Call Hand-offs
- 7.2.1 Call hand-off same switch
- 7.2.2 Call Hand-off between different switches

7.3 Feature Activation and Deactivation for Home Subscribers (Reseller)
- 7.3.1 Call Transfer (Immediate) to a seven digit number
- 7.3.2 Call Transfer (Immediate) to a ten digit number
- 7.3.3 Call Transfer (Immediate) to a eleven digit number
- 7.3.4 Call Transfer on busy (TRB-2) to a seven digit number
- 7.3.5 Call Transfer on busy to a ten digit number
- 7.3.6 Call Transfer on busy to an eleven digit number
- 7.3.7 Call Transfer on no reply / no answer (TRN-4) to a seven digit number
- 7.3.8 Call Transfer on no reply / no answer to a ten digit number
- 7.3.9 Call Transfer on no reply / no answer to an eleven digit number
- 7.3.10 Call Waiting (CAW-1)
- 7.3.11 Call Inquiry / Conference Calling (ENQ-4) Three way call

7.4 Automatic Roamers (Resellers In Other Existing Cellular Networks)
- 7.4.1 Automatic (Reseller) Roaming to Other Mobiles
- 7.4.2 A call from a mobile subscriber to an automatic roaming reseller
- 7.4.3 Reseller Automatic Roaming Mobile to Land
- 7.4.4 Reseller Automatic Roaming Mobile to Land
- 7.4.5 Land to Reseller Automatic Roaming Mobile7.4.6 Reseller Automatic Roaming to Reseller Automatic Roaming Mobile

7.5 Test of Call Hand-offs - Reseller Roaming
- 7.5.1 Call hand-off same switch
- 7.5.2 Call Hand-off between different switches - Skipped - This test cannot be demonstrated. Requires the mobile to roam in two different switches

7.6 Feature Activation and Deactivation for Autoroaming Subscribers (Reseller)
- 7.6.1 Call Transfer (CTR-1) to a seven digit number - Skipped - This test cannot be demonstrated. Transfer to 7 digit number invalid while roaming *1
- 7.6.2 Call Transfer (CTR-1) to a ten digit number
- 7.6.3 Call Transfer (CTR-1) to a eleven digit number
- 7.6.4 Call Transfer on busy (TRB-2) to a seven digit number - Skipped - This Section cannot be demonstrated. Transfer to 7 digit number invalid while roaming *1
- 7.6.5.1 Call Transfer on busy (TRB-2) to a ten digit number
- 7.6.5.2 Call Transfer on busy (TRB-2) to an eleven digit number
- 7.6.6 Call Transfer on no reply / no answer (TRN-4) to a seven digit number - Skipped - Cannot demonstrate. Transfer to 7 digit number invalid while roaming *1
- 7.6.7 Call Transfer on no reply / no answer (TRN-4) to a ten digit number
- 7.6.8 Call Transfer on no reply / no answer (TRN-4) to an eleven digit number
- 7.6.9 Call Waiting (CAW-1)
- 7.6.10 Call Inquiry / Conference Calling (ENQ-4)

*1 Test attempted while roaming on the Santa Barbara switch. This test is not supported while roaming on any switch.

Mr. OXLEY. Is it fair to say that you are asking us to reregulate an industry that we just deregulated a couple of years ago?

Mr. KATZ. No. Forgive me. With all due respect, I disagree with that. Number one, I think what we are asking for, the omnibus bill, there is not a great deal of clarity and there is still a great many open issues. What we are asking for is the same level of deregulation today, but on a level playing field for all participants, both wire line and nonwire line.

Mr. OXLEY. What is the different as to what you asked the FCC to do as to what you are asking us to do?

Mr. KATZ. Candidly, I am not sure I can answer the question, because I am not sure I understand specifically what you mean.

Mr. OXLEY. Well, your proposal to the FCC, what, a couple of years ago was undertaken by the FCC and rejected; is that correct? The proposal on reselling?

Mr. KATZ. I don't——

Mr. OXLEY. You didn't have a proposal before the FCC, the resellers didn't have a proposal before the FCC as it related to regulation?

Mr. KATZ. I am sorry. I think you are referring to the right to interconnect.

Mr. OXLEY. The separate switch concept.

Mr. KATZ. Right, that is the right to interconnection. As a matter of fact, this year the FCC invited anyone who chose to ask for interconnection and was denied interconnection to file, I believe it is called a 206 or 208—208 petition and the FCC would, in fact, look at that, but that is a slow and painful process, which will take a long time and while the FCC is deciding it, even if they decide in our favor, I think the general consumer loses because he will be paying higher rates for less service during this adjudication process. And what we are asking for is for you folks in the broad stroke of the deregulation bill to do the same thing in wireless.

Mr. OXLEY. So the answer is, yes, you are basically trying to get in legislation what you were denied at the FCC.

Mr. KATZ. I don't think we were denied it. I think what the FCC has said was proceed with the process which we have done, but I think the process is much slower and would be more arduous than if the good offices of this august body were to recommend another approach, which got everybody to the same place more rapidly and universally.

Mr. OXLEY. Thank you.

Mr. KATZ. Thank you.

Mr. FIELDS. I wasn't sure if there was a palace coup or a filibuster. You can take shots like that at your Vice Chairman.

The gentleman from New York, Mr. Manton.

Mr. MANTON. I thank the Chairman.

My first questions refer to Mr. Galvin from Motorola. As introduced, H.R. 1555 contains an MFJ savings clause that preserves the decree section 2(b), nondiscrimination provisions. In your view, is the preservation of section 2(b) alone adequate to guarantee that independent manufacturers have a fair opportunity to compete for Bell Company procurement awards or should the bill include additional nondiscrimination requirements?

Mr. GALVIN. Let me respond in the following way. The technical answer, we will have to have our staff give you the specific answer. I will give you the answer relative to principle. Again, as I said in my oral statements, the issue of nondiscrimination in procurement is an essential enabler in promoting and achieving competition in all of these markets. And, again, there were opportunities without the proper—very modest oversight in this issue for there to be non-competitive or less competitive practices without these kinds of provisions.

Mr. MANTON. Next question, this bill requires local telephone companies to offer number portability when technically feasible and economically reasonable.

When will manufacturers be able to offer the technology necessary for the Bell companies to provide number portability in a way that does not impose undue economic burdens on the Bell companies?

Mr. GALVIN. You are speaking about single number, carry it wherever you go across all the network systems.

Mr. MANTON. Well, if you want to switch your phone company, you move your number.

Mr. GALVIN. The answer is there are a variety of basic software what they call intelligent network approaches that are being designed to achieve that class of thing, but, again, the marketplace will determine when those things are purchased, but at this stage in time they are not yet available technologically to put across the networks. Probably within the next 4 to 7 years or so they may, in fact, be.

Mr. MANTON. In other words, if there was a market, this is fairly easily done?

Mr. GALVIN. The answer is, yes, it will be in the future with the advent of additional software and hardware enhancements, but today people are able to switch their long distance services rather regularly and their cellular services by having the phone reprogrammed to move in this instance.

In a duopoly, at some point in the cellular business, as spoken by Mr. Katz, there will be 3 or 4 or 5 cellular providers in a community and people will be able to move their radios across, if they are on the same frequencies and using the same protocols and send messages back and forth.

Mr. MANTON. Thank you, Mr. Galvin.

Mr. Synk, if Congress does not step in and provide a 6-year transition period, what happens to your small business-dominated industry? Will we be in a position of enacting legislation that is responsible for the possible elimination of many of the 130,000 jobs that are now provided by your industry?

Mr. SYNK. Well, that is our concern and the fact that we do provide life safety types of services: Fire alarms and burglar alarms. As I mentioned in my testimony, we service about 17 million homes and businesses today. So those particular locations could be in jeopardy.

One of the things that we offer is a service, we have a certain amount of labor associated with our service because we have to go out to the premises to install and maintain the equipment. I think the phone companies are more attuned to providing services from

their central offices and the communication link, but you could lose a whole host of people who are now capable and who have the expertise for over 100 years for that matter, our service actually predates the phone service and they have the expertise to go on out and make sure these systems are functioning properly in the homes and businesses. And I guess you know the thing that we have to think about is if we lose that, how fast can it be put back together again, so that is the only reason that I have said we like the idea of competition.

We are looking at the fact that maybe over the next 5 to 6 years we will see enough competition in this and alternative communication paths open to us, but we are very, very concerned, so I thank you very much for that question.

Mr. MANTON. Final question. Vigorous competition between your 13,000 alarm companies has resulted in a 40 percent reduction in installation costs over the past decade. Is it likely or is it unlikely that consumers will face higher prices as a result of diminished alarm competition once the Bells enter the industry?

Mr. SYNK. Well, deregulation certainly has demonstrated that you know competition can be driven by deregulation. However, you have got to be careful that in that process and that is what we are saying is with a transition you don't spoil the competition that now exists. We have a lot of competition.

I remember years ago when the average alarm system was costing somewhere between $1,500 and $2,000 for installation. Today, it is maybe $190 and in some cases there is no money down and you have 3 years to pay it back. So we think that competition can continue and we think it is vital, but we are concerned if that is concentration that those 13,000 companies get screened, you will see prices instead of going down, going up.

I ask you to look at your phone bill. You haven't seen too many phone bills going down over the last 20 years, whereas you have seen a lot of alarm installation service rates go down over the past 15 years or so.

Mr. MANTON. So you like competition, but you need the transition period.

Mr. SYNK. Yes, I think that is it. We want to gradually transition one that is not going to destroy the competition that exists today.

Mr. MANTON. Thank you. I yield back my time.

Mr. FIELDS. The Chair recognizes himself.

Mr. Colbert, very quickly. We applaud your negotiation with the Bell operating companies in fashioning an agreement. What about the long distance companies? Have you discussed your agreement with them and, if so, where are they?

Mr. COLBERT. The long distance companies, AT&T is paying us on a per call compensation method now. We haven't really received the revenues. If I can give you a brief overview, about 700 calls a month go through our phones. Six hundred is local calls which is a direct rate. About 100 go through in the form of long distance. We currently are compensated for about 10 of those calls we receive money on per month.

Mr. FIELDS. Are you in negotiations with the long distance companies the way you have negotiated with the Bell operating companies.

Mr. COLBERT. Yes, we are in discussion with all of them. Sprint has now approached the FCC with a waiver to pay on a per call basis for calls that go through our phones.

Mr. FIELDS. You do not have a formal agreement as you have with the Bell operating companies.

Mr. COLBERT. We do not at this time. AT&T and Sprint, we are working on, and MCI is the one that is left. We believe we have made tremendous strides to try to get a level playing field. All we are asking for you in Congress is to say structurally we will put something in place.

Mr. FIELDS. Mr. Galvin, we, yesterday, had some very moving testimony from the hearing and the seeing impaired. Let me ask, what does your company do in trying to work with people who have disabilities?

Mr. GALVIN. Well, we have a very extensive program dealing within the company in this instance and, of course, we do a lot of eleemosynary work on the outside. The paging technology using vibration to alert people to come to phones if they are hearing impaired is being integrated into a variety of services and so there are a whole host of things like that that are going on. Though the technology is complicated and difficult, it needs to be tailored to very specific purposes.

Mr. FIELDS. Have you had an opportunity to review our portion of the bill that deals with that and, if so, do you think that that is something—the context in which you can work in and around?

Mr. GALVIN. Mr. Chairman, in this one, I would have to get you an answer because I am not familiar with the details of that segment of the bill.

[The information follows:]

MOTOROLA,
October 3, 1995.

The Honorable JACK FIELDS,
Chairman, House Subcommittee on Telecommunications,
Rayburn House Office Building, Washington, D.C. 20515

DEAR MR. CHAIRMAN: I am pleased to respond to the Committee's request on behalf of Christopher Galvin, President and COO of Motorola, for additional information about how Motorola's products may be used by the disabled. As stated in his testimony, Motorola's technology for vibrating pagers and cellular telephones provides a useful alternative to audible rings to alert hearing impaired users to pages and phone calls.

There are many other wireless technology applications that are useful to the disabled. For example, our cellular phones enable a user to preprogram an emergency number of his or her choice into the phone and that number then can be dialed by pressing one key.

We have provided our resources and the time of one of our top engineers to assist the developers of the HATIS device for the hearing impaired in making the device compatible with our cellular telephones. In fact, on September 13, Heather Whitestone, Miss America 1995, who is hearing impaired, used the HATIS device to place a cellular call to the First Lady, Mrs. Clinton.

Our Paging Group has established an alliance with Ultratec, Inc., a small firm in Madison, Wisconsin that builds TDD devices for the handicapped. With our assistance, Ultratec is developing an inexpensive alphanumeric input device for the home that assists a disabled person to stay in touch with family members, medical personnel and others.

In the exercise of our responsibility to investigate the impact of wireless technology on the types of electronic devices used by the disabled, Motorola was a founding member of the Center for the Study of Wireless Electromagnetic Compatibility at the University of Oklahoma. The Center is widely supported by the wireless industry, and included among its current areas of investigation are pacemaker compatibility and hearing aid compatibility.

Again, thank you for the opportunity for Motorola to testify before your subcommittee on this important issue.

Sincerely,

JOANN PICCOLO,
Vice President and Director of Federal and State Relations.

cc: The Honorable Thomas Bliley

Mr. MANTON. Mr. Chairman, would the gentleman mind yielding as long as we have Mr. Galvin's attention here.

Mr. FIELDS. Sure.

Mr. MANTON. I am not sure my question on number portability was articulated very well. My question was how long will it be before you can keep your telephone number when changing service from one local telephone company to another.

Mr. GALVIN. I think the answer would be, again, if the bill achieves its ultimate objective and I will now put numbers on it, ultimately there are two or three very viable local exchange-like carriers that are providing that kind of service competing on price and the quality of service. The technology will allow a customer to switch from local service to local service the way they are now basically able to do so in cellular and basically believe to do in long distance.

Mr. MANTON. And the time period would be how long in this example of two or three local phone companies.

Mr. GALVIN. I think the answer in the bill, which we agree with the principle of, and that is to seek local competition first prior to these deregulations so it is a matter of how effectively now the legislation takes hold and is, in fact, then enforced to allow first for the local competition in the wire line side which will provide the kind of competition for pricing and interconnect for, I am assuming the alarm services, and for the cellular services and this will be now numbers of years in order for people to set up systems in competition with Ameritech or Bell South or any of the others that are there.

It takes time to put in the system, get the architecture integrated, get equipment up and running and collect customers in this case. So it would be numbers of years.

Mr. KATZ. Excuse me, if I may.

Mr. FIELDS. Please.

Mr. KATZ. Thank you, Mr. Chairman.

With respect to number portability, just as 800 portability has brought competition to the 800 line service and thereby reduced costs ultimately to the consumer, number portability, as was pointed out by Mr. Galvin, would, in fact, do the same thing whether it be in local exchange or in wireless.

It would create another level of competition and thereby forcing prices to become lower. That was part of what I think you were asking about and part of what we would like to see in the bill from the wireless perspective. Thank you, sir.

Mr. FIELDS. Mr. Hendricks, I want to say we appreciate your return to this subcommittee. You have testified many times. We always appreciate your enlightening testimony. You made a compelling case just a moment ago as to what happened in your company pre-reregulation and what happened post regulation.

I wanted to give you an opportunity to expound a little bit on how you see our legislation affecting the development of other prod-

ucts, perhaps in your company or as was mentioned earlier, about people in their own garages coming up with new products. I assume in this new age where there is more opportunity for delivery that there will be other products brought to the market.

Mr. HENDRICKS. Yes, I think I have a great deal of concern about the entrepreneurs in the garage. I started in my basement as well. I think one of my chief concerns over the last few years as industry was reregulated there were certain companies that had the ability to survive it and launch new services, larger companies like Turner.

At Discovery, we had the backing to kind of weather the storm, as I said. It would have been very difficult during the last 4 years and impossible for most new program entrants to start a new service. Again, what was removed from the marketplace was a distributor's ability to see a new service and add that if they thought it was of value to their consumers and adjust their rates upward if that is what the consumers could afford and pass that along and that whole economic structure was disrupted.

So what happened was that services like The Learning Channel, for instance, cost more to the consumer than, say, the Discovery Channel which was launched during a period of deregulation. A number of services, we think, like CNN, ESPN and Discovery and The Learning Channel need to reach the mass of America, if we can, at a low cost, packaged or basic or expanded basic.

The Learning Channel has been forced by regulation into upper tiers or, worst yet, on an a la carte basis where some consumers may pay an effective 80 cents per subscriber per month rather than 40 cents per subscriber per month for the Discovery Channel.

Mr. FIELDS. What would have happened to your company if you had not had Discovery up and running and you were just bringing out The Learning Channel?

Mr. HENDRICKS. It would have been impossible without having Discovery's financing to sponsor The Learning Channel's losses without having the investment of the cable operators to help. We wouldn't have survived. It would have been impossible to generate that kind of capacity for losses.

The chief challenge is raising capital. And when I have a situation where there is regulations strangling the introduction of new services, the capital markets dry up.

I tried to fundraise for The Discovery Channel for 3 long years from 1982 to 1985. Finally, with the passage of the 1984 act was capital freed up that I could then attract the money to launch The Discovery Channel.

Mr. FIELDS. So as a consequence of this legislation, assuming that it gets passed in near its current form and makes it all the way to the President and he signs the legislation, what does this mean to you in terms of the video platform of telephone and environment that is more deregulated?

Mr. HENDRICKS. I think after the alternative individual grow platforms are authorized, which may be some 15 months as I understand it from my reading if the bill, the industry would be deregulated. I think there would be much more investment capital.

I think with the signature on the bill more capital will be freed up to increase capacity and that is our chief problem in the indus-

try right now, capacity developed in delivering new services. So it is my assessment that in 15 months when the regulatory issues hopefully are behind us, we will be able to launch new services.

Mr. FIELDS. I am not aware of any announcement. I am not going to ask you to disclose anything that is proprietary, but since you have rolled out two good educational products, do you have more hopefully in the stream someplace.

Mr. HENDRICKS. What we are on the verge on is what I think is the third revolution of television when finally people can get programs on demand.

Mr. FIELDS. You sound like the Speaker now.

Mr. HENDRICKS. That is exactly what I think this revolution will bring about and this bill will increase the capacity to—where people can order movies on demand, TV shows on demand. If that infrastructure is in place, it means in the classroom teachers can order up specific projects and field trips right on demand.

Mr. FIELDS. I would like to recognize the surfer of that third wave, my good friend Mr. Markey from Massachusetts.

Mr. MARKEY. Thank you, Mr. Chairman, very much. I don't know what it means, in Alvin and Heidi Toffler's last book, the only two Congressmen mentioned were me and Newt Gingrich. I would leave it for you to speculate how we are both included in our vision of the third wave.

And we do, we share a vision of this unlimited number of channels reaching every person in America on an uninhibited basis. They can each reach every single consumer. That is really the ultimate vision. It breaks down the architecture of the telephone companies. We first broke up AT&T into eight companies and now we continue to break down the local loop control so that no one can partner with one company and wall out everyone else.

The history of this subcommittee is replete with evidence that AT&T in its old form kept out MCI and Sprint. They couldn't compete. They forced those companies to add 17 extra digits if you wanted to in fact make a long distance call.

It took the Federal Communications Commission in a promulgating feature Group D software that ensured that these long distance companies could compete. And now they can and people have choices because there was a backstop on interoperability on this telephone network.

My concern, to be quite frank with you, is that we don't have anyone who is working in a garage right now testifying. We have people about as far away from a garage as is humanly possible testifying today. Those are the people that I am concerned about. The people who have, in other words, the new idea. The people who want to break up some monopoly of a software company right now, but they might not be able to if that software company has partnered with a telephone company and created a barrier to a new idea to get through.

As a matter of fact, my great concern is that if the telephone company partners with a software company and then designed it in such a way that the new ideas that are out there in garages today can't get through, unless they sell their idea to the software company, the big software company or to the big telephone company, that that will stifle innovation. They won't be able to get

through and the biggest and best ideas, no matter how small they are at this stage, will be sold unfortunately to the telephone company in order to gain access. I want to avoid that.

Mr. Hendricks could not, in fact, gain access until, I mean he is proud of it, but until TCI and others invested in him and he gained access. There were plenty of other smaller ideas that were just as good as his, I might add, and I think he is a true genius but they could not make it because they could not get the partnership with TCI, with the big company.

So, my view is quite simply that we need to ensure, again, that as all of these software companies are moving towards the telephone company network, that they have to have some protections for their ideas. That they are not forced to sell or it or killed in the crib intellectually because they can't reach enough customers. That is all I am really about here. I don't care who wins or loses to be honest with you. But I do need to ensure that the newer ideas can get out there and that somebody can take it all the way.

The young guys in the garages in the early 1980's in terms of this technology, they might as well have been in the 19th century. That is how fast all of this has moved. And it is all now converging on a telephone or cable common carrier wire where your access to that wire and the way the software is designed is going to determine how successful thousands of software providers and software ideas in this country can be.

And that is my simple point here. In anything we do, we have to balance between the huge companies that have already been successful, and they are there, and the thousands who are out there.

Now, for Mr. Hendricks, and he knows that this is an irony, is that the number of national cable networks has grown from 80 in 1982, when the Cable Act went into place, to 113 in 1995, a 42 percent increase since the cable rate regulation bill went into place.

There was a complete stultification, in fact, of new programming from 1989 to 1992, before the regulations went into place. Now, there is an irony there. But the truth is that right now is there is about 65 new channels on line that are being invested in trying to get on, and before the cable bill passed in 1992 there were only a small handful.

And in addition, I might want to add this, Mr. Hendricks had 62 million customers or so in 1992 when the bill passed. But because this committee mandated that his programming be given—be sold at reasonable cost to the cable dish industry, they now have 7 million additional customers. And was the Cable Act of 1992 breaking down further the cable monopoly over programming that made his ability to expand out to an additional 7 million customers possible and that is true. As it is true for every other cable software provider who otherwise would have been locked into their cable owner who would not have let them out.

I want to make sure that at the end of the day we have unleashed all of this creativity, that the third wave involve thousands of smaller companies, employing tens of thousands, hundreds of thousands, millions of younger people who we want to give these skills to in the schools across this country.

The future belongs not to the larger companies who will provide the network, but to the smaller companies who will be the primary source of new employment in this country. And only if we pass legislation that fully embraces that vision of the architecture broken down and made open and accessible so that newer ideas can compete will we be, in fact, capturing this great opportunity for the future.

So to all of you down here it is the tip of the cap. You are the geniuses of the existing network structure in this country. But let us design it in a way in which the thousands of others in the garages right now or are thinking about going to the garage are given the incentives to know that it is worth the risk. They will not have to sell out their idea and they can compete to be the multimillionaires or billionaires 10 years from now whose pictures are on the covers of Fortune or Business Week or Forbes. I want those people testifying here in 6 or 8 years. I don't want to see you here again. And you weren't here 10 years ago, Mr. Hendricks. Okay? I want a whole new generation of people who will be beneficiaries of the openness of the architecture which we are trying to design.

If we do that, we will be a success. That has been the history of this subcommittee from long distance to cable and now in this new era in this telecommunications universe.

And you, Mr. Deutsch, you represent the best of what exists in this country today and I pay you tribute on that. And I want to work with you if we could because I believe there has to be a way that we reconcile the differences that exist between you and Mr. Gooch and the people who he represents here today.

And I will add just parenthetically, to Mr. Decherd, who answered to the question that the FCC should be minimally involved, that calls into question, in fact, all the information service protections for the newspaper industry we have built into this bill.

And when the newspaper industry is with us in private, they do not say that we need minimal protection, the protections that are built into this bill for the newspaper industry are those—and they can negotiate today because they are powerful and big.

What do we do for those who are not powerful and big today? That is a huge responsibility on our shoulders. There will be no PAC money and contributions, because these people do not exist yet. We have a responsibility to make it possible for them to be born and once again revolutionize this industry that is the most vibrant part of the American economy.

Thank you, Mr. Chairman.

Mr. FIELDS. Thank you. The gentleman from Washington State, Mr. White.

Mr. WHITE. Thank you, Mr. Chairman.

First of all, I would like to say we really do share the same vision. We are all trying to protect the person in the garage. The problem is when you look at the telephone industry, there hasn't been a telephone company in the garage since Alexander Graham Bell. And it is because they have been regulated by the government and it has prevented that sort of innovation.

And other industries, such as Mr. Deutsch's industry, for example, he was in the garage 10 years ago. And I think that is exactly

the question we are trying to grapple with here. How do we get these people and encourage them to innovate in the garage? Do we do it by government regulation or otherwise?

Just to follow on a couple of the questions that we were talking about before, Mr. Deutsch, or actually just to finish that line of testimony, I take it that you believe that if we took out the interoperability language of section 248, that would improve the bill. If we just didn't refer to interoperability in this bill, that would be a step in the right direction?

Mr. GOOCH. Yes, that is correct.

Mr. WHITE. Mr. Gooch, I am familiar with your company, I believe. Is it correct that storage technology is a manufacturer of hard drives? Is that your primary product?

Mr. GOOCH. No, Mr. Congressman, we don't manufacture hard drives; disk drives I assume you are referring to?

Mr. WHITE. Right.

Mr. GOOCH. We do manufacture serial products and high-performance libraries. We purchase our small hard drives for disk subsystems.

Mr. WHITE. But you are a manufacturer of hardware, not software.

Mr. GOOCH. No, we invest over $40 million per year in development of software in MicroKote.

Mr. WHITE. What is your primary product?

Mr. GOOCH. Our primary flagship product line today is an automated cartridge system.

Mr. WHITE. And that is a piece of equipment; isn't it?

Mr. GOOCH. It is hardware and software and on board MicroKote.

Mr. WHITE. Can you give me the approximate proportions of—how much of your product—you say you spent $40 million on developing software. How much did you spend on developing software?

Mr. GOOCH. Approximately, of our total research and development budget, $170 million. We spend between $40 and $50 million in software, MicroKote.

Mr. WHITE. So, would you disagree with me that you are primarily a hardware manufacturer?

Mr. GOOCH. Well, I would like to make a distinction. If we backed out the $40 million that we spend to animate our hardware platforms, there would be no value in our hardware.

Mr. WHITE. The interoperability standard that you testified about, that is a standard that basically deals with software; isn't it?

Mr. GOOCH. No, I would not characterize it primarily as that.

Mr. WHITE. How would you characterize it?

Mr. GOOCH. Again, I would encourage those who have not read the computer systems policy project report, I think the characterization in that report of critical interfaces is an excellent starting point.

Mr. WHITE. I haven't read it and I probably won't read it, so if you would just tell me what you think, I would appreciate it.

Mr. GOOCH. I would like to do that. In overview, four key points. For instance, a set top device on a TV. One critical interface proposed was the ability to adapt that device to a network. A second

of the four interfaces was the ability of a network to adapt to another network in the transmission of the data from the set top back and forth through the system.

Another interface was from the network to the application running in a computer platform. And the fourth was in turn that application's ability to interface with the SCP, our system control platform. And that is the thrust of our concern about interoperability; to not get into entanglements or prohibitions on features, but to establish what the critical junctures, the interfaces, so that every competitor can attach seamlessly.

Mr. WHITE. You say in your testimony that you think it is the government's job to articulate the vision and mission of the information infrastructure. Do you have in mind the sort of role that MITI might play in Japan? Is that the sort of thing you are suggesting here?

Mr. GOOCH. No, I believe I also said that government should provide an open forum and be a facilitator.

Mr. WHITE. I was just asking what you meant by this sentence in your testimony, articulating the vision and mission of the information infrastructure. You said you thought that is what you thought the government's role was. What did you mean by that?

Mr. GOOCH. The vision being interoperable standards. The mission being achieving and maintaining those, even if it involves on a limited scope arbitration to ensure just standards are developed.

Mr. WHITE. And you also said that you thought that things that are critical to interoperability be made freely available. Did you mean free of charge they should be available to other people in the industry?

Mr. GOOCH. I believe I said that if patents already exist, it may be necessary to license that intellectual property.

Mr. WHITE. What would you think if we adopted a standard that said that your product ought to be made freely available to people in the industry? Is there a distinction there that I am missing or isn't that exactly what you would be telling the software manufacturers?

Mr. GOOCH. I believe our product is made freely available in an intensely competitive marketplace at the market clearing price of our products. All we ask is the ability to maintain that ability to compete in the future.

Mr. WHITE. I thank you. I appreciate it very much. And thank you, Mr. Chairman. I have no more questions.

Mr. FIELDS. Thank you. The gentleman from New York, Mr. Frisa.

Mr. FRISA. Thank you, Mr. Chairman.

With all this talk of the garages, and I ran my campaign out of my garage because I didn't have enough—I couldn't afford to pay for a headquarters and it actually kept the opposition in the dark. But I have got to get out of here and clean that thing so I can get my lawn mower out of my garage.

But I have another several questions for Mr. Katz. While we are sitting here thinking about garages, I sort of daydreamed a little bit and I think we have maybe made everybody in the cellular industry happy by going through this exercise.

How large, dollar amount wise, would you say the cellular industry is including the two in each region as well as resellers?

Mr. KATZ. Today the entire industry, in 1994, was approximately $15 billion.

Mr. FRISA. $15 billion?

Mr. KATZ. Correct.

Mr. FRISA. What percent saturation would you say that is of the entire potential universe for cellular use? Disregarding costs, but potential growth?

Mr. KATZ. Let me answer that by saying at the turn of the century everybody expects the industry to exceed $60 billion.

Mr. FRISA. A fourfold increase.

Mr. KATZ. Correct.

Mr. FRISA. It is possible it could be even bigger?

Mr. KATZ. Absolutely. The turn of the century, we are talking 6 more years, essentially 5 years. And penetration rates are expected to go considerably higher as we move into the 21st century.

Mr. FRISA. And right now, it is your contention, and I think the facts would bear out, that the duopoly companies in each region are making, well, the lion's share of that $15 billion; 90 percent?

Mr. KATZ. That is correct. By comparison, I think Mr. Markey was correct. We are the functional equivalent of the mom and pop or cottage industry. We are the largest reseller in the industry. Our total revenues just exceeded $200 million, out of almost $16 billion.

Mr. FRISA. Is it also possible if rates were low enough, that the $60 billion could grow even bigger?

Mr. KATZ. By, again, knowing what we know about the elasticity of demand, that is expected. Rates will or should come down and penetration should grow well past the roughly 40 percent that is projected by the turn of the century.

Mr. FRISA. Okay. Do you think if the duopolies were opened up fully to anyone who could compete, do you think the rates would come down faster?

Mr. KATZ. Absolutely, because you will have people offering features, functions and services which are not offered today.

Mr. FRISA. Do you, therefore, think the market would become even bigger than we expect that it would be today?

Mr. KATZ. Absolutely.

Mr. FRISA. Is it not also possible that the duopoly companies could be making much more money with smaller market shares than they have now than they are today?

Mr. KATZ. I think it is not only entirely possible, but likely given what has happened—the same parallel exists in long distance.

Mr. FRISA. This is like good stuff. So you are saying if we open up the cellular industry to competition, those who right now don't really want it opened up are going to benefit more than they would have imagined and faster, and so you are and so are kids in their garages now who would also be able to join the industry.

Mr. Galvin would be thrilled because he will be making so many of these that he would be able to retire sooner than even he thought. I think that we may be on to something here. Competition necessarily wouldn't hurt those duopoly companies. It could help them beyond their wildest dreams, help you, help everyone. We

would get more tax revenue. We could balance the budget. I think we should seriously consider this.

Thank you, Mr. Chairman.

Mr. KATZ. In addition to concurring I would also want to suggest that the consumer will benefit dramatically by immediately receiving lower prices.

Mr. FRISA. That is the most important part.

Mr. KATZ. And those folks who normally would not be able to participate because of current expenses being outside of their personal budgets would also be able to participate in wireless.

Mr. FRISA. And Mr. Synk and the alarm companies would be happy because they would be able to provide their signals by wireless communication. This is good.

Mr. SYNK. That is exactly it. That is the alternative form of communication that we are looking for. In fact, we have had discussions many times about wireless communication and all it requires is enough critical mass there and enough capital, because you have had an infrastructure amongst the telephone companies built up for many, many years.

Mr. FRISA. Mr. Chairman, the people rest.

Mr. FIELDS. Let me just point out to the gentleman that while Republicans are for a competition model, we don't want the unintended consequence of Mr. Galvin retiring because, as you know, we need the best and the brightest people as we enter this new communication age.

I appreciate the remarks made by the gentleman. Mr. Hendricks. You had your hand up?

I am going to be the last speaker. We are going to wind this up, because the Chairman now has a plane problem.

Mr. HENDRICKS. Mr. Markey offered a couple of spins on my business and I just wanted to respond to those.

First, on the issue of—he left I think us with maybe my owners were responsible for our success. I just wanted to make the observation that 70 percent of Discovery's carriage come from nonshareholders of Discovery.

Second, on the point about Hughes taking the Cable Act of 1992 to require us to sell to DBS, as a content holder of companies like Turner, Discovery, it is in our interest to get our service out to all distributors so we had reached an agreement with Hughes prior to the 1992 act. So it is in our business to get our services out.

The third point, I would ask the subcommittee's support on this whole issue I think we have been talking about in terms of parity. The cable networks that are vertically integrated like Discovery, like some Time Warner Services and like Turner, we are subject to provisions of the act that I think will remain, such as we have to provide our service, as Mr. Markey told you about, to all distributors.

One of my colleagues in the programming business, Howard Stringer, now has three new partners, and if you total up the assets of those three partners, they dwarf the assets of my three partners. So, I hope whatever restrictions are placed on me or Ted Turner for the distribution of our services, that those kinds of restrictions and openness are also applied to the others.

92-967 O - 95 - 18

Mr. FIELDS. Mr. Hendricks, you mentioned $65 million in losses postreregulation, $65 million to your company? To Discovery?

Mr. HENDRICKS. Yes, that is correct.

Mr. MARKEY. Excuse me, Mr. Chairman. I thank you. The quite simple point that I was making, John, is that the breath of life is given to programming services by decisions made by TCI and Time Warner as to whether or not they are going to put them on their systems.

Yes, in fact, it may be possible to survive at a marginal existence in this industry unless those couple of two or three or four largest cable systems carry you. And then once you are on there, yes, the rest of the country does gain access to it.

But there is an entry point that we are trying to break down by having the 18-inch satellite dish industry and having the telephone industry come in so that there is room for not just the limited numbers that can now be accommodated under the existing cable architecture, but for the other hundreds of ideas that have not been able to get a partnership with a cable company, a MSO, in order to reach that very critical mass so they know that the financial capital will flow to them. And that is my only point.

And the same thing is true for the provision for the requirement that the competing technologies to cable have access to the programming. That has given opportunities for dozens of software providers or programmers to gain access to 8 to 10 million new consumers across this country which has helped them to attract more capital than they would have been able to before the passage of the 1992 Cable Act, and it has helped to expand the investment in programming.

And I just would like at least that acknowledgment of the role which the 1992 Cable Act played towards the goal of expanding competition, so much to the point which the cable industry is now using it—that is the 18-inch satellite industry—as the reason why there is competition; the very amendment which they opposed in 1992 is the very reason now that they are arguing that they don't need any further regulation because of the competition which has been added.

I thank you, Mr. Chairman.

Mr. FIELDS. Well, and this is a preview of perhaps what you will see next week. And I say that in great respect for my friend from Massachusetts. You know, we worked 14 months last session and fashioned what was then a very deregulatory and procompetitive bill on our side of the aisle.

We would like to think that we used that as a foundation and have actually advanced even further this time. And I will, again, compliment my friend from Massachusetts, because in this transition he has been there working every minute, every step of the way in a very cooperative fashion, and when we disagreed we have not been disagreeable.

And I think that we are at that proverbial watershed moment as we close these hearings today and as we begin to prepare for the markup next week in subcommittee and we plan to conduct a markup in the full committee the week after. I will reiterate that I will push this legislation as fast as is humanly possible in this particular process.

If you were to use a word or two words for what we are trying to accomplish, we are trying to accomplish competition. And we are trying to create an atmosphere of opportunity. Because I, like my friend, feel that there are many other people in this country just like you and we want them to have the opportunity to sit at this table.

It is not going to bother me if you are sitting at this table, 2 years, 5 years, 10 years from now, as long as you are being entrepreneurial and you are pushing that envelope. Because to me that is what creates goods and services that benefit the consumers of this country. And I have to feel that in a competitive model, per capita consumer cost goes down. That is beneficial.

We also believe very strongly in what you were saying just a moment ago, Mr. Hendricks, about a model of legislative parity. That it is not lost on us, that in this time of convergence that you have a number of competing interests, and we want to try to be as fair as we possibly can. And as a Southerner I have learned to pronounce that word: simultaneity. We want to see simultaneity and fairness.

We want definition and we want certainty. Because we feel just as your companies represent perhaps billions of dollars sitting on the sideline waiting to see what we do, we think it also represents tens of thousands, if not hundreds of thousands of jobs, and that is not lost on us in this very important responsibility that Mr. Markey and I share.

And I want to say "we share" because I think we both have the vision of advancing this country into the communication age. It not only benefits our consumers but it gives us an opportunity as we try to export what people like you create and offer to people abroad.

So, we appreciate very much your participation. We hope that you will continue to be involved in the process. As I said earlier, we are proud of our product. We don't have such pride of authorship that we are not open to your suggestions. If you have those, we would encourage you to get those to us quickly. Some of you already have. And we thank you for it.

And with that, these 3 days of hearings are ended. Thank you.

[Whereupon, at 3:54 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows.]

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Thank you, Mr. Chairman, for the opportunity to present our views to you. NAB represents almost 1,000 television stations and more than 4,300 radio stations, as well as the major broadcasting networks.

You and your colleagues face a daunting task. Reform of our telecommunications system is a huge undertaking involving numerous industries, thousands of employees and billions of dollars in business. NAB salutes Chairman Bliley, ranking Democrat Dingell, Chairman Fields and all the others who are involved in this legislation, as well as your staffs who have labored many hours to produce this legislation and who will be working hard as it moves forward in the coming weeks.

NAB strongly supports the enactment of telecommunications reform legislation this year. The new technologies and new players that are entering every communications market have finally outrun even the flexible provisions of the 1934 Communications Act. The communications marketplace is now beset with uncertainties, with policies often being set more by litigation than by policymakers in the Congress or the FCC.

The key to resolving these issues is to ensure that consumers have access to all forms of communications, regardless of the transmission path used to reach them. That is particularly true for broadcasters, who, while continuing our over-the-air, universal service, will also be using new transmission paths to reach our audiences. Your bill looks to a new regime where the activities of communications companies are determined by their own entrepreneurial energies and success in the marketplace, and not by decisions made here in Washington.

Broadcasters support the overall thrust of H.R. 1555 and stand ready to move into the new communications marketplace. We, like other communications suppliers, need to be freed from regulations that inhibit their abilities to offer new and competitive services. Let me turn to some of the specific areas in which reform of broadcasting regulations has been suggested, and give you NAB's thoughts about those changes.

OWNERSHIP RULES

As you are aware, while the television industry is agreed on most issues relating to this legislation, there are differing views on the question of changes in the FCC's television multiple ownership rules, both with respect to the national "caps" and the rules governing ownership of stations in local markets. On this issue, NAB is neutral.

On the separate question of changing the ownership rules for radio, NAB strongly supports the need to eliminate all remaining restrictions on radio ownership. There are more than 11,000 radio stations operating in the United States. Under the FCC's current rules, no one entity can control more than 40 stations (20 AM and 20 FM) with the possibility of a small additional "bump-up" for minority-controlled stations. The radio market is so diverse that there is no possibility that any one entity could gain control of enough stations to be able to exert any market power over either advertisers or radio programmers.

Similarly, while the FCC several years ago modified its duopoly rules to permit limited combinations of stations in the same service in one market, there are still stringent limitations on the ability of radio operators to grow in their markets. Further, the FCC's rules permit only very restricted or no combinations in smaller markets. These limitations hamper the ability of radio broadcasters to provide the best possible service to listeners.

We acknowledge the legislation that Congressman Stearns, Chairman Bliley and Chairman Fields have introduced, H.R. 1556, which deals with ownership of broadcast stations. While we endorse the removal of restrictions on radio included in that legislation, our neutrality on TV ownership forces us to be neutral on the legislation overall. But we appreciate the efforts that Congressman Stearns, Chairman Bliley and Chairman Fields have made in attempting to address the radio ownership issue.

Increased multiple ownership opportunities would allow radio operators to obtain efficiencies from being able to purchase programming and equipment on a group basis, and from combining operations such as sales and engineering. Radio stations have had to face increasing competition from new radio stations and from other advertising and programming sources, such as cable television operators. Further, many cable operators have begun to provide music and related services that compete with radio stations, and the FCC is developing rules for a new satellite-delivered service that may deliver 60 channels of digital audio service in every market.

In the near future, radio stations will also begin to face the need for new capital investment when the FCC authorizes terrestrial digital audio broadcasting. Without the opportunities to grow and to attract capital, the radio industry will face an increasingly difficult task in responding to these new competitive pressures. Clearly, we must look at radio as not just an industry that competes with itself, but also within the context of the delivery of all forms of "mass media" services.

The experience of the industry following the FCC's limited relaxation of the radio rules several years ago is instructive. Prior to the FCC's action, there was little investment capital flowing to the radio industry. After the FCC permitted greater ownership opportunities, the radio market revitalized, and became again an attractive area for investment. If the Congress acts this year to eliminate all ownership rules for radio stations, the ability of the radio industry to grow and to provide better service will simply take off.

These are the benefits that will flow from radio ownership deregulation. NAB is unaware of any threats to the public interest that could arise if radio ownership decisions were made by operators and investors, and not the federal government. NAB, therefore, urges the subcommittee to include the elimination of government controls over radio ownership and investment as part of H.R. 1555.

SPECTRUM FLEXIBILITY

As we move into the new communications environment you seek to foster, it is important that the providers of services that form the backbone of today's communications market be permitted to compete effectively. As repeated surveys have demonstrated, local television stations are the core of today's video and information market. Most Americans obtain their news and the majority of their entertainment programming from local television stations. These stations devote an increasing percentage of their total revenues to providing news and public affairs programming and otherwise serving the needs of their communities.[1]

Today's television broadcasters, however, are increasingly at a technological and regulatory disadvantage. The new entrants to the video market, be they cable systems, telephone companies, or others, are able to provide multiple channels of programming, compared to the broadcaster's one. Most important, the new delivery systems that will be coming on-line in the next few years will all be digital. Digital services permit not only the transmission of vastly increased amounts of data, they also are more flexible and, for video signals, they can provide pictures of far greater quality than our present analog system. Your bill includes a provision which will permit television broadcasters to be part of this digital transformation.

As you know, the FCC, broadcasters, and the electronics industry have spent years planning for a new Advanced Television Service (ATV) that ultimately will replace the present NTSC analog system of television broadcasting. The FCC expects to receive a recommendation for such a new system later this year. When it began to consider plans for conversion of over-the-air broadcasting from analog to digital, the FCC recognized that it could not make all existing TV sets obsolete overnight. Doing so would leave every household in the United States without television service and turn over 200 million sets into junk. At the same time, the FCC recognized that, if broadcasting were to remain competitive, television stations must be able to use digital technology.

Thus, the Commission concluded that there must be a transition period during which television signals will be available to consumers in both analog and digital formats. Because the laws of physics prevent analog and digital TV signals from being provided over the same channel, the FCC adopted a plan under which each existing full-power television station will be assigned an additional 6 MHz channel on a temporary basis. Stations will provide ATV service on the new channels, while continuing to serve the public owning analog receivers on their existing channels. If ATV service proves successful in the market, and when most analog TV sets have been replaced with digital receivers, the FCC plans to end NTSC broadcasting and recover one of the two channels.

We are pleased that H.R. 1555 recognizes this transition and incorporates much of the provisions needed to accomplish it.

The broadcast spectrum flexibility proposal builds on this foundation laid by the FCC. For broadcast stations, the FCC's plan creates both opportunities and difficulties. Conversion to digital broadcasting will allow stations to provide better services to their viewers. At the same time, the construction and operation of what in effect is a second station will place huge capital demands on stations and, to the extent that the digital signals duplicate existing analog service, stations will realize little or no additional advertising revenue from simultaneously providing an ATV signal. The spectrum flexibility proposal we support will encourage the transition to digital service by providing the opportunity to provide new and innovative services as part of an ATV signal.

In a digital television service, the amount of the total bitstream that is needed to produce a television picture and sound will vary from moment to moment, depending on what is happening on the screen. In a fast-moving basketball game where the action on the screen may shift rapidly, virtually all of the data capacity may be needed to provide the television signal. On the other hand, if a station is broadcasting a "talking head" interview, only a small portion of the total bandwidth might be needed to update the picture. Because of this feature of dynamic scalability characteristic of digital systems, the rest of the bitstream could be used to provide other services, such as supplemental program information or specialized information services.

We believe that the FCC should be directed to go ahead with its plans to assign ATV channels to local stations and to permit those stations to provide, as part of an ATV signal, other services that are ancillary and supplemental to their free, over-the-air television service. These services would be limited only by the technical

[1] *1994 NAB/BCFM Television Financial Report at vii.*

limits of the television signal and by the requirement that stations continue to provide a free, over-the-air ATV service to viewers.

The benefits of this proposal will flow to the public and to broadcasters. If broadcasters can provide new and innovative services, the public will benefit by having access to such services. If they compete with services provided by other entities, the public will benefit from the competition in the form of lower prices and higher quality. If broadcasters can seek out additional revenue sources from digital broadcasting, that will help speed up their conversion process and defray the enormous costs of providing the new service.

Such a system also is needed to support a continuation of the universal, free, over-the-air service we now provide to all Americans. There continue to be more homes with television sets (98%) than with telephones, cable service, computers, or other communications devices. The one truly universal "information highway" that already exists and already serves nearly every American is over-the-air broadcasting. Our infrastructure is already in place. Spectrum flexibility will allow us to best utilize that existing network to provide services to all Americans quickly and at less cost.

Mr. Chairman, we have heard of many objections to this proposal. On examination, however, these concerns are unfounded. First, some have argued that additional spectrum should not be allocated to broadcasting. I have several responses. Most important, neither our proposal nor the FCC's established ATV plans require the allocation of *any new spectrum* to broadcasting. The spectrum from which ATV channels will come was allocated to television broadcasting fifty years ago. It has not been assigned to stations because, in most areas, analog television signals could not be provided on those channels without creating interference to other stations. Digital technology allows these frequencies to be used. Moreover, these same interference problems would drastically limit the use of these frequencies for non-broadcast services, if existing analog service is to be maintained.

Others have questioned why these channels should be assigned to existing local stations, rather than being made available to others. The FCC carefully considered this question and concluded that initially restricting the availability of ATV channels to existing television broadcasters "is the most practical, expeditious, and non-disruptive way to bring improved service to the American public."[2] Note that the restriction is only for the initial assignment of licenses, if a particular station does not decide to provide a digital service within a reasonable period or fails to construct and transmit a digital signal after specific licenses are assigned, the FCC will offer that channel to other potential users.

The financial burden is all up-front for broadcasters. We must obtain a license and construct a digital transmitter within six years—costing $1.6 to $2 million or more per-TV station—and then add to that complete digital technology in our studios and news-gathering equipment. The total cost of such a transition could run as high as $8 to $10 million per-station. All this will occur with absolutely no guarantee that consumers will accept the new technology, I might add.

Moreover, those who argue that this is merely a spectrum "grab" by broadcasters ignore several salient points. This new spectrum that stations will be allowed to use is transitional. It will be assigned to stations only for the purpose of allowing them to change to a new delivery system. Further, it is not spectrum that can be used realistically for any other purpose. It is not like a salami that can be sliced up into pieces. Broadcasters will use all or parts of the spectrum at varying instances during programming. Spectrum flexibility, in fact, promotes spectrum efficiency by maximizing the signals provided to consumers. The primary purpose of the second channel will remain the same as the primary purpose of broadcasters' existing channels—providing free, over-the-air television service. Those who instead argue that the non-broadcasters should be allowed to compete for these channels forget that computer companies or common carriers are not likely to want to use most of the spectrum to provide a broadcast service. If they purchase such spectrum in an auction, they then could use it for any purpose—and the public may or may not be provided any free broadcast services as a result.

Most of the objections to spectrum flexibility, however, appear to come from those who fear that ancillary and supplemental services provided by broadcasters will compete with them. They argue that television stations should be restricted to providing traditional television service and that it would be unfair for broadcasters to provide services over television spectrum that competes with services for which others had to obtain spectrum through auction. These concerns are similarly unjustified. The entire thrust of your bill, Mr. Chairman, is to promote competition and eliminate artificial distinctions between the providers of communications services by

[2] *Advanced Television Systems (Second Report and Order),* 7 FCC Rcd. 3340, 3342-43 (1992).

allowing anyone to provide whatever services they can that are able to succeed in the market. Providing that freedom to cable systems, telephone companies, PCS providers, electric utilities and everyone else except local broadcasters would be unfair and harmful to the public interest. So long as broadcasters meet their public interest obligations and use ATV spectrum to provide whatever ATV services are directed by the FCC, there is no reason why they should be barred from providing additional services within the same spectrum. No one else could put that spectrum to use except the broadcaster himself, and it will lead to the most efficient use of the spectrum possible.

Further, the FCC has long permitted radio and TV stations to provide additional services on subcarriers or in television's vertical blanking interval, and stations have done so without in any way lessening their main service to the public. The same principle should be followed when the FCC authorizes ATV service, where the potential for new services is so much greater.

Many of the new services that this provision will allow television stations to provide may be advertiser-supported and free to the consumer. Others may not. If consumers believe those services offered by broadcasters are better or more attractive, that should be the choice of the marketplace, rather than the result of a directive from Washington.

The argument that broadcasters will receive an unfair advantage from the spectrum flexibility proposal simply ignores the actual proposal. Where broadcasters offer services on a subscription basis, your bill authorizes the FCC to impose a fee on the station offering those services. In setting these fees, the FCC is directed to consider how much spectrum is being used and how much time a broadcaster devotes to a particular service, and the amount that would have been paid for similar spectrum at auction. Permitting broadcasters to offer new and innovative services thus will provide them with no unfair advantages.

What particular services broadcasters may offer no one can tell. However, it is certain now that, if television stations are to move into the new world of digital communications, they must have the ability to transition their existing services to digital without "disenfranchising" the millions of households with analog reception equipment, and they must be allowed to use their ingenuity and business skill to develop new services consistent with their obligation to provide a free, over-the-air television service in the public interest. The additional channel proposed by the FCC that your bill would provide is needed to ensure that all Americans continue to receive free over-the-air television service during the period when broadcasting in changing from analog to digital to the ultimate benefit of the entire public.

BROADCAST LICENSING

Another issue which we asked you to address concerns the outdated broadcast licensing provisions in the Communications Act.

The first area in which the licensing provisions need reform deals with the way in which the FCC handles renewal applications. Traditionally, when a renewal application is filed, the FCC allows a period during which the public can petition to deny the renewal and competing applications for the same facilities can be filed. H.R. 1555 provides that the process be amended to require the FCC to consider the renewal application and any petitions to deny before it accepts any competing proposals.

The FCC's current process has been the subject of ceaseless criticism from the courts and from many other observers and participants. Comparative renewal cases are among the longest proceedings in administrative law. Most frequently, they focus on questions about the fitness of the applicants that are far removed from any consideration of the quality of service which either has been or will be provided to the public. Often, such applications were filed as a way of extracting a payment from the incumbent licensee in order to avoid a protracted proceeding. The Congress recognized that these "shake-downs" were occurring and amended section 311 of the Communications Act to prevent these so-called "strike" applications. Moreover, the FCC's standards for selecting among competing applicants were recently struck down by the courts, and the Commission has to date been unable to develop acceptable new criteria.[3]

The answer we believe to these problems is to do away with the current comparative renewal process entirely. Instead, the FCC should accept renewal applications and consider them under a renewal standard as outlined in H.R. 1555 and allow petitions to deny or informal objections from the public to be considered. If the renewal applicant demonstrates that it has served the public interest and not engaged

---

[3] *See Bechtel v. FCC,* 10 F.3d 875 (D.C. Cir. 1993).

in a pattern of violations of the FCC's rules, its application would be granted. If the FCC finds otherwise, it could take either of the steps the law now provides—either renew the license under conditions or deny the renewal application. Only if it denies the application would it accept new applications for the frequency.

The FCC, in its proposals for reinventing government, also suggested the elimination of comparative broadcast renewal proceedings. FCC Chairman Hundt testified in support of this proposal yesterday. Indeed, for cellular telephone renewal applications, the FCC already adopted a similar two-step renewal procedure on its own.[4] It found that a two-step renewal process would encourage investment by licensees in their facilities since they would be freed from the fear of an expensive comparative challenge. The FCC also concluded that, since comparative hearings necessarily involved a distorted comparison between the actual record of the incumbent licensee and mere promises of the competing applicant, they created the risk of replacing an acceptable licensee with an inferior one. Third, the FCC determined that a two-step renewal process would avoid needless disruption in service to the public. All of these factors are equally or more applicable to broadcast renewal proceedings.

Radio and TV stations expect to be scrutinized by the FCC at renewal time. What we ask is that the renewal process focus on the record of the licensee, and not on the arcane and expensive legal maneuverings that mostly characterize comparative renewal hearings.

NAB is pleased that your bill recognizes these facts and that a two-step renewal process has been included in H.R. 1555. That such a change in FCC processing would begin with the radio license renewals soon to be underway is even more commendable.

Our other concern has been the term of FCC licenses. More than a decade ago, Congress extended the normal term of an FCC license to ten years for every type of licensee except broadcasters. Although broadcast license terms were extended to some degree, television licenses still only run for five years and radio licenses for seven. These exceptions to the rule applicable to all other FCC licenses should be eliminated. Shorter broadcast license terms impose an unneeded burden on both broadcasters who have to file applications and on the FCC which has to process them. Adopting a uniform ten-year license term would significantly reduce the FCC's processing work load. The FCC's ability to ensure that broadcast stations operate in the public interest would not be affected. The Commission would retain its full powers to consider any complaints about a broadcast station during its license term, or to initiate any investigations or proceedings it deems appropriate. Further, if a station's conduct warrants, the FCC would retain its authority to call for an early renewal application, or to grant a renewal for a shorter term than the maximum authorized.

H.R. 1555 does extend the term of TV licenses to seven years, while leaving radio license terms at that same level. We would urge the subcommittee to amend the bill and to codify broadcast license terms at ten years—on a par with other FCC license terms.

SAFEGUARDS

Finally, we would like to discuss some areas in which we think regulations will be needed to make sure that, as new video delivery systems are established, the providers of those systems will not engage in anticompetitive actions that could destroy competition between them and other program providers, particularly local broadcasters.

NAB commends H.R. 1555 in this regard, as many of the concerns we raised in this area have been addressed in your legislation. We thank the authors of this bill for recognizing the need to ensure access, navigability and other issues are included in this landmark legislation.

The experience with the cable model has shown all of us that where one company provides both transmission capacity and programming, there is a substantial risk of that company taking action to disadvantage competitors. There are other types of regulations that the FCC adopted to ensure the integrity of marketplace arrangements, such as program contracts, that also need to be extended to telephone company-provided video delivery systems.

If local broadcasters are to compete in the new video environment and continue to provide diverse local service both to subscribers of cable and telco video systems and those who receive their television over-the-air, it is absolutely essential that sta-

---

[4] *License Renewals in the Domestic Public Cellular Radio Telecommunications Service,* 8 FCC Rcd. 2834, *recon. denied,* 8 FCC Rcd. 6288 (1993).

tions have access to viewers. Local television service is now, and for the foreseeable future will be, primarily supported by advertising. If the audience cannot see a station, that station cannot sell advertising and its programming will inevitably suffer. Thus, protections for stations' access to the audience are foremost among the safeguards we believe must be included in any legislation.

Among those protections is an extension of the must carry provisions of the Cable Act to the telephone company when they enter the cable television business. Several of the telephone companies proposing video dialtone service have asked the FCC for authority to carry local stations to all subscribers on a "will-carry" basis, indicating they recognize the need for such protections. Although the telephone company video environment is more complex than the cable model, since there may be a number of separate program suppliers on the system, we think that a fair approach is to place must carry obligations on the telephone company's programming affiliate, particularly if, as your bill proposes, telephone companies are required to use a separate affiliate to provide video programming to subscribers. We thank you for including must carry in H.R. 1555.

Other key provisions of your legislation deal with the competitive relationship between telephone companies and cable. One—prohibiting the buyout of cable systems by telephone companies in the same region—is a necessary marketplace rule that will prevent non-competitive mergers of the two. We applaud your prohibition as one of the best means of assuring that consumers will have viable choices for their multi-channel video services. We do not want to simply replace one monopoly—cable—with another larger monopoly, the local telephone company. Consumers will see no benefit from such a relationship, and competitors will be even more disadvantaged.

The other deals with the requirement that telephone companies that wish to offer their own video services do so through a separate subsidiary. This is an important element in preventing cross-subsidization of new ventures by a phone company's captive ratepayers. We do suggest, however, that you look at extending the time in which the subsidiary must operate to 8 or 10 years.

Your bill also establishes guidelines for menuing and navigation systems. With the possibility of 500 or more "channels" on new video delivery systems, the design of the interface between the system and consumers can make the difference between a signal that consumers watch and one they ignore. The provisions that you have included in H.R. 1555 are nearly identical to those in last year's bill. Any such provisions should establish several principles for the FCC to enforce in connection with navigation systems. For example, we think that consumers should be able to gain access to a local broadcast signal without having to go through several levels of menus or having to click on repeated "boxes" on a screen. Instead, the navigation systems should ensure that broadcast stations can be selected as easily on new systems as they are today, and the menus should clearly identify the source of all program choices. Second, whatever menuing system is adopted should preserve the integrity of a broadcast signal. Subscribers should be able to select a broadcast signal from a menu which identifies it as a local station, and not simply from a menu of program categories. Further, the navigation systems should maintain the integrity of program channels, so that when one program ends, subscribers' sets remain on that channel, rather than automatically returning to a menu. We also think that the FCC should have the authority to ensure that equipment, such as set-top converters, that is provided to subscribers cannot restrict subscribers' easy access to broadcast or other signals provided by companies other than the telephone company or other program service provider. These protections should apply to the telephone company and to any multi-channel video programmer using telco facilities.

In addition to these navigation and access issues, a crucial protection the FCC has long enforced in the cable environment must be extended to video signals delivered over telephone company facilities. Your bill recognizes that the FCC should extend the coverage of its network non-duplication and syndicated exclusivity rules to all providers of video signals over telephone company facilities. These regulations do not impose government restraints, instead they merely permit the enforcement of private contractual arrangement for programming. Absent these protections, distant broadcast signals carrying the same programming as a local station could be imported, even though the local station negotiated and paid for the exclusive right to carry that programming in its area. These rules are needed to preserve the integrity of established local broadcasting markets. We thank you for including them in this bill.

Let us also thank you for your inclusion of quality of service and dispute resolution language. These are important provisions of law that should be retained.

CONCLUSION

To reiterate, Mr. Chairman, broadcasters believe that the adoption of telecommunications legislation this year will help usher in a new area of advanced and innovative services for the public. Broadcasters look forward to competing in these new arenas, and we support your efforts to enact legislation. We believe H.R. 1555 makes great strides towards addressing many of the concerns we have raised. However, we ask that you incorporate our proposals to relieve radio broadcasters of outmoded ownership restrictions, and further enhance your legislation through the other suggestions included in this testimony.

PREPARED STATEMENT OF THE NATIONAL SCHOOL BOARDS ASSOCIATION

I. INTRODUCTION

The National School Boards Association represents 95,000 school board members who endeavor daily to provide an excellent public education to every child in the country. School board members are the elected and appointed local officials responsible for ensuring that our public school children have the best opportunity to succeed in an increasingly complex world. School board members are elected by parents, business people, taxpayers and voters in every community across the nation. As local community members themselves, school board members provide an essential bridge between the community and its schools.

NSBA and school board members recognize that an integral part of providing that opportunity lies with the effective use of technology in the classroom. NSBA has been a leader in advancing the wise use of technology in public education through its Institute for the Transfer of Technology to Education (ITTE). Launched in 1985, ITTE represents the school districts engaged in cutting edge work in the area of technology. ITTE also hosts an annual conference attracting over 1,000 school board members, educators, federal and state policymakers and industry representatives who come together to explore technological advances that foster learning.

One of the most critical functions of telecommunications technologies will be to open new doors of educational opportunity in our nation's schools. Emerging telecommunications technologies are essential to helping our children learn more effectively and succeed in the new global, information-based marketplace. The Speaker of the House, Newt Gingrich, well known for his dedication to technology in the schools, recently stated that all students should have access to the Internet, a key to reaching out to rich information sources. NSBA supports that vision. However, by far the largest roadblock to achieving this goal is affordability. Bringing schools into the information age requires putting a series of puzzle pieces in place. Among those puzzle pieces are connections, access charges, hardware, software, teacher training and curriculum development. The achievement of each piece will require a concerted public-private partnership to achieve. Now, Congress has a clear and important opportunity with telecommunications legislation to help solve a large piece of the puzzle and to guarantee that all classrooms have affordable access to the National Information Infrastructure (NII).

II. THE AFFORDABLE ACCESS CHALLENGE

The current situation in schools demonstrates the magnitude of our task. A recent study released by the Office of Technology Assessment entitled "School Facilities: America's Schools Not Designed or Equipped for 21st Century" concluded that while at least three quarters of schools have sufficient computers, most "are not networked or connected to . . . the outside world [and] cannot access the information superhighway." In fact, a survey by the National Center for Education Statistics shows that only 3% of classrooms have access to on-line services for instructional purposes. Of course, this is less surprising when we realize that only 1 in 10 public school classrooms have a telephone—the most basic communications tool.

One considerable problem is the high cost of access charges. Schools operate on limited budgets and are not part of the normal commercial marketplace. Yet, more often than not, schools are paying business rates for access. In many cases schools must place a long distance call to reach an information provider and therefore, pay more for access.

While opening up the market to increased competition among telecommunications providers will hopefully reduce costs, it is unlikely to solve the problem for schools especially in high-poverty and rural areas. States like Massachusetts, Texas, Virginia, and California need additional safeguards. In Massachusetts, there are no special tariffs for education established by the Public Utility Commission and yet

a recent study by Southwestern Educational Development Laboratory found that Massachusetts educators consider short-term and long-term costs a significant barrier to telecommunications access. That finding is replicated in many state across the country.

In Texas, the Port Neches-Groves School District must connect to an information provider 80 miles away in Houston which is their nearest hub. Since the rate is based on miles, the cost is currently $1200 per month per school for one line. This district has 12 schools. Port-Neches is now trying to develop a strategy to deal with these high costs.

In White River School District #47 in South Dakota, the school district would be charged normal commercial long distance rates to connect to the information provider. They have decided they cannot afford Internet access because these rates are so high.

III. WHAT THE NII WOULD BRING TO SCHOOLS

Many of the dreams about the so-called information superhighway seem to be the stuff of science fiction; however, telecommunications in the classroom brings very concrete advances for students. This technology has proven to be a great motivator for school children. Students become better researchers—inspired to explore the vast resources literally at their fingertips. They also become better writers and communicators—connected to a system that eases communication with students, teachers, experts and others. They also learn to work together as they collaborate on the design of projects with their peers in their own and in distant classrooms.

There are many pilot projects that show clearly how school districts are using telecommunications to open new worlds for students, teachers, and communities. In Glendale Union High School District in Arizona, project Fiber Link uses video monitors in each classroom to transmit instructional television and announcements to all the teachers and students in the district. The network includes simple-to-operate podiums which give teachers and students control over four television monitors. The system offers several advanced placement academic classes, which in area would normally not enroll enough students at any single school to warrant hiring a teacher.

Six Chicago-area school districts have teamed up for Project Homeroom—a partnership of the districts and several local businesses that extends the school day and enhances the learning process. It provides students, parents, teachers, and administrators round-the-clock access to national news services, on-line encyclopedias, science and financial statistics, and their own school libraries. And from their home computers, students can access their personal work files stored on school computers or turn in their homework assignments to their teacher's computers.

The challenge is to bring programs like these into every school district and make them available to every school child.

The National Center for Education Statistics study bears out what school board members and administrators have asserted—the major barrier to bringing technology and telecommunications to the classroom is cost. However, this is an investment that this country must make. It is an investment in our future work force and our consumer marketplace.

IV. ENSURING AFFORDABLE ACCESS

The 104th Congress must take action to ensure affordable access to the NII for all school children. The legislation before this Committee currently includes language directing Federal & State policymakers to address the telecommunications access needs of schools. NSBA urges the Committee to strengthen and more fully address the needs of our school children. Unless the Committee includes a clear policy in support of affordable access, this insurmountable barrier will remain. The Senate Telecommunications Competition and Deregulation Act of 1995 contains a solid, bipartisan approach to ensuring affordable access. That provision, called the Snowe-Rockefeller-Kerrey-Exon provision guarantees that schools and libraries will have access to essential, universal telecommunications services at rates that are not higher than incremental cost. As a result, schools will be able to provide access to online services, distance learning and countless other educational resources. The provider will neither loose nor make a profit from the schools use. However, they will be helping to open the school and home marketplaces to more advanced services. NSBA and a coalition of over 25 national organizations are strongly supporting that provision. As the Committee examines this issue, NSBA urges it to explore language such as the Snowe-Rockefeller provision, that will truly make a difference for our school children and our country by explicitly guaranteeing affordable access. In addition, NSBA urges the committee to work with school board members, educators,

the states and industry to address the remaining pieces of the puzzle from hardware acquisition to technical assistance and educational software development to teacher training.

As Congress crafts this legislation that will both launch and govern the information superhighway for years to come, education must be a central concern that is carefully examined and addressed in legislation. National School Boards Association looks forward to working with the members of the House Subcommittee on Telecommunications and Finance on the development of this critical legislation.

Prepared Statement of The Rural Telephone Coalition

The Rural Telephone Coalition (RTC) submits this statement for the hearing record now being compiled regarding H.R. 1555, the Communications Act of 1995. The Subcommittee is holding three days of hearings with a reported list of 45 witnesses representing government, industry and other interests. No spokesperson for the associations representing the unique interests of small and rural local exchange telephone companies is among the 45 witnesses. Therefore, the RTC respectfully asks the Subcommittee to accept this brief written statement and place it in the hearing record.

This bill is a deregulatory one, which relies on competition in the local loop to build the national information infrastructure and eventually to keep rates reasonable. A telecommunications policy which forces competition in all areas, rural and urban alike, will not help build the infrastructure in rural areas. In fact, such a policy may undermine infrastructure development in rural areas. Moreover, without strong Congressional policies, competition will cause deaveraging and undermine other effective cost recovery mechanisms that keep rural rates reasonable now. Indeed, driving prices to cost is one claimed "benefit" of competition. Thus, a pure marketplace operation without adequate public policy mechanisms would be certain to increase the rates in low density, low traffic volume areas—rural America. Therefore, high cost and residential rates, traditionally kept at levels to encourage subscription and use by charging somewhat higher rates to businesses, would be the cost of lower urban and large business rates. Rural and residential ratepayers are not likely to share the view that rate hikes for them are "benefits."

We are members of the Rural Telephone Coalition, an informal alliance of The National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA) and the organization for the Protection and Advancement of Small Telephone Companies (OPASTCO). Members of the three associations, which include both commercial companies and cooperatives, are small and rural LECs providing service in 46 states. More than 850 small and rural telephone systems are members of the RTC associations.

There are many aspects of H.R. 1555 about which we have grave concerns. Among our principal concerns for rural and residential customers are the following:

H.R. 1555 introduces competition and deregulation into the local exchange industry by greatly increasing regulation of the interconnection between the facilities of a local exchange carrier and a competitor that requests such interconnection. The legislation allows for modification or waiver of this requirement only for a local exchange carrier that has fewer than 500,000 access lines installed. Even for an eligible carrier, waiver or changes would be available, only if it makes the case successfully before the Federal Communications Commission (FCC) that such interconnection would be unduly economically burdensome, technologically infeasible, or otherwise not in the public interest. The RTC believes that the legislation should mandate an exemption, waiver or modification for rural telephone companies unless the FCC and states determine that this interconnection does not create the listed adverse consequences. Furthermore, the FCC and each state should be able to make this determination on its own motion. It should not be necessary for every small and rural company to incur the costs and burdens of litigating a petition for waiver before the FCC. The expense of the procedure for requesting this determination could effectively prevent many small and rural local exchange carriers—including those most likely to experience economic, technical and public interest harm—from seeking the needed waiver.

H.R. 1555 appears to establish a strong commitment to universal service, which the RTC applauds. However, the bill leaves gaps in the development of universal service funding that could raise the cost of universal service funding and undermine the network's efficiency, development and affordability for many customers. For instance, H.R. 1555 does not target universal service funding to carriers that must shoulder universal service and "carrier of last resort" obligations. In fact, the FCC could interpret this legislation in such a way as to allow funding for high cost areas

on a per customer basis. Professors J. Panzar and S. Wildman have demonstrated the adverse economic impact and public interest consequences of such a policy. Per-customer vouchers will not build the rural infrastructure. Moreover, the Link-Up and Lifeline programs that currently aid in securing telecommunications service for economically disadvantaged customers are a sound basis for a low-income measure. High cost support is a different solution to a different problem. The purpose of this universal service funding is to ensure that customers in high cost areas are not forced to pay extremely high rates in order to receive service in the high cost areas. It has economic justification from the "external" nationwide value to everyone of maximizing network subscription and use. The bill also calls for the sunset after five years of the Joint Board that addresses the universal service issues. It is not clear whether the mechanisms sunset also or pass into the hands of the FCC alone.

Adequate universal service support in rural America is critical to its technological and economic development. In fact, OPASTCO recently conducted a study in which it determined the effect on customers of the elimination of support mechanisms. The study "Keeping Rural America Connected: Costs and Rates in the Competitive Era," examined 424 small and rural LECs that represent approximately 2.8 million rural access lines. The impact of eliminating support mechanisms and deaveraging toll rates on the monthly bills of their subscribers was established. The average increase in the local monthly bill was $12.84. The increase in the total monthly bill was $31.27. This is an average monthly increase in the average total rural telephone bill of 72.3%.

The effect that these potential increases could have on the customers of small and rural companies would be disastrous. Surveys were sent to 5000 subscribers of 20 small LECs from various regions of the country. Several questions asked subscribers what they would do if the rates for their local monthly bills rose by $5, $10, $15, and $25 per month. The results were alarming: 4.3% of the subscribers said they would disconnect service with an increase of $5. For an increase of $10, 12.9% said they would disconnect service. If facing an increase of $15, 27.1% said they would disconnect service. Finally, 44.7% said they would disconnect service with an increase of $25.

The bill freezes rates and service levels for three years for customers willing to forego modern telecommunications. It does not disclose how the costs of maintaining unimproved parts of the network would be recovered. The costs could exceed improved service levels, moreover, as is often the case when regulators try to freeze multi-party service at lower rates although the upgraded facilities can provide single party service at a lower cost. If network improvements were instead delayed for everyone, customers that need and want modern facilities and services could be tied to obsolescent technology and services.

This legislation permits the Regional Bell Operating Companies (RBOCs) to enter into the Modification of Final Judgment (MFJ) restricted lines of business. The RBOCs will be permitted to manufacture telecommunications equipment. However, there are no rural safeguards to ensure the availability of such equipment to small and rural companies for the same terms, prices and conditions as those available to the BOCs. Historically, the Bell system refused to sell equipment to independent telephone companies. There is also no language requiring that the RBOC manufacturing affiliate continue to make the equipment available while there is reasonable demand for it.

The legislation also lifts the MFJ restriction which prevents the RBOCs from providing interexchange services. However, there is no provision requiring geographically averaged toll rates or preventing RBOC cherry-picking of the few high volume rural customers of the small or rural local exchange carrier, leaving more costs to be recovered from customers without a competitive choice. RBOC entry into interexchange seriously threatens the FCC's policy of geographically averaged toll rates. Geographically averaged rates are important particularly in rural areas where the calling scope is small and often essential calls, such as to one's doctor, school, suppliers and others, are toll calls. If the rates for toll calls in these and other high cost areas rise to stand-alone cost, these crucial everyday communications may no longer be affordable. This diminished access could isolate rural Americans from the rest of the nation, impede economic development and discourage network improvements to enhance health, education and other services.

H.R. 1555 does not contain language requiring the BOCs to share their infrastructure with neighboring small and rural LECs. Such a provision is necessary to allow small and rural LECs that serve communities that are not large enough to accommodate the necessary databases for advanced information services to share the infrastructure of the neighboring BOC so that the small operator's community can have access to the national information infrastructure. The small or rural company would be a coprovider of the larger company, as it has in the past, not a customer

or a competitor. Without protection for these traditional arrangements, improved services and network capabilities will be less likely to reach rural America.

These are but a few of the issues that must be resolved before this legislation can truly represent a package that will bring the information infrastructure to all Americans, urban and rural alike. The RTC hopes to work closely with the Committee members and their staffs, as well as other members of Congress interested in protecting rural and residential customers. We urge you to incorporate amendments in H.R. 1555 that will preserve and enhance this nation's world-renowned, pervasive, high quality and continually evolving public switched network.

Prepared Statement of David Honig, Executive Director, Minority Media and Telecommunications Council

Mr. Chairman and Distinguished Members of the Committee: Thank you for graciously providing me with this opportunity to present this written statement of the Minority Media and Telecommunications Council ("MMTC") on the Communications Act of 1995.[1]

INTRODUCTION

The ability to participate in the free flow of information is a fundamental right entitled to special protection by Congress. It fulfills the same public function as education in 1954, when *Brown v. Board of Education* was decided. Access to the National Information Infrastructure will create job opportunities, enhance education, promote democratic participation, improve access to health care, and strengthen our communities.

MMTC supports legislation promoting universal service, equal employment, economic development in minority communities, and an exchange of diverse viewpoints. H.R. 1555 should be amended in a number of respects to promote these goals.

UNIVERSAL SERVICE AND REDLINING

In fostering the development of a new generation of telecommunications services, Congress has a unique opportunity to insure that all Americans might benefit from the day these services are introduced. This opportunity is particularly desirable in the case of common carriers, with centuries of tradition as providers of equal service to all.

The concept of universal service originated in Section 1 of the Communications Act of 1934. It was created for the purpose of "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."[2]

Universal service also has clear First Amendment value in that it promotes participation in the democratic process. Participation in voting, school board meetings, local government, and other forms of public debate could expand rapidly with access to new technologies. Each of these forums require an open exchange of ideas and viewpoints. Service available to all, irrespective of their socioeconomic and ethnic backgrounds, benefits society as a whole because diverse views and voices are shared.

One of the fundamental goals of the administration's telecommunications policy is "preserving and advancing universal service to avoid creating a society of information 'haves' and 'have nots.'"[3] The Administration supports making the advancement of universal service an explicit goal of Section 1 of the Communications Act.[4] This definition would include making advanced services available to rural and urban lower income users.[5]

---

[1] The Minority Media and Telecommunications Council ("MMTC") is a nonprofit association of attorneys, scholars, engineers and economists. Since 1986, it has provided research and legal support to the national civil rights organizations on matters of communications policy. The views expressed in this testimony are the carefully considered views of the Council institutionally. This testimony does not necessarily reflect the views of any particular member of the Council or any member of its Board.

[2] 47 U.S.C. § 151 (emphasis added). *See also Rural Telephone Coalition v. FCC*, 838 F.2d 1307, 1315 (D.C. Cir. 1988).

[3] Administration White Paper on Communications Act Reforms, Jan. 27, 1994, available in LEXIS, News Library, Curnws File ("White Paper").

[4] *Id.*

[5] *Id.*

In its recent comments regarding the Senate Telecommunications Competition and Deregulation Act of 1995, the Administration manifested that it construes universal service to include access to the National Information Infrastructure for classrooms, libraries, hospitals, and clinics.[6]

Vice President Gore has also stressed that all carriers should be required to contribute, "on an equitable and competitively neutral basis, to the preservation and advancement of universal service," with the FCC responsible for implementing the underlying regulatory framework.[7]

In a speech given at the Harvard Graduate School of Education, FCC Chairman Reed Hundt reiterated the importance of universal service in interactive networks: "[i]f these networks do not reach into every community and bring us together, they could end up dividing us further—leaving whole segments of our country without the skills and information necessary to prosper in our post-industrial economy."[8]

MMTC agrees with these views, and emphasizes that the universal availability of new telecommunications services is especially critical to the economic prospects of low income minority communities. These new services will generate new businesses and new jobs where they're most needed, enabling low income, minority communities to generate the private social safety net which has enabled other groups to escape poverty and dependence on federal entitlement assistance.

The history of telephony has shown that without firm regulatory requirements of universal service, the poor will be the last to receive service. In most major cities, both POTS and custom calling services (three-way calling, call waiting, call transfer and speed dial) reached segregated minority neighborhoods last. Indeed, to upgrade their plants to offer custom calling services, telephone companies increased their basic rates applicable to all consumers—thereby forcing minorities to subsidize service for nonminorities. This was nothing but a tax on segregation.

Even when service was made available to minorities, it was often inferior in quality, with repair calls taking longer to be answered if they came from segregated neighborhoods.

Various video dialtone applications display a pattern of avoidance of low income areas with high minority populations.[9]

To prevent a repetition of this high-tech discrimination, the FCC must be given wide authority to break the cycle of separate but unequal service which would be spawned by an ineffectively regulated marketplace.

Any reform legislation must include strong anti-redlining protections that ensure that lower income, minority and rural areas are not the last to benefit from new technologies. The proposed legislation should specify that no carrier may exclude any neighborhood from any of its geographic service areas on the basis of the race, national origin, income, age or rural location. Congress should expressly provide for universal service, and deployment at each phase of construction without discrimination based on income, race or ethnicity. Applicants for new service, such as video dialtone service, should have the burden of showing the FCC that their proposed deployment has neither the purpose nor the effect of discriminating on the basis of income, race or ethnicity. This showing should be made with census-tract level demographic data in a format that permits easy inspection by the public and the FCC. Carriers should also provide public notice and hearings at the local level on their proposed deployment plans.

---

[6] White House, Administration Concerns regarding S. 652: Telecommunications Competition and Deregulation Act of 1995, April 1995.

[7] *Id. See also* White Paper.

[8] First Annual Action for Children's Television Lecture on Media and Children, Harvard Graduate School of Education, Feb. 28, 1994.

[9] After examining video dialtone applications filed by Ameritech (Indianapolis and Chicago areas), Bell Atlantic (Washington, D.C. area and Toms River, New Jersey), Pacific Bell (Orange County, South San Francisco Bay, and San Diego areas), and US WEST (Denver and Portland areas), Dr. Mark Cooper, a leading expert in the area of technology and economics, concluded that there is a "clear and systematic pattern of not serving some lower income areas, which turn out to be much more heavily minority areas." Anthony L. Pharr, Counsel with Office of Communication of the United Church of Christ, examined Ameritech's application for the Chicago metropolitan area and found a similar pattern. *See* Testimony of Anthony L. Pharr, Director, Washington Office, Office of Communication of the United Church of Christ, on S. 1822, presented to the Committee on Commerce, Science, and Transportation, 104th Cong. (1994) ("Pharr").

Another pattern involves skipping entire counties. Counties with high income levels and lower minority concentrations appear to be the applicants, first choices. Examples include Orange County and South Bay, California, wealthier areas with a lower percentage of minorities than adjoining areas, and the Washington, D.C. metropolitan area, where Bell Atlantic is proposing to initially serve only certain Maryland and Virginia suburbs. *See* Pharr, *supra*.

EQUAL EMPLOYMENT OPPORTUNITIES

Employment practices in the telecommunications industry must be addressed in the reform legislation. Employment practices in a new industry tend to become institutionalized over time. Discrimination becomes harder to redress when its effects are solidified by expectations of seniority. Thus, Congress should provide incentives aimed at insuring opportunities for the employment of women and minorities, especially in upper management.

We strongly urge the Congress to adopt provisions that will require telecommunication carriers to comply with the same EEO provisions that apply to the cable television industry. Congress should instruct the FCC to develop and enforce these rules. The FCC has been particularly negligent over the years in enforcing its common carrier EEO rule, and Congress should provide appropriate oversight to be sure this rule begins to be enforced.

BROADCAST LICENSE TERMS

MMTC strongly opposes longer license renewal terms for broadcast stations. The only significant effect of longer renewal terms would be a substantial decrease in the FCC's ability to promote equal employment opportunity in the broadcasting industry.

After program content deregulation in the 1980's, EEO review is by far the most significant activity undertaken by the FCC at license renewal time. EEO compliance is a small price broadcasters pay for the very valuable right to use the spectrum without charge.

Renewals impose almost no time and cost burdens on EEO-complying licensees. Thus, lengthening the renewal term would deliver material benefits only to EEO noncompliers, while delivering no benefits to the public.

COMPARATIVE RENEWALS

The elimination of comparative renewals would also be unfortunate. After deregulation, and given the widespread use of LMA's, licensees are obligated to provide almost no service to the public to win renewal. Without comparative renewals, licensees would lose their incentive to provide even minimal service.

Furthermore, the loss of comparative renewals would place at risk one of the few remaining FCC minority ownership initiatives—the distress sale policy.[10] Following the elimination of the tax certificate policy last month, it is especially critical that Congress take no further steps to diminish the already abysmal representation of minorities in the broadcasting industry.[11]

Elimination of comparative renewals would threaten distress sales because the constitutionality of the distress sale policy assumes the availability of comparative renewals. In *Metro*, 497 U.S. at 599, the Court explained:

> The distress sale policy is not a quota or fixed quantity set-aside. Indeed, the nonminority firm exercises control over whether a distress sale will ever occur at all, because the policy operates only where the qualifications of an existing licensee to continue broadcasting have been designated for hearing and no other applications for the station in question have been filed with the Commission at the time of the designation. *See Clarification of Distress Sale Policy*, 44 Radio Reg. 2d (P&F) 479 (1978). *Thus, a nonminority can prevent the distress sale procedures from ever being invoked by filing a competing application in a timely manner.* (emphasis supplied; fn. omitted).

During the oral argument in *Adarand Constructors, Inc. v. Peña*, No. 93-1841 (Sup. Ct., argued January 17, 1995), Justice O'Connor expressed concern over the procedural hurdles faced by those wishing to challenge the genuineness of companies receiving benefits from federal affirmative subcontracting provisions. The comparative renewal procedure responds directly to Justice O'Connor's concern by enabling opponents of a distress sale to seek the license themselves.

---

[10] The distress sale policy permits a licensee facing a renewal or revocation hearing to avoid loss of license by selling its station to a minority owned company for up to 75% of fair market value. *See Statement of Policy on Minority Ownership in the Broadcasting Industry*, 68 FCC2d 979 (1978). The constitutionality of the distress sale policy was upheld in *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990) ("*Metro*").

[11] In 1994, NTIA determined that minorities own but 2.7% of broadcasting stations. MMTC estimates minority ownership to amount to less than 0.5% of industry asset value.

ALIEN OWNERSHIP

It is imperative that H.R. 1555 *not* be amended to permit foreigners to have easy access to American broadcast spectrum.

The outright repeal of Section 310(b) would sound a death knell for minority media ownership. Furthermore, unlimited foreign capital invested in American broadcasting would eviscerate the public interest standard which has undergirded broadcast regulation for most of this century.

Along with the major broadcast station groups, the nation's six commercial television networks (five of which are financially sustained by lucrative local stations) are the crown jewels of our system of popular government. Largely by relying on these media, Americans decide who will represent us in Congress and who will lead us as President and Vice President.

Foreign ownership of these primary instruments of mass communications would profoundly threaten our democratic system. For over sixty years, localism and licensee control have been the earmarks of the American system of broadcasting. When the American people wish to speak to the owners of our television and radio stations—to praise, to criticize, or to offer suggestions on program service—they shouldn't have to place an international call to someone who may care not a whit about American democracy.

Minorities, who own less than half of one percent of the asset value of the broadcasting industry, have waited in line for broadcast station ownership for over 60 years. How unfortunate that Congress would even think that it is in the public interest to allow wealthy foreign corporations to cut to the front of the line.

Repeal of Section 310(b) would literally permit the airwaves to be sold off to the highest bidder. That would be a tragedy. It would destroy years of careful and thoughtful work in constructing the world's greatest system of broadcasting. Unlimited alien ownership in American media would make broadcast owners even more distant from viewers and listeners than many of them are now.

In our system of broadcasting, the licensee is ultimately responsible for everything he broadcasts. The "buck stops" with the station owner. Because of that direct accountability, broadcasting has been freed even of indirect program content regulation, such as the Fairness Doctrine, ascertainment and program percentages.

The quality of our broadcast service is guaranteed by the FCC's very high standards for licensee character qualifications. Because there are far fewer radio and television licenses than there are people who want them, we have laws and regulations to insure that licensees are not felons, antitrust violators, race or sex discriminators, or drug dealers. We know that an American owned licensee has complied with American laws. But we have no realistic way of knowing whether alien broadcast owners have complied with the laws of their home countries—laws which may be much more relaxed and easier to circumvent than American laws.

An equally fundamental reason Congress should not repeal Section 310(b) is that we have not yet completed the task of insuring that all Americans have a chance to achieve ownership in America's most important industry. We as a nation cannot give up on our commitment to diversify the public airwaves.

The primary obstacle facing minorities seeking to break into media ownership is access to capital. Roughly 80% of the world's media and telecomunications investment capital is not American capital. Suppose Congress allows virtually unlimited amounts of that 80% of the world's media and telecommunications investment capital to enter this country at will. If minorities and small broadcasters are forced to bid against alien as well as domestic capital, they will be swamped, and forced out of the marketplace.

Virtually no foreign equity or even foreign debt finds its way into the hands of minority communications entrepreneurs. There are two principal reasons why.

First, virtually all alien media investment capital arrives in this country in units too large for most minority communications deals. Unlike domestic investors, an alien investor typically lacks the knowledge and ability to monitor her investment closely. The administrative cost of managing an overseas investment is not materially greater for a $100 million investment than it is for a $1,000,000 investment.

Second, alien fund managers and bankers seldom have experienced the culture and traditions—much less the legal regime—of civil rights. The Community Reinvestment Act does not apply overseas, nor do precepts against redlining and discrimination in lending. Even alien investors with the best of intentions have little to gain from the long term success of minority entrepreneurs in the United States.

On the other hand, all Americans benefit when the minority sector of our economy is strong. Domestic investors, aware of these benefits, frequently act accordingly.[12]

Congress must avoid even the appearance of weakening its defense of minorities, ability to obtain meaningful access to capital and to use that capital competitively. It should remember that the broadcast deregulatory initiatives the FCC launched over the past two decades—with congressional approval—were defended by pointing to the existence of the minority ownership policies as a structural, content neutral and profoundly necessary means of promoting diversity.

Unlimited entry of aliens into American media ownership would virtually eviscerate the effectiveness of the minority ownership policies. It would be especially cruel to American minorities to deny them a meaningful opportunity to buy broadcast stations as a consequence of legislation welcoming well-heeled Britons, Russians, and Germans to buy access to the American peoples, airwaves. Congress should not force American minorities to the back of the line and allow wealthy foreigners—simply because they have money—to jump to the front of the line. *As Americans, we simply need to out our own people first.*

If some relaxation of Section 310(b) is considered by the Congress, MMTC has four recommendations on how to somewhat cushion the blow to minorities and small businesses.

First, we should not allow foreign access without reciprocity. Most nations do not allow virtually unrestricted access by American investors in their mass media enterprises. Most Anglophone and Francophone nations have at least a 60% local ownership and equity requirement. Leaders of both political parties disfavor unilateral concessions in trade negotiations. The recent successful negotiation with China over the pirating of intellectual property demonstrates why reciprocity must be part of any liberalization of Section 310(b). If reciprocity is a factor, though, it should be but one of several elements of the public interest test the FCC uses in considering whether to grant waivers—and it should be a relatively minor element.

Second, if Congress liberalizes Section 310(b), it should do so in a way which fosters minority ownership by addressing the longstanding, almost intractable problem of capital formation. For example, Congress could permit up to 49% alien equity so long as it is invested in a minority controlled company.

Third, Congress should authorize the FCC to permit an alien who makes a substantial investment in a minority controlled broadcaster to hold a larger equity stake in that and other American media holdings than otherwise would be permissible.

Fourth, Congress should create the American Communications Investment Bank as a vehicle to promote diversity in broadcasting through the use of alien investments. The Bank would be a private, nonpartisan institution, operated by Presidential appointees subject to Senate confirmation. The Bank would permit aliens (and others, including U.S. based multinationals) seeking to invest in U.S. media to channel and pool their investments for subsequent subdivision and targeting to U.S. media interests of all sizes, in furtherance of U.S. communications and trade policy. The Bank would be designed to attract sufficient investment to greatly accelerate the construction of the information superhighway, generate additional tax revenue, and help balance the budget without raising taxes.

This is not "affirmative action." It is, instead, a workable means of fulfilling Congress, goal of assisting minorities to acquire the capital needed to compete in the marketplace as well as generating additional competition in the marketplace.

We encourage Congress not to consider repeal or liberalization of Section 310(b) unless a workable and tested mechanism is created to guarantee that the net effect of additional alien ownership will have a dramatic increase in American minority ownership.

MINORITY PROCUREMENT AND MARKET ENTRY BARRIERS

The FCC and NTIA agree that the underrepresentation of minorities and women in communications is due in large part to a lack of access to capital and racial and gender discrimination.

---

[12] Automotive sales is the largest sector of the minority owned business economy. The number of minority owned dealerships affiliated with American owned manufacturers far exceeds the number affiliated with foreign manufacturers of similar size. According to the National Association of Minority Automobile Dealers Resource Guide (1993-1994 edition), pp. 45-74, the number of minority owned dealers affiliated with the large American manufacturers are: Chrysler: 123; Ford: 170; and GM: 169 (plus 13 with Saturn). The number of minority owned dealers affiliated with similar sized foreign owned manufacturers are: Honda: 3; Nissan: 22; Toyota: 36; Volkswagen: 16. Obviously, foreign capital entering the U.S. in the automotive sector manifestly does *not* translate into minority ownership.

Two separate pieces of legislation introduced in the last Congress, H.R. 187 and H.R. 503, dealt with these economic issues. These bills were offered by Congresswoman Cardiss Collins as part of H.R. 3626, which passed in the House by a wide margin with strong bipartisan support. According to Congresswoman Collins, "[t]he two amendments which were passed will help to ensure that a fair proportion of the total purchases, contracts, and subcontracts for supplies, commodities, technology, property, and services offered by the telecommunications providers and their affiliates are awarded to minority and women business enterprises." [13]

H.R. 187 would have required the FCC to conduct a rulemaking proceeding on means to surmount barriers to market access that continue to constrain small businesses, minority, women-owned, and non-profit organizations. H.R. 503 would have provided incentives to help ensure that telecommunications providers encourage and foster greater economic opportunities for businesses owned by minorities and women. It would have required all telecommunications providers to annually submit to the FCC a clear and detailed company policy for increasing procurement from minority and women owned business enterprises. The annual plans would include progressive goals, timetables, technical assistance, and training. MMTC encourages Congress to adopt comparable provisions.

BROADCAST SPECTRUM "FLEXIBILITY"

MMTC opposes H.R. 1555's plan to limit the eligibility for advanced television service licenses to current broadcast licensees. MMTC agrees that most current licensees have provided service in the public interest and deserve an opportunity to upgrade. However, Congress should insure that the FCC does not exclude new entrants, particularly minorities, from having the chance to serve the public that they were denied in the allocation and licensing of television stations to date.

THE OWNERSHIP CAP, CROSSOWNERSHIP AND MULTIPLE OWNERSHIP

MMTC unequivocally stands for diversification and localism in one of our greatest national resources, the radio frequency spectrum.

On such issues as crime, welfare and health care, Congress is considering how to shift the balance of power from the national level to the local level. Congress should adopt a similar approach for broadcasting. It should avoid legislation which would vest in New York City and Hollywood—and remove from local businesspeople—the ability to decide what the American public sees and hears.

Legislation to further accelerate concentration of control in broadcasting especially inappropriate in an industry whose greatest asset is creativity. Creative thinking flows from the bottom up, not from the top down.

In MMTC's experience, greater market concentration has benefitted the largest and financially strongest companies at the expense of smaller, local, more innovative and minority owned companies. It enables big broadcasters to grow yet bigger, making it difficult for small operators to obtain financing and to win advertising contracts. Greater concentration would weaken our system of broadcasting—unique in the world largely because of its emphasis on diversity and its protection of small, local station owners.

Protections against media concentration are especially critical for minorities. Minority broadcasters, almost without exception are small broadcasters. Most minority owned radio stations operate in the AM band, which now enjoys only 19% of radio listenership. Many of these AM stations are uncompetitive, upper band, daytime-only facilities: they occupy the spectrum space nobody else wants.

Today, minority broadcast ownership is in danger of extinction, in large part because of the consequences of H.R. 831's repeal of the tax certificate policy. That policy was responsible for ⅔ of all minority owned stations. Furthermore, the current economic climate renders it profoundly difficult for minorities to finance startup stations or stand-alone radio stations and keep them on the air while struggling for a piece of the advertising pie.

We need only look at similar industries which grew without multiple ownership rules—cable television and daily newspapers—to soothsay the fortunes of minorities in broadcasting if the multiple ownership rules are relaxed even further. In newspapering and cable, as in agriculture and food retailing, minorities and most small businesses generally were unable to compete with huge multiple owners who were able to extract competitive advantages from their group holdings. A small, stand-alone broadcast station is no match in the marketplace for a powerful com-

[13] Office of Congresswoman Cardiss Collins, Press Release, March 22, 1994.

bination of several larger stations which can out-finance, out-program, out-sell and out-price the small operator at will.

The FCC is considering a rulemaking proposal which would link increases in the number of stations a company may own to the company's efforts to invest in or finance minority owned stations. This "incubator" concept was first developed by President Bush's FCC Chairman, Alfred Sikes. The concept would only succeed if the multiple ownership rules remain in effect; otherwise, there will be no incentive to "incubate" anything. Absent positive incentives, nonminority broadcasters seldom voluntarily go out of their way to assist minorities to join the ranks of station owners.

For four decades, as the industry grew, diversification grew. The resulting panoply of small business owners, including minorities, gave our airwaves the diversity of information which makes our system of broadcasting unique in the world. It would be a national tragedy, of immense proportions, if Congress tells the FCC to shut the doors on minorities and small business owners forever.

CONCLUSION

We hope the Congress will keep these considerations in mind as it relates to the prosperity and growth of our nation as a whole and the American way of broadcasting and telecommunications.

Prepared Statement of the American Public Power Association

The American Public Power Association (APPA), the national service organization representing more than 1,750 local, publicly owned electric utilities throughout the country, submits these comments to the Telecommunications and Finance Subcommittee of the House Commerce Committee for the hearing record on H.R. 1555, The Communications Act of 1995.

APPA strongly supports the intent of H.R. 1555 to promote competition in telecommunications and encourage rapid deployment of new telecommunications technologies. Specifically, APPA is pleased that the legislation maintains the consumer-owned utility exemption from FCC regulated pole attachment rates. However, the legislation falls short of S. 652 by failing to provide local governments with adequate authority to manage the public rights of way and to include a preemption provision specific to the utility industry.

Pole Attachment Rates

APPA supports the continued exemption of municipalities and rural electric cooperatives from the FCC regulated pole attachment rate regulation. Both H.R. 1555 and S. 652 maintains the exemption.

The reasons Congress exempted consumer-owned power systems from FCC jurisdiction in 1978 remains relevant in 1995. Consumer-owned power systems are self-governing, run by boards of directors that are either locally elected or appointed by locally elected officials. It is their responsibility to run the electric system on an "at cost basis." In addition, since municipally owned electric utilities are an arm of local government, it is in their own best interest to negotiate fair and reasonable rates for their pole attachments, so that the community may receive quality service at economic prices.

There are also a number of practical reasons why the exemption should be maintained. When calculating pole attachment rates, municipal and cooperative utilities consider local ordinances, applicable taxes, safety requirements, climate conditions, costs of poles and maintenance. If required to comply with federal regulations, local conditions and considerations would be ignored as rates would be set according to a national—not local—formula.

In addition, there are over 2,000 local publicly owned systems in the United States and another 1,000 rural electric cooperatives. Placing pole attachment rates under FCC jurisdiction would tremendously increase the workload of the FCC by 3,000 utilities. Currently, the FCC regulates the pole attachment fees of approximately 150 investor owned utilities. By placing municipal and cooperative utilities under FCC jurisdiction, these utilities would be required to participate in FCC proceedings, incurring high legal and expert fees. This would be inconsistent with the legislation's intent to reduce regulatory burdens.

Preemption of Barriers to Entry

Local governments welcome increased competition in telecommunications service and have no interest in erecting barriers to entry. However, the fact remains that the expansion of America's telecommunications system will take place on rights-of-

way owned by and paid for by local governments with funds collected from taxpayers. These local governments have become the central repository for information on the location and identification of all lines, pipes, wires and facilities in the streets, thus eliminating conflicts among uses. Expansion of the number of telecommunications services and providers will create more demand for access to the public rights-of-way, making the cities' management role more critical.

Municipalities have the duty and responsibility to manage these public rights-of-way and the right to receive reasonable compensation for the use of these assets. In order to manage the rights-of-way and move traffic in the most efficient manner possible, cities, not the telecommunications companies, must determine when a roadway can be dug up to install wire. The city must be able to coordinate construction, minimize public cost, and control disruption of traffic and public access.

Local governments also deserve compensation for the use of taxpayer owned property. This is not a barrier to entry, but reimbursement for costs incurred at the public's expense. For example, when a street is cut its useful life and value is reduced significantly. Section 243 should be amended to clarify that state and local governments not only have the right to manage the public rights-of-way, but also to collect reasonable compensation from similar providers of telecommunications service. The local government authority language in S. 652, Section 254(c) should be included in H.R. 1555.

The proposed language in Section 243(c) on construction permits does not adequately meet all right of way management needs including proper technical certification and training, scheduling roadcuts to coincide with one another, providing liability protection to local government and providing protection against negligent contractors and occupants.

Electric Utilities In Telecommunications

Although preemption language prohibits states and local governments from barring any entity from providing telecommunications services, it does not *specifically* acknowledge the role of electric utilities in providing telecommunications services.

All electric utilities, whether owned by units of state or local government, organized as electric cooperatives or owned by private investors are ideally positioned to play a role in the advancement of telecommunications services. They have the infrastructure in place and the ethic of universal service. Moreover, through their participation, utilities will inject an additional element of competition.

Unfortunately, some electric utilities are prohibited by state law—or interpretation of state law by the courts—from providing telecommunications services. For example, a recent South Carolina ruling in *Sheppard v. City of Orangeburg* denies the opportunity for municipally owned electric utilities in South Carolina from becoming an active player in the provision of telecommunications services. The court said that cable TV and, by implication, all telecommunications services, are not public utilities, and that public power utilities are not authorized to participate in these activities. The preemption language in H.R. 1555 should be strengthened so there is absolutely no doubt as to the intent of the legislation to preempt such laws. Language similar to S. 652, Section 206, which provides a preemption provision specific to the electric utilities industry, would provide a positive solution to this problem.

Public Utility Holding Company Act Amendments

While H.R. 1555 does not include provisions allowing registered holding companies to participate in the telecommunications market, an amendment to do so is anticipated. APPA believes that electric utilities in general should be allowed to provide information and telecommunications services. However, Congress, as it did in 1935, should recognize that multistate holding companies continue to require special regulatory treatment to protect ratepayers due to the complexity of the corporate structure and geographic reach of their utility operations. Therefore, at the very least, the legislation must contain language reversing the *Ohio Power* decision and assure full Federal Energy Regulatory Commission and state commission review of registered holding company interaffiliate transactions.

The American Public Power Association appreciates the opportunity to comment on the Communications Act of 1995.

AMERITECH SMALL BUSINESS SERVICES,
HOFFMAN ESTATES, IL,
May 17, 1995.

The Honorable JACK FIELDS,
Chairman, Subcommittee on Telecommunications and Finance,
House Commerce Committee,
U.S. House of Representatives, Washington, D.C. 20515.

DEAR CHAIRMAN FIELDS: I am writing on behalf of Ameritech to respond to certain allegations and statements raised in testimony of Jim Synk representing the National Burglar and Fire Alarm Association ("NBFAA") before the Subcommittee on Telecommunications and Finance ("Subcommittee") on Friday, May 12, 1995. I would appreciate the inclusion of this letter in the hearing record. Since 1991 when the ban on the Bell company provision of information services was lifted by court decision, there have been no legal restrictions whatsoever on the provision of security monitoring services by the Bell companies, including Ameritech. In its testimony, the NBFAA portrays a highly competitive industry that continues to grow and flourish, now serving more than 17 million customers nationally, notwithstanding the freedom of the Bell companies to enter the market. Given this market condition, there is no policy basis for turning back the regulatory clock and restricting Bell company entry.

In its testimony, the NBFAA contends that Ameritech "failed to live up" to an agreement contained in H.R. 3626, passed by the House last year, which effectively barred Ameritech and other Bell companies from entering the security monitoring industry for a period of six years. While H.R. 3626 passed the House, no similar legislation was passed by the Senate. Two months after the chief sponsor of the Senate legislation announced the bill would not be brought to the floor, Ameritech announced its purchase of SecurityLink, an electronic security monitoring company based in Oak Brook, IL. Had the legislation become law, Ameritech would not have purchased SecurityLink.

NBFFA also argues that Ameritech should be prohibited from using our name and logo to promote our SecurityLink subsidiary, and from joint marketing our services. We strongly disagree. No other firm in the security monitoring industry is subject to such unreasonable and anti-competitive restraints—including such major corporations as ADT, Wells Fargo, Honeywell, Brinks and Westinghouse. No such restriction should apply to Ameritech.

In its testimony, the NBFAA argues that no incidental interLATA relief should be granted under H.R. 1555 for alarm monitoring services. It would be totally inconsistent with the pro-competitive, open market philosophy of H.R. 1555 for the legislation to grant incidental relief to all information services—except security monitoring. Ameritech is currently at a competitive disadvantage in our alarm monitoring business in that we cannot provide long distance connections to any of our alarm customers because we are prohibited from offering long distance services both within and outside of our region. We urge you to remedy this competitive disadvantage by granting immediate interLATA relief for *all* information services, including alarm monitoring services.

Security monitoring is an $11.2 billion industry that has been growing at a rate of 10 percent a year in terms of both revenue and customers. This industry is far from concentrated, with the 100 largest competitors having only a 25 percent market share. These thousands of small companies continue to compete quite successfully with much larger companies which, as I've previously noted, include ADT, Honeywell, Wells Fargo and others.

While SecurityLink is the nation's 14th largest security monitoring firm, it has only three-tenths of one percent of the total market share. We view Ameritech's entry into security monitoring as a highly attractive growth opportunity for our investors and a valued service to our customers. We hope to be a part of this high-growth industry and to use security monitoring as a platform for expansion into "smart house" and "smart office" services. These new innovative services will enable customers to save money on their energy bills and automate homes and workplaces in numerous other ways.

Mr. Chairman, in conclusion, thank you for this opportunity to provide our response to the National Burglar and Fire Alarm Association testimony for the record. As the Subcommittee continues its deliberations on H.R. 1555, we encourage you to apply the same pro-competitive, open market, deregulatory standards to the security

monitoring industry as you do in other segments of the telecommunications industry.

Sincerely,

MITCHELL WIENICK,
President, Ameritech Small Business Services.

ASSOCIATION FOR **MAXIMUM SERVICE TELEVISION, INC.** **MSTV**

1776 Massachusetts Ave., NW
Suite 310
Washington, DC 20036

Tel (202) 861-0344
FAX (202) 861-0342

Margita E. White
President

Hand Delivered May 18, 1995

The Honorable Jack Fields
Chairman, Subcommittee on
Telecommunications and Finance
2228 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Fields:

Thank you for the opportunity to testify before the Subcommittee on important telecommunications reform legislation.

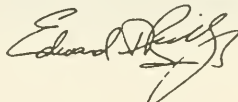
During the hearing on May 12, two questions were asked that warrant further follow-up from me in my capacity as Chairman of the Association for Maximum Service Television. (As you know, I also represented the ABC, CBS and NBC Affiliates Associations on Friday's panel with respect to matters on which MSTV -- which focuses on spectrum issues -- takes no position. On the other hand, a large number of affiliates are members of MSTV and support MSTV's work and positions.)

The first question was whether the existence or viability of free, local, universal television service is threatened. It is our belief that without access to transitional ATV channels that will enable local broadcasters convert their service to the public into the digital world, free and universal community-based television cannot survive. Accordingly, the transition from the current NTSC channels (which would be returned to the FCC after an appropriate interval) to these ATV channels is essential if our uniquely American system of free, local and universal service is to have the opportunity to endure in the new digital marketplace.

Second, we were asked whether broadcasters' use of the ATV channels should entail additional public interest responsibilities or requirements. Since these are to be transitional channels, which after the transitional period would become broadcasters' sole channels, we believe that they should be subject to whatever public interest obligations are appropriate for broadcasters' current channels.

I ask that this letter be included in the record. If there are other questions you would like us to respond to or other information we should provide, please so inform us. Again, thank you for the invitation to participate in Friday's hearings.

Respectfully submitted,



Edward T. Reilly

William A. Graven, Chairman
Entertainment Made Convenient (Emc³) U.S.A., Inc.
8530 Wilshire Blvd. - 4th floor
Beverly Hills, CA 90211
310-551-4100 (tel)
310-854-0551 (fax)

Jeffrey D. Wilson, Senior Vice President, Legal
Entertainment Made Convenient (Emc³) U.S.A., Inc.
5923 Bay Point Drive
Portland, OR 97035
503-620-3488 (tel)
503-620-3487 (fax)

PREPARED STATEMENT OF Emc³

Thank you for the opportunity to submit a written statement on the "Communications Act of 1995" (H.R. 1555) draft legislation. First of all, I would like to commend the Subcommittee on its efforts to date in drafting new telecommunications laws that promise to further the United States' leadership role in telecommunications and facilitate the development of an "Information Superhighway." As a competitive video program provider, Entertainment Made Convenient (Emc³) U.S.A., Inc. eagerly awaits the advent of an "Information Superhighway," which promises to allow consumers to send and receive video and other broadband services in the same "open access" manner that consumers send and receive voice, data, and other services today.

Upon review of the proposed legislation, Emc³ was pleased to see that the Subcommittee recognizes the importance of "open access" to a switched broadband video programming distribution system. Specifically, the legislation would require telcos, with a few exceptions, to establish a video platform for the delivery of video services to consumers. This video platform is a necessary element of a competitive video services marketplace and will be a critical foundation for the "Information Superhighway." The legislation also encourages cable operators to participate, likewise, in the development of the "Information Superhighway" and provide "open access" to their networks. For example, the legislation would require the Federal Communications Commission to study whether the public interest requires cable operators, who do not install a switched broadband video programming delivery system, to provide an "open access" video platform, in lieu of a closed cable TV system. Further, the legislation would require cable operators that install a switched broadband video programming delivery system to meet certain "open access" video platform requirements and provide unaffiliated video programmers nondiscriminatory access to their switched broadband delivery systems.

Notwithstanding the Subcommittee's efforts to ensure that all Americans have access to a wealth of video and information services offered by both facilities-based and nonfacilities-based video program providers, Emc³ remains concerned that the Subcommittee's efforts will not be realized and the telcos will exploit potential "loopholes" in the legislation unless certain changes are made to strengthen the "open access" requirements. To that end, Emc³ proposes a few minor changes to the legislation (*see* p. 10) that will go a long way towards fulfilling the national goal of an "Information Superhighway."

I. Background Information on Emc³

Entertainment Made Convenient (Emc³) U.S.A., Inc., founded in 1987, has designed and developed a technology that provides for the delivery of digitally encoded, time and/or space compressed information to an electronic storage device. This technology, the "Emc³ Feature," permits a full-length (approximately 100 minute) movie to be transmitted in a short, five-minute burst over broadband facilities (6 MHz bandwidth or less) to customer premise equipment ("CPE") equipped with an electronic device that stores the video programming. A consumer can then access this stored programming and view the movie at his leisure. The Emc³ Feature is designed to be incorporated in VCRs, read/write optical disk players, and other CPE.

The first product offered by Emc[3] will be Electronic Video Rental ("EVR"). EVR provides all of the convenience, control, and choice of traditional video rentals -- including the ability to choose the viewing time, pause viewing, and view the programming more than once (programming is automatically erased after the second play) -- but eliminates the inconveniences of leaving the home to go to a video rental store, finding out that the movie sought is not available, having to return the video to the store after viewing, and paying any late return fees. EVR, and other services offered by Emc[3], also will benefit program suppliers by eliminating the problems associated with manufacturing, distributing, and stocking video cassettes, and will benefit consumer equipment manufacturers by expanding their presence in the development of the "Information Superhighway." Recognizing the benefits of this technology, over a dozen major consumer electronic manufacturers, representing over three-fourths of the world's VCR production capacity, have signed letters of intent to incorporate the Emc[3] Feature into their products.

The Emc[3] Feature will offer significant opportunities for the telephone companies and other facilities-based providers to carry new, innovative, and interactive video services to consumers. Using the Emc[3] method for delivering video signals, numerous video bursts or programs are able to ride the same "commuter lane" to consumers' homes, leaving other channels for broadcast or live, real-time applications. Recognizing the significant advantages of the Emc[3] method for delivering video signals to consumers, entities in Canada, Hong Kong, Japan, and Mexico have entered into agreements with Emc[3] for the provision of EVR to consumers.

II. The Public Interest Would Be Served by Requiring Telcos to Provide a Video Platform in Which Non-Affiliated Video Programmers Could Use to Deliver Services to Consumers -- Such a Platform Is a Critical Element of an Efficient, Nationwide, Publicly Accessible, Advanced Telecommunications Infrastructure, Commonly Referred to as the "Information Superhighway."

Through a video platform, a multiplicity of video programmers, including telco-video programmers, will be able to provide consumers with a diversity of traditional and new and innovative video services. Unless telcos are required to provide a video platform, however, the many potential video programmers that do not control a distribution medium will be effectively frozen out of the market by the very few facilities-based providers that do control a distribution medium. This is precisely the problem faced today by video programmers seeking to provide video services to consumers over existing video transmission mediums, such as cable television systems. Although cable television operators may make available a certain amount of capacity to non-affiliated video programmers, they retain a significant amount of discretion over the rates, terms, and conditions of access to a cable system. As a result, consumers are effectively unable to obtain from third party providers video programming services that could otherwise be available over a video platform. It can therefore be expected that absent a video platform obligation, telcos will engage in the same discriminatory conduct that cable television operators engage in today. Based upon Emc[3]'s real-world experience, the large cable operators demand 50% of a video programmer's revenue and 20% of a video programmer's company for the carriage of video services. These practices, as you can imagine, have a chilling affect on the development and availability of new and innovative video services.

The history of telecommunications in this country has taught us that competition leads to lower prices and new and innovative services. In recognition of this fact, lawmakers and regulators have adopted, and continue to adopt, laws and regulations aimed at opening historically closed markets, such as the local exchange services, long distance services, and wireless services, to competition. Now is the time to likewise allow consumers to realize the benefits of competition in the video services market. A duolopy, where a consumer's only choice is between the incumbent cable operator and the new telco cable operator, will not lead to a competitive video services market and the introduction of new and innovative services, lower prices, and better quality service.

The telcos have been granted, and have long enjoyed, special rights in the local telecommunications market -- rights the telcos have leveraged to create a powerful force in the local market. With these rights, however, telcos must also bear certain "open access" obligations, such as interconnecting with competitive carriers, unbundling network functions and features, and permitting other service providers to use their networks to deliver voice, data, and other narrowband services to consumers. Although the telcos have not willingly embraced the requirements placed upon them, the significant public interest reasons for these requirements have been found to outweigh the telcos' private interests in maintaining their monopoly position in the local market. Similarly, these very same public interest reasons strongly support legislation that would require the telcos to provide "open access" to their broadband networks.

Establishment of a video platform would eliminate the barrier that currently exists today for the distribution of video services to consumers and would promote the development of an efficient, nationwide, publicly accessible, advanced telecommunications infrastructure, commonly referred to as the "Information Superhighway," which would in turn provide consumers with a wide variety of voice, data, and video services. A video platform would serve the public interest by promoting increased video competition, nondiscriminatory carriage, and greater access to video programming, all of which do not exist in today's cable television video distribution system.

Further, the requirement of providing a video platform is consistent with the overall goal of developing a National and Global Information Infrastructure. One of the hallmarks of the Administration's goal of developing an advanced telecommunications infrastructure is "open access" -- unrestricted and equitable access by providers and consumers to advanced telecommunications networks. This goal, however, is at risk unless video and information providers have access to a nondiscriminatory "open access" common carrier transmission medium. Absent a common carrier obligation, parties controlling transmission mediums are in a position to act as "gatekeepers" for the distribution of video and information services to consumers.[1]

III. Absent Regulatory Safeguards, The Telcos Will Construct "Closed" Private Cable Systems Available Only For Their Own Use and Will Not Construct "Open" Video Platforms Available To Multiple Unaffiliated Video Programmers.

Originally, the telcos enthusiastically endorsed all of the public interest benefits of the common carrier video platform approach -- infrastructure development, increased competition in the delivery of video services, and diversity of video services available to consumers from multiple providers. Since the FCC adopted the video dialtone approach, telcos have filed more than 35 applications to provide competitive video services to over 8 million consumers from multiple video programmers. The typical commercial video dialtone system will provide consumers over 70 analog channels and 200 digital channels of video programming from multiple unaffiliated video program providers. For example, five video program providers have reserved 302 of the 384 available channels on Bell Atlantic-New Jersey's planned commercial video dialtone system in Dover Township, New Jersey.[2] Clearly, the amount of capacity of telco broadband networks, even without broadband switching, is sufficient to accommodate the telcos' video programming requirements as well as the requirements of unaffiliated video programmers. Emc[3], for example, would only require access to one channel to deliver a wealth of video and other services to consumers.

Now that several federal courts have declared the prohibition against telcos providing video programming to be unconstitutional, the very same telcos that enthusiastically endorsed all of the public interest benefits of the video dialtone approach are claiming the right to leverage their existing ratepayer-financed facilities to provide a "closed" private cable TV service rather than an "open" access video dialtone network. In their comments in the FCC's *Fourth Further Notice of Proposed Rulemaking*,[3] telcos boldly assert that they have a constitutional right to construct broadband networks over public rights-of-way without providing unaffiliated video programmers access to such networks. ("LECs may not be prohibited from providing cable

service within their service areas," U S West Comments at 6; "[T]heir [sic] also is no question about whether they [telcos] should be able to choose between providing programming under either a video dial tone or cable model," Bell Atlantic Comments at 7; "The Commission cannot adopt a rule requiring a telephone company that provides video programming in its service area to do so only over its VDT platform," Ameritech Comments at 7.)

Some telcos do not even attempt to mask their intentions to leverage their publicly-funded infrastructure to support their own private cable system. ("There is absolutely no authority or justification for the Commission to prohibit telephone companies from using shared facilities to provide both telephone service and cable service," BellSouth Comments at 21.) Allowing telcos to construct advanced broadband networks, paid for largely by telephone ratepayers, without being required to provide ratepayers the ability to receive broadband services from multiple video program providers, but being permitted to limit ratepayers to only those noncompetitive services offered by the telcos themselves, is clearly inimical to the public interest.

Even those telcos that have strongly argued that video dialtone is economically feasible and have been granted authority or have applications pending to provide video dialtone service are now considering abandoning the "open access" common carrier video dialtone approach for a "close" private cable TV service offering. On April 25, 1995, Bell Atlantic asked the FCC to suspend further action on its two pending video dialtone applications claiming that "significant technological and other developments have occurred which caused us to reevaluate our plans."[4] Meanwhile, an official of Ameritech, who was granted authority to provide video dialtone service to over 1.3 million households in five states, was recently quoted as saying that "[t]here is nothing that says...we can't go in tomorrow as a cable company."[5]

In its *Fourth Further Notice of Proposed Rulemaking*, the FCC asks whether it should require telcos to provide video programming only over a common carrier video dialtone platform. Unwilling to await any public interest determination by the FCC, several telcos and telco trade associations are seeking to enter the cable television market and have filed complaints in U.S. District Courts asking the courts to find that the FCC's Section 214 application process unconstitutionally infringes upon their First Amendment rights.[6] In arguing that they have a constitutional right to provide a "closed" private cable television service, telcos fail to recognize that the very same federal courts that have declared the cable/telco ban to be unconstitutional have concluded that the telcos' entry into the video programming market may necessitate new legislative or regulatory protections for consumers, including the requirement to provide a common carrier video dialtone platform.

IV. The Courts Generally Agree That Congress or the FCC May Lawfully Require Telcos to Provide Video Programming Only Over a Video Platform

The very courts that invalidated the cable/telco ban have expressly recognized the need to impose conditions on the telcos' provision of video programming services, including conditions requiring telcos to provide a common carrier video dialtone platform open to all video programmers on nondiscriminatory terms and conditions. In *C&P of Virginia*, the court expressly recognized that Congress or the FCC may lawfully impose conditions on the telcos' entry into the video programming market, such as requiring telcos to provide a common carrier video dialtone platform capable of serving multiple unaffiliated video programmers, in order to protect against the potentially anticompetitive practices of the telcos.

> To the extent that existing legislative and regulatory framework may be viewed as ineffective in curbing anti-competitive actions in the video programming market, more restrictive conditions may be placed on the provision of video programming by telephone companies. For example, the Commission's current recommendation to Congress for repeal of § 533(b) includes a requirement limiting the telephone company's direct provision of video programming to a specified percentage of the channel capacity made available by company's video

transport facilities. [cite omitted] The balance of the channel capacity would be required to be leased on a common carrier basis, and the system would be required to have the capability to accommodate multiple video programmers. Such restrictions would eliminate any possibility that a telephone company could extract monopoly profits from the video programming market (even if it succeeded in monopolizing the video transport market) by artificially restricting the aggregate quantity of video programming, thereby inflating the market share of the telephone company's programming affiliate.[7]

On appeal, the United States Court of Appeals for the Fourth Circuit agreed that less burdensome alternatives to a complete ban on the telcos' provision of video programming exist, including limiting telcos' "editorial control over video programming to a fixed percentage of the channels available" and requiring telcos to "lease the balance of the channels on a common carrier basis to various video programmers."[8]

Similarly, in *U S West*, the court concluded that a common carrier video dialtone platform requirement may be an appropriate safeguard to address concerns over the telcos' control of essential local distribution facilities.

[V]arious additional controls, all less restrictive of speech than § 533(b), have been suggested which would address the concerns of defendants and would prevent monopolistic behavior by the telephone companies. Such recommendations include imposing a cap on the percentage of channel capacity which may be used by the telephone company for providing its own programming, with the balance available to be leased on a common carrier basis to other programmers, [cite omitted], as well as requiring that "the telephone companies provide video programming through a structurally separated video programming subsidiary."[9]

Further, in *BellSouth*, the court concluded that limiting the telcos to a specified percentage of common carrier capacity would be a less restrictive alternative to a complete ban on providing video programming services.

In addition, should existing regulations be insufficient to halt anticompetitive action by telephone companies, more restrictive regulations could be enacted. The F.C.C.'s current recommendation to Congress for repeal of § 533(b) includes an anticipated requirement "that the provision of video programming directly to subscribers by the local telephone companies be limited initially to a specified percentage of common carrier capacity." [cite omitted] As the Commission noted, "such a requirement at the present time would bring the public the benefits we have identified, but minimize the potential for anticompetitive abuses . . ." [cite omitted] In addition, the Commission recommended to Congress that "if the benefits exceed the costs, the telephone companies provide video programming through a structurally separated video programming subsidiary."[10]

Moreover, in *Ameritech*, the court concluded that the government has a significant interest in protecting against the monopolistic tendencies of the telcos.

These measures could include cost accounting standards to detect cross-subsidization and a "complex regulatory framework designed to protect against discrimination and other anticompetitive conduct." *FCC Video Dialtone Order*, 7 FCC Rcd. at 5829-30. Other possible measures include an initial limit on the percentage of channel capacity that the telephone companies may use for their own programming, with the remainder to be leased to other programmers. *Id.* at 5850.[11]

Thus, the courts generally agree that there are significant legal and public interest reasons for imposing conditions on the telcos' entry into the video programming market, including a requirement that telcos' provide a video platform with sufficient capacity to serve multiple unaffiliated video programmers.

V. The Administration Voices the Concern of the Public That Telcos Must Provide Video Programming Only Over a Video Platform

The Administration recently stated that telcos should be allowed to provide video programming, but *only* over a common carrier video dialtone platform available to multiple unaffiliated video program providers:

> The Senate bill would allow telcos to provide video programming services either on a common carrier video dialtone (VDT) basis or as a conventional cable operator. The Administration is concerned that, in the latter case, telcos would not be required to provide common carrier VDT facilities to unaffiliated programmers. **A common carrier VDT platform cannot be merely an option for telcos, but rather should be a required aspect of their entry into the video programming market.** As long as telcos continue to control the poles and conduits that cable companies need to provide service, and as long as telcos remain regulated and dominant providers of local telephone service, there is a substantial risk that telcos may be able to gain an unwarranted competitive advantage in the video services market through discrimination and cross-subsidization. Requiring telcos to provide common carrier VDT facilities to unaffiliated programmers would ensure that programmers have ample opportunities to market services directly to subscribers, without having to go through a conduit-controlling gatekeeper. This would foster additional competition in the provision of video to the home, with the concomitant benefits of lower prices, more programming choices, and improved customer service.[12]

Emc[3]'s Proposed Changes to the House Telecommunications Discussion Draft

To ensure that consumers enjoy the benefits of a competitive video marketplace, telcos must be required to provide video services over an "open access" video platform, except, as the Subcommittee has provided for, when a telco acquires certain in-region cable systems. Only through an "open access" video approach will the goal of an "Information Superhighway" be realized.

Emc[3] therefore proposes the following changes to the legislation.

1. **Eliminate the loophole in the legislation by which telcos could construct broadband networks without providing "open access" to a video platform.**

Section 201 of the legislation amends section 613(b) of the Communications Act to allow telcos to provide video programming directly to subscribers in their telephone service areas. Of concern is that Section 613(b)(3) would allow telcos to avoid providing an "open access" video platform and, instead, provide a "closed" cable TV service if a telco's video programming subsidiary does not use the "facilities or services" of any affiliated common carrier in distributing such programming. The bill's failure to define "facilities or services" invites telco efforts to interpret it narrowly, which would enable telcos to establish video programming affiliates that are subsidized by telephone ratepayers, while denying ratepayers the benefits of the broadband distribution facilities necessary to deliver competitive video services to consumers.

This loophole can best be closed by deleting proposed section 613(b)(3) of the

Communications Act. Alternatively, if the "no common facilities or services exception" to the video platform requirement is retained, the term "facilities or services" should be defined so that there would be no confusion as to when telcos could provide a closed cable TV service rather than a video platform. This can be accomplished by modifying proposed Section 613(b) to read as follows (new language in italics):

(3) Notwithstanding paragraphs (1) and (2), an affiliate that --

(A) is, consistent with Section 656, owned, operated, or controlled by, or under common control with, a common carrier subject in whole or in part to Title II of this Act, and

(B) provides video programming to subscribers in the telephone service area of such carrier, but

(C) does not utilize the local exchange facilities or services of any affiliated common carrier in distributing such programming,

shall not be subject to the requirements of part V [Video Platform Obligations], but shall be subject to the requirements of this part and parts III and IV.

(4) *As used in subsection 613(b)(3)(C), the term "facilities or services" includes poles, conduit, rights-of-way, central office land and building space, personnel, operation and maintenance services, and financial services, including loans, guarantees, and surety arrangements. An affiliate shall be deemed to use the local exchange facilities or services of any affiliated common carrier if it purchases, rents, leases, or acquires access to such facilities or services.*

Under either of these proposed legislative changes, telcos would still be able to provide a closed cable TV service if they acquire an existing cable TV system within their service areas consistent with the requirements of proposed Section 655 of the Communications Act.

2. **Modify the "Open Access" Obligations Under Section 653(a)(3)(A) to Eliminate the Ability of Incumbent Cable Operators to Monopolize Channel Capacity.**

Telcos have raised concerns that incumbent facilities-based cable operators within the telcos' service areas will seek access to their networks with the intent of limiting the telcos' ability to provide a full range of video services by "plugging up" the limited capacity of the networks. Such efforts could vitiate the telcos' ability to provide a video programming service and the ability of independent video program providers to obtain access to the video platform. To address this concern, the legislation should prevent incumbent facilities-based cable operators within the telcos' video service area from obtaining access to the telcos' broadband facilities unless (i) the cable operator ceases operation over its facilities, or (ii) the telco installs a switched broadband video programming distribution system in which case incumbent facilities-based cable operators would be able to obtain access to the switched broadband capability of the telcos' video distribution system. To this end, Emc[3] proposes amending new Section 653(a)(3) of the Communications Act to read as follows (new language in *italics*):

(3) After receiving and reviewing the requests for capacity submitted pursuant to such notice, such common carrier shall establish channel capacity that is sufficient to provide carriage for

(A) all bona fide requests submitted pursuant to such notice --

(i) by nonfacilities-based video program providers within the carrier's service area; and

(ii) if a carrier installs a switched broadband video programming distribution system, by nonfacilities-based and facilities-based video program providers within the carrier's service area.

3. Require Telco Contracts with Video Program Providers Be Filed with the FCC.

The legislation eliminates Title II regulation (*see* Section 653(c)), thereby eliminating the requirement that the telcos file tariffs identifying the rates, terms, and conditions of carriage. By requiring the telcos to file with the Commission the contracts executed with video program providers, the legislation would provide a necessary safeguard against telco discrimination without imposing onerous common carrier tariff filing requirements on the telcos. Telcos currently file such contracts at the FCC for certain unregulated services.

Emc^3 therefore proposes adding the following new subparagraph to proposed Section 653(b)(1) of the Communications Act:

(I) require a common carrier to file with the Commission the contracts executed with video program providers for carriage of their signals.

4. Deployment of an Advanced Telecommunications Capability to All Americans.

The deployment of an advanced telecommunications capability to all Americans is vital to the national interest of the U.S. Emc^3 therefore proposes the adoption of the following new section (a similar provision is being proposed in the Senate bill);

Section 653(e). Advanced Telecommunications Incentives.

1. General.-- The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, and other regulating methods that remove barriers to infrastructure investment.

2. Inquiry.-- The Commission shall, within 1 year after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action under this section, and it may preempt State commissions that fail to act to ensure such availability.

3. Definitions.-- For purposes of this section --

(A) Communications Act Terms.-- Any terms used in this section which is defined in the Communications Act of 1934 shall have the same meaning as it has in that Act.

BOSTON PUBLIC LIBRARY

3 9999 05577 315 2

(B) Advanced Telecommunications Capability.-- The term "advanced telecommunications capability" means high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications.

(C) Elementary and Secondary Schools.-- The term "elementary and secondary schools" means elementary and secondary schools, as defined in section 1471(8) and (21), respectively, of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 2891(8) and (21)).

1/ Administration Concerns Regarding S.652: The Telecommunications Competition and Deregulation Act of 1955, where the Administration stated that "[a]" common carrier VDT platform cannot be merely an option for telcos, but rather should be a required aspect of their entry into the video programming market."

2/ *See The Cable-Telco Report*, p. 3, April 21, 1995.

3/ *Fourth Further Notice of Proposed Rulemaking*, FCC 95-20 (released January 20, 1995).

4/ Bell Atlantic letter from Edward D. Young, III to Kathleen Wallman, Chief, Common Carrier Bureau, April 25, 1995 [emphasis added].

5/ *Telecommunications Reports*, p. 8, May 1, 1995.

6/ *Complaint for Declaratory Judgment and Injunctive Relief*, United States Telephone Association, et al., Civil Action No. 95-533-A (E.D. Va. April 27, 1995); *see also Ameritech's Cable TV Subsidiary Challenges Section 214 Requirements To Offer Cable TV Programming*, Telecommunications Reports, p. 21, May 8, 1995.

7/ *Chesapeake and Potomac Tel. Co. of Virginia v. United States*, 830 F.Supp. 909, 930-31 (E.D. VA. August 24, 1993), *aff'd on appeal*, No. 93-2340 *et al.* (4th Cir. Nov. 21, 1994) (*C & P of Virginia*).

8/ *Chesapeake and Potomac Tel. Co. of Virginia v. United States*, No. 93-2340, p. 39 (4th Cir. 1994).

9/ *U S West v. United States*, 855 F.Supp. 1184, 1193 (W.D. Wash. 1994), *aff'd on appeal*, No. 94-35775 (9th Cir. Dec. 30, 1994) (*U S West*); *citing Video Dialtone Decision*, 7 FCC Rcd 5781, 5847.

10/ *BellSouth v. United States*, Case No. CV 93-B-2661-S (N.D. AL September 23, 1994), p. 9-10 (*BellSouth*).

11/ *Ameritech v. United States*, No. 93 C 6642 and No. 94 C 4089, p.34, n. 9 (N.D. IL. October 27, 1994) (*Ameritech*).

12/ *Administration Concerns Regarding S. 652: The Telecommunications Competition and Deregulation Act of 1995* [emphasis added].

ISBN 0-16-052079-7