

originates on one network and terminates on another network is approximately equal to the volume of terminating traffic flowing in the other direction.⁴² The Commission found that bill-and-keep in other circumstances would not compensate carriers for costs incurred and that imposing bill-and-keep when terminating traffic is out-of-balance would be economically inefficient.⁴³ Since, as acknowledged by ILECs, dial-up traffic to ISPs is usually not in balance, bill-in-keep would violate these principles and is inappropriate.

Further, it is ironic that ILECs are now in favor of bill-in-keep since they originally were vehemently opposed to it. ILECs insisted on high reciprocal compensation and emphatically rejected bill-and-keep. ILECs assumed that CLECs would be terminating most of the traffic to them. The fact that it has not turned out that way, is not a sufficient reason for the Commission to embrace ILECs' current position that bill-and-keep is an appropriate form of compensation. Accordingly, the Commission should not alter its rules – that are the result of sound policy objectives – based on the whims of the ILECs.

CONCLUSION

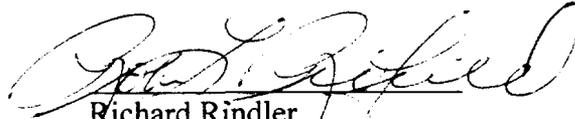
Based on the foregoing and Pac West's and Connect's initial comments, the Commission should conclude that dial-up calls to ISPs is subject to reciprocal compensation because it is local traffic, and it is entitled to such treatment under §251(b)(5) of the Act. Moreover, the Commission should not alter its current rules concerning the cost methods for determining

⁴²*Local Competition Order*, 11 FCC Rcd at 16054 ¶1111.

⁴³*Id.* at 16055 ¶1112.

compensation for dial-up calls to ISPs. It should confirm its rules relating to symmetrical rates, tandem treatment and the reliance on ILEC forward looking costs.

Respectfully submitted,



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August 7, 2000

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CERTIFICATE OF SERVICE

I, Robin L. Redfield, under penalty of perjury, hereby certify that, on this 7th day of August, 2000, a copy of the foregoing *corrected* Reply Comments of Pac-West Telecomm, Inc. and Connect Communications Corporation on the Remand of the Commission's Reciprocal Compensation ISP Ruling by the U.S. Court of Appeals for the D.C. Circuit was served on the following, via U.S. mail, postage prepaid, without previously filed attachments, except where hand-delivery and attachments are indicated below:

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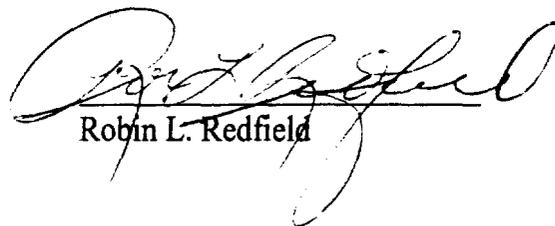
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ATTACHMENT A

[HEADLINES](#) [HOME](#)

- ▶ HEARING OF THE TELECOMMUNICATIONS, TRADE AND CONSUMER PROTECTION SUBCOMMITTEE OF THE HOUSE COMMERCE COMMITTEE
- ▶ SUBJECT: INTERNET ACCESS
- ▶ CHAIRED BY: REP. W.J. TAUZIN (R-LA)
- ▶ WITNESSES: JAMES ELLIS, SENIOR EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SBC COMMUNICATIONS; EDWARD YOUNG, SENIOR VICE PRESIDENT OF FEDERAL GOVERNMENT RELATIONS, VERIZON COMMUNICATIONS; ARNE HAYNES, PRESIDENT, RAINIER GROUP; LEN CALI, VICE PRESIDENT OF FEDERAL GOVERNMENT AFFAIRS, AT&T CORP.; DHYRUV KHANNA, EXECUTIVE VICE PRESIDENT, GENERAL COUNSEL AND SECRETARY, COVAD COMMUNICATIONS; STEVE POCIASK, EXECUTIVE VICE PRESIDENT AND CHIEF ECONOMIST, JOEL POPKIN & CO.;
- ▶ 2123 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C.
- ▶ 11:00 AM. EDT THURSDAY, JULY 27, 2000

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REP. W.J. TAUZIN (R-LA): The hearing will please come to order. - - asked to take seats and to be comfortable. Members are on their way back from a series of votes so they'll be arriving shortly, but I think we can probably get started because we are going to have an interruption that I'm going to make clear to all of you in just a minute.

Let me first thank the panel for assembling today. We appreciate very much your being here. Today is the first legislative hearing on H.R. 2420, Internet Freedom and **Broadband** Deployment Act of 1999. My Ranking Member, Mr. Dingell and I introduced this bill last year and I believe that it is one of the most important pro consumer pieces of legislation that our subcommittee has considered this session. Today, the legislation enjoys the co-sponsorship of a majority of the House of Representatives, fully 225 members to be exact, including a majority of the Hispanic, Rule and Western Caucus.

While its overwhelming bipartisan support for the bill might surprise some, the warm response here in the House to H.R. 2420 really shouldn't startle anyone. In fact, it's a quite simple explanation for how Mr. Dingell and I have built a **broadband** coalition in such a short period of time. That it this, that most members of the House of Representatives understand that policies put forward in H.R. 2420 are absolutely critical for American consumers. We are, after all, a consumer organization here in Congress. We represent, first and foremost, the consumers of America, our constituents.

If enacted, most members realize that H.R. 2420 will create full scale competition in our Internet backbone marketplace and thereby insure that the Internet does not further Balkanize our society to haves and have nots. It's as simple as that. It's no secret that a huge sector of our nation is not receiving or is not capable of receiving true high-speed **broadband** services.

The reason is because hundreds of communities are not near or not linked to any of the hubs that enable access to Internet backbone, the real information superhighway. Moreover, very few companies are building high-speed gathering lines all the way back from the backbone points of access to the rural, remote and impoverished areas because it is simply too expensive and not profitable enough at this time.

What this means of course is that those living in areas that are not near Internet points of presence or POPs or they're not tied into a backbone facility via a gathering line are not enjoying the fruits of a new economy. Without a high-speed connection to the Internet backbone, these Americans in rural areas, inner cities are regulated to the narrow band dirt road that is so incompatible with the rest of our high-speed infrastructure that the full communications across our national Web-based infrastructures will be significantly impeded.

See without a UUNet, a Sprint, a Cable Wireless or AT&T an e-mail that is sent through a standard dial-up access must pass through a pokey, congested, public access point rather than zap through a **broadband** hub. E-mails back up quickly, Web pages freeze and fold. You can forget about streaming video. If we do not operate at these high speeds, Internet cannot evolve into a fluid nationwide communications network that all of us are hoping it will be.

Instead smaller ISP subscribers will continue to encounter service disruptions, data transfer delays and every instant where **broadband** facilitated high-speed traffic is pressed upon narrow band floor speed infrastructure that were designed to carry only voice for short intervals not the large volumes of data for extended periods time.

Consider the case of John Brown of Albuquerque, New Mexico, runs a small ISP called I-highway. A quote in a recent article about Mr. Brown in "Forbes" magazine quote, "He'd like to give his clients the fastest possible link to the rest of the world, but he can't because UUNet and a few other giants, the data haulers that dominate Internet traffic don't have the fat 45-megabit lines in Albuquerque and Brown can't afford the \$120,000 a year to lease a pipe running 330 miles to UUNet Phoenix."

There's also the case of Sheldon Jefferson, CEO of NetCom, an Internet provider serving residential business customers in the New York area. To quote from his testimony to this subcommittee, "My company is locked out of the **broadband** Internet market via cable. Not only can I not get access to local cable facilities, I must pay inflated prices for transit to the Internet backbone. These prices are so high because the concentration of ownership of Internet backbone in the hands of a few carriers and companies."

Once more Mr. David Cushion (sp) of the Children's National Medical Clinic here in Washington who said that even in Northwest D.C., many impoverished residential areas, including the 100 block of Michigan Avenue, just right up the road, have no direct links to the Internet backbone facility much less a POP, despite the fact that the nation's capital is the most, I repeat the most wired city in the United States today.

So we have a digital divide growing because many people don't have access to backbone. Either where they live and the dial-up access they have is limited or affords them only a narrow band Internet services. To solve the problem, H.R. 2420 does something very simple, very pragmatic, it lifts the 20-year-old latta restriction to enable the Bell Companies

to haul data traffic from rural and underserved areas to Internet backbone facilities via their extensive fiber optic networks that are already in the ground in most states today.

This makes sense because the Bell fiber infrastructure reaches just about every square mile in states where Bell provides local service. Moreover, the fiber is available today to serve the high-speed **broadband** gathering lines that are absent in many rural and underserved areas today. We saw in several of our hearings a map we produced indicating in my own state of Louisiana two POPs, one in Baton Rouge and one in New Orleans.

And we also saw on those maps, I think Teddy has them again, we saw the interlacing of fiber optic lines that have been laid and paid for by the telephone rate-payers of my state that have been laid in the ground to serve the telephone network in our state, but nevertheless is crossed by the black latta lines drawn on a map by court here in Washington, D.C. in settlement of the AT&T breakup. Those latta lines separating communities from the POPs that exist in New Orleans and Baton Rouge, also separates those customers from those high-speed POPs.

More importantly those fiber lines that American citizens in my state paid for can't be effectively used by their own company to deliver high-speed Internet services for them to those POPs. We also saw some a competing map of mine at the last hearing, and we may see it again today, accompanied of course by some new information addressing the state of Internet POPs across the country. The contention being made, as of yesterday, by those opposing the bill is that 94.7 percent of the nation lives within 50 miles of an internet POP of DSC-3 speed or higher, 45 megabits. It's quite a revelation.

Just a few weeks ago it was revealed that many of the POPs, however, represented to be high-speed at our last meeting were, in fact, no faster than DS-1 or T-1 speed, not truly a **broadband** speed, a far cry from the 45 megabits a second. Now I know the Internet economy moves fast, but I have my doubts about whether 250 POPs have been upgraded so dramatically in just a few weeks time.

What concerns me most, however, about the materials being distributed is that they lack description. Despite being a flat contention that every POP displayed is at least a DS-3 POP or greater, materials being distributed provide no insight as whether these so-called POPs actually do. It's not clear, in other words, whether many of these POPs represent : mere peering points, points at which IXCs access local traffic or more importantly whether any of these POPs actually reach rural and underserved areas via gathering lines as opposed to serving only certain IXCs, limited number of cable modem customers.

So while speed is an important issue, no doubt, purpose is every bit as important and equally important is the central question of why on earth would Washington tell a few telecommunication companies in this country that it can't compete when even foreign countries providers can come into America and buy up companies here and compete for customers, Internet high-speed **broadband** services? And why more importantly have we paid for fiber in the ground that we can't use?

Anyway, I'm interesting getting into a fuller discussion about these so-called POPs and will have a number of questions about them as we move forward. But let me just say at the outside, despite the contentions being made about POPs in the U.S. today, we're still inclined to doubt that enough of them of are actually providing high-speed Internet services

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

I wonder why anyone would be talking about a digital divide and why one exists, or why companies are predicting that as far out as four years from now fully half of our country will have, at best, one provider, at worst, no provider of **broadband** Internet services? I doubt seriously that Dr. Kristner's (ph) children's hospital would be so abandoned in most wired capital city in America if backbone providers today had a business plan to serve it or the ISP it subscribes to.

In the final analysis, the high concentration of Internet backbone ownership in the U.S. is, even as we hold this hearing, effectively disenfranchising many Americans, not only in rural areas, but in underserved and poor urban areas as well. And because of this there's a glaring need to update the '96 act so that our legal framework becomes compatible with consumer demand and desire to facilitate a new Internet economy.

H.R. 2420's promise of allowing the Bell fiber to be used to transport data to and from areas that are being neglected by the backbone oligopolist is simply the right thing to do for business and it's the right thing to do for consumers. It's the right to do for our nation's economy. Two hundred twenty-five members of the House now recognize this. I'm confident that more will soon follow. One caveat before I yield to my colleagues, there are those at the FCC who are predicting today that in as short period as 12 months to 18 months, all of the country will be experiencing the 271 relief that has been afforded now to the Bell Companies in New York and Texas.

We are just a year or way or so from full local long distance competition from 271 and yet we are being told the fiber that is laid in the ground to serve the data needs of America has to be held hostage to latta lines drawn on a map to separate local and long distance years ago when AT&T was broken up. My only point is the sooner we get this legislation adopted, the sooner that full blown competition that Texas and New York are finally enjoying will be available to all parts of our country and the sooner I can be satisfied that folks in Louisiana will have the same advantage of competition that folks in Texas and folks in New York are currently enjoying.

The chair will yield to my friend from Massachusetts, the Ranking Minority Member, Mr. Markey for an openings statement.

REP. EDWARD J. MARKEY (D-MA): Thank you, Mr. Chairman very much and I thank you for calling this extremely interesting hearing on the **broadband** revolution that is taking place on the Internet today. It's happening at a breathtaking pace and it's sweet and it's unprecedented. It's a rapid revolution. A few mere years after passage of the Telecommunications Act of 1996, consumers are reaping the digital dividend of communications competition. Without the competitive forces unleashed by the Telecom Act we probably wouldn't be having this hearing today.

The feature rich information driven content that is every day igniting the enthusiasm of our nation's entrepreneurs and investors is riding upon a telecommunications infrastructure

that is the envy of the world. Across the globe, country after country is trying to emulate the dramatic steps that America has made in opening historic monopoly markets to marketplace competition and building bandwidth and in bringing the benefit to all sectors of society. The cable industry alone makes **broadband** capability available to 41 percent of U.S. homes and has over a million subscribers today.

The competitive local telephone companies have driven **broadband** deployment on the competing wire and currently invest roughly a billion dollars per month on new telecommunications infrastructure around the nation. Bell Atlantic had proven it can meet the market opening requirements of the Telecom Act in New York and is poised to file applications in other states in the near future including, Massachusetts, which they expect to have approved by the end of this year.

In addition, wireless applications promise ever more capacity and competition for businesses and residential consumers. In short, the marketplace is responding the Telecom Act is working as we designed it. Moreover, the competitive telecommunications industry is exerting tremendous effort to meet the bandwidth needs of the growing Internet usage in our country. That's because the goal of the telecommunications policy is not the deployment of a particular technology or application, but rather the goal of telecommunications policy is competition everywhere and for everyone.

Competition will determine whether consumers prefer wireless services, DSL, cable modems or any other technology and competition will pick winners and losers amongst applications. The fundamental issue before is whether we will continue our successful policy or instead insert uncertainty back into the marketplace. The so-called carrot and stick approach contained in the Telecommunications Act clearly contains enough incentives to the Bell Companies to open up their local telecommunications monopolies to free market forces as long as Congress does not entice them with some alternative.

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

REP. TAUZIN: Thank you, my friend. The chair recognizes the gentleman from Richmond, Virginia, the chairman of the full committee of commerce, Mr. Bliley.

REP. TOM BLILEY (R-V): Thank you, Chairman. Today, the subcommittee returns to the topic of **broadband** deployment. I am looking forward to hearing from our distinguished panel of witnesses. I'm particularly interested in learning how parties might be impacted if Congress were to deregulate the incumbent phone companies. These same companies tell the committee repeatedly that they need relief and that they need it now.

But as I said at the last hearing, I'm puzzled because as far as I can tell this industry and its consumers are prospering under the current set of rules. Indeed much has happened over the past year alone. We've seen a real commitment to rolling out **broadband** service by competitors and incumbents alike, the numbers are astounding. Let's take SBC, who's with us today as an example. In November of 1999, SBC pledged six billion to update its network. SBC assured shareholders that Project Pronto would pay for itself by delivering cost savings and generating substantial revenue growth.

SBC has already conditioned 15 million customer lines for DSL service and the company

aims to install between four and 5,000 DSL lines each day during the second half of 2000. That's right, between four and 5,000 DSL lines per day. SBC's customers aren't the only ones who should be pleased. By every measure its shareholders are doing quite well too. In the second quarter of this year, SBC data services revenue grew by an impressive 38 percent and SBC also announced a \$1.8 billion of data services sales in just three months.

Verizon has also made great strides in just one year reporting 47 percent increase in the number of DSL subscribers since the first quarter of this year. Morgan Stanley projects that by 2002 a full 92 percent of Verizon's lines will be DSL capable. In fact I've read that the real challenge for carriers like Verizon and others is finding enough technicians to fill the orders that are pouring in.

Covad is with us today too and it has equally impressive story to tell. Morgan Stanley recently estimated that Covad is six months ahead of the competition in terms of market penetration and new product offerings. It's worth noting that future job creation for Covad and others is dependent on the ability to share lines with incumbents like SBC, but the legislation before us today would extinguish new entrants rights to share lines.

I look forward to an explanation as to why it would be good for the Congress to block new entrants ability to share line, particularly in light of the fact that future job creation in this industry is so dependent on line sharing. So forgive me if I remain unconvinced that there is a problem that requires the help of the federal government.

These facts lead me to conclude that competition is working and that the 1996 act is working. Indeed SBC and Verizon themselves have proved it's working. They're now offering a full bundle of services to consumers in New York and Texas. They're both putting downward pressure on long distance prices and I look forward to Virginians enjoying this kind of price competition and I yield back the balance of my time.

REP. TAUZIN: I thank my friend. He's just a hard guy to convince, but I want to thank the chairman. I'm not going to give up. I want to thank the chairman for the jeering today and for his participation and his continued interest in the resolution of the issue.

And the chair wishes now to make unanimous consent that the statement of the Ranking Minority member of the committee, Mr. Dingell and the written statements of all members who would like the written statements for the record be accepted in the record without objection. It is so ordered.

The chair now recognizes the gentleman from Maryland, Mr. Wynn for an opening statement.

REP. ALBERT RUSSELL WYNN (D-MD): Thank you, Mr. Chairman. In view of the shortness of time and the importance of this hearing, I would defer an opening to submit in the hopes that we could at least get some of the witnesses before we have to recess. And with that, Mr. Chairman, I would relinquish my time

REP. TAUZIN: I thank the gentleman. The gentlelady has an opening statement, Ms. Wilson?

REP. HEATHER WILSON (R-NM): Yes, Mr. Chairman, I'll just be very brief. I'm of the

belief that the 1996 Telecom Act is working and that competition is growing both in Albuquerque and around in Mexico and that why the local Albuquerque office gets our local phone service from E-Spire (ph) and I think that more competition should be the goal of any changes to the act. I support the idea of more competition in the data backbone market and I am concerned though about the bill that it might result in less competition in local exchange, Internet service providers and **broadband** access markets.

I've heard from a lot of consumer groups, Internet service providers, competitive local exchange providers, public utility commissioners, small businesses all across New Mexico about this bill and almost unanimously they either outright oppose the bill or they have grave concerns that have to be addressed it should move forward. I'd like to hear from the witnesses today about the need for the legislation as I understand the Bell Companies are reporting record profits and usually crediting their movement into the data world for these record profits.

I'd also like to hear more about the impact this bill is going to have on backbone competition and I'd like to hear about the impact it's going to have on our burgeoning competitive telecommunication market across the country and specifically in New Mexico. I'd also like to make a clarification to a recent "Forbes" magazine article that suggested that Albuquerque has no high-speed Internet access. Contrary to the "Forbes" article, my constituents, in fact, can receive high-speed Internet access.

UUNet, a subsidiary of WorldCom, provides high-speed access. There's several DSL companies in Albuquerque including Covad, Rhythms and E-Spire. Comcast Cable is rolling out high-speed cable modems. In Des Moines, New Mexico, which has I think it's now 400 telephone customers in 2,800 square miles, you can get DSL from the telephone co-op. US West, however, does not yet offer high-speed Internet access in Albuquerque. They have announced plans to roll out DSL, however.

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

REP. TAUZIN: The chair thanks the gentlelady. The gentlelady from Missouri is recognized, Ms. McCarthy.

REP. KAREN MCCARTHY (D-MO): Thank you, Mr. Chairman. I'm very grateful for this hearing and I'm going to be very brief and put my extended remarks in the record so that we can get on with the panel. There are a lot of very positive developments happening for consumers in my district because of competition and I do not want to change or act prematurely, a law that is in place and working well. Any change that might reduce competition I think would be very adverse and it could lead to increased costs and stifling innovation and if ain't broke don't fix it. So, Mr. Chairman, I will yield back the balance of my time and put my remarks in the record.

REP. CLIFF STEARNS (R-FL): I thank my colleague. The gentleman from Texas is recognized. The gentleman from Oklahoma is recognized, Mr. Largent.

REP. STEVE LARGENT (R-OK): Thank you, Mr. Chairman. The chairman of the

subcommittee said the chairman of the full committee may be a hard guy to convince, I may be impossible. In preparation for this hearing this month, I visited an SBC central office in Tulsa and it's something that I recommend that every member of this subcommittee do is take a central office tour if they've not done so. It's extremely educational and helps to put into context what we're doing with this legislation.

I came away from the tour with the favorable impression that Southwestern Bell has made a good faith effort in Oklahoma to abide by the intent of the '96 Telecommunications Act. More than 50 companies have been approved by the Oklahoma Corporation Commission to provide local service. Seventy-three interconnection agreements with SBC have been approved. Competitive local exchange carriers provide competitive local service in 66 of the 72 counties that SBC serves.

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

I was left with the distinct impression that the act is working as intended CLECs have invested \$30 billion in new networks since the passage of the act and continue to invest over a billion dollars every month in their networks. Despite the CLECs significant growth incumbent local exchange carriers continue to serve between 93 and 95 percent of the local telephone market. Since passage of the act, the Bell Companies and GTE have also done quite well in data market.

In the first quarter of this year SBC, Bell Atlantic, Bell South, US West and GTE posted anywhere from 32 to 41 percent growth because of data. Why have competitors been able to make inroads in an industry that has been traditionally dominated by a few large monopolies? Largely because of Section 251, which lays out the interconnection requirements that incumbent local exchanges must comply with. H.R. 2420 makes some significant changes to Section 251 as it pertains to data services.

I believe these changes could hinder competition rather than help it. I refer members to page seven of the bill beginning on line seven it says and I quote, "The commission shall not require an incumbent local exchange carrier to A) provide unbundled access to any network elements used in the provision of any high-speed data service other than those network elements described in Section 51.319 of the commission's regulation as in effect on January 1, 1999 or B) offer for resale at wholesale rates any high-speed data service."

So in essence what we would be doing, if we were to enact this legislation, is to say to those companies, who have invested billions of dollars to spur competition and develop innovative technologies, Congress really didn't intend that data should be considered as a telecommunications service. Throw your business plan out the window and start over. In my view, that's poor public policy. If we enact this legislation, why should those in the telecommunications or any other industry, for that matter that comes before this committee, have any certainty about how to construct a business model if we change rules of the road because one side doesn't like the rules.

As members of this subcommittee, our first goal when developing legislation should be to do no harm. I fear that H.R. 2420 would do significant harm. The act is working and if it ain't broke don't fix it. I yield back my time.

REP. STEARNS: Thank my colleague. I understand the gentleman from Minnesota does not have an opening statement. OK. Chair recognizes himself. Let me just compliment the chairman, who just stepped out momentarily for his alacrity, he has 220 co-sponsors. He deserves to have a hearing and I think he's done great work in trying to present his case. I, like my colleague from Oklahoma, am not one of the 220 members who are on the bill, but I believe that this hearing is very important and I compliment him for having this hearing.

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

The Telecom Act of 1996 I think is working and I think the landscape is continuing to change. Consumers now have mind-numbing options. I mean it's almost either from DSL or ISDN on long distance providers and packages. Cable of course now is a legitimate competitor with copper voice and data services, competitive local exchanges have sprung up around the country effectively competing with incumbents and bringing competition to the local phone market.

Additionally, new sectors have been given birth in the area of data, **broadband** and bandwidth, with data being one of the key components driving the telecom revolution and the demand for bandwidth and **broadband** is growing day by day, if not my colleagues, second by second, bandwidth now being traded as a commodity. Americans electing to do away with their dial-up modems for lightening fast speeds being offered through cable and DSL to access the Internet and this demand is being met, not only by the incumbent phone companies, but also by the cable providers, CLECs and the LECs.

Furthermore the commission, the commission itself has finally approved 271 applications for Bell Operating companies entry into long distance. In the last year alone, Bell Atlantic won approval in New York and SBC approval in Texas. Bell South will soon be filing in Georgia and the flood of applications will soon make its way to the FCC. Now that the Bells finally have a clear blueprint for inter- latté (sp) entry I anticipate the landscape to be significantly different 12 months from today.

So clearly it is an exciting time for telecommunication, for this revolution. I appreciate the hearing, as I mentioned, but the real question, members we have to decide, is do we want to go back and change the Telecom Act of 1996 and that's the main question before this hearing or should we continue to let this percolate and dry to seed, let competition solve the problem without more government regulation and that concludes my opening statement.

Mr. Sawyer is recognized for an opening statement.

REP. THOMAS G. SAWYER (D-OH): Well, thank you, Mr. Chairman. I assume that you have already sought unanimous consent for members to insert their statements into the record.

REP. TAUZIN: The chairman had already done that. Yes sir.

REP. SAWYER: Well I thank you for the opportunity to speak, but I won't take advantage of that opportunity and we can get on with the hearing.

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

REP. CHRISTOPHER COX (R-CA): I have no opening statement.

REP. TAUZIN: All right. The gentleman from Ohio is recognized.

REP. MICHAEL G. OXLEY (R-OH): Thank you, Mr. Chairman and welcome to our distinguished panel. I strongly support efforts to support **broadband** deployment through deregulation, which is why I've co-sponsored this legislation. If a regulation has outlived its usefulness for protecting consumers, whether due to technological innovation or market competition, it ought to simply be repealed. That's why I favor data relief for the Bell Companies, that's why I'm against imposing open access regulations and horizontal ownership caps on cable systems.

I believe that when we look at the issue of **broadband** we need to take a step back make sure we're seeing the big picture. We want to make sure that we're closing the so-called digital divide in both urban and rural markets and we want to be sure that we remain technologically neutral and not promote one way of addressing the problem over other alternatives. So in addition to ILEC (sp) deregulation, which is in order, in my opinion we should look at promoting wireless and cable solutions as well. No option should be ignored.

As usual, the best thing we can do is pursue deregulatory parity and let the consumer pick the winners and losers. The most perfect mechanism for choosing technology isn't the commission or the Congress. It's the competitive marketplace. I'm sure we'll hear lots of suggestions today on how to help the market work its magic and I'm anxious to hear them all in due course. I'm also interesting in hearing about the need to maintain or even increase regulation based on a competitor's view of fairness although I'm sure we'll hear a fair amount of that too.

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

REP. TAUZIN: I thank the gentleman and I thank him for his support and his strong statement. Are there any other members wishing to make an opening statement? Then I'm pleased to begin the testimony of our witnesses. As I do, let me announce that there's a special mass in memory of the life of our good friend, Mr. Stupak's son, who lost his life this year. It starts at 12:10 and we will begin taking the testimony of the witnesses.

But members obviously will be excused if any would wish to go and attend that service and we'll try to complete the round of the witnesses and hopefully by that time members will have returned and we can begin the round of questions of our witnesses. So if members feel, as I would love to personally attend, if you want to attend, you're certainly excused to do so as we as we take the testimony.

Any further opening statements from anyone? Then the chair is pleased to introduce the panel. The panel is indeed a distinguished panel and pursuant to the request of the

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

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

Let me also indicate that we did receive a call suggesting that two people who would love to attend could not make here and I just wanted to let you know that they did want to make it, first the CEO of AT&T had called us and let us know that he would personally liked to have made it and hopefully we an here from him at a future date, Mr. Collins. And also the chairman of FCC called and expressed his regrets that he could not be here.

This will go into the fourth or fifth time that it's happened and I assured my friend, Collins, that this is the first time he's really had a good excuse and not only a real authentic one, but one I support, he's attending the adoption hearing for his new son and it's kind of big day for him, an exciting day and I wanted to acknowledge that today and wish him and his new son and his family all the best wishes. It's a very big day for him and his family and want to wish him well and he's certainly excused from being here today.

We'll begin with Mr. James Ellis, the senior executive vice president and general counsel for SBC Communications. Mr. Ellis, all written statements of the panelists are part of our record. So if you will kindly just summarize your statement within the five-minute rule. Mr. Ellis. The lights will indicate to you green, yellow and red when you've just about completed your five-minutes before the committee. Mr. Ellis, please.

MR. JAMES ELLIS: Mr. Chairman and members of the committee, good afternoon. I appreciate the opportunity to share my company's views on this important legislation. We support the bill because we believe it will lead to increased deployment of advanced services, particularly in the rural areas. It will mean more competition for advanced services and with that will be more customer choice and competitive prices. It couldn't come at a more critical time.

The experts say that the amount of traffic on the Internet doubles roughly every 90 days and certainly the demand for high-speed access is exploding. It's becoming increasingly clear that the role of the Internet and high-speed access is vital to all segments of the economy. We believe in considering your legislation, a beginning point is a recognition of two fundamental facts. First, there is no bottleneck for advanced services.

Cable modem, which is provided by the cable companies, competes directly with our XDSL services. Cable modems provided over their networks, their facilities, completely independent from ours. In addition, we have terrestrial wireless alternatives, satellite alternatives. They provide their services completely independent of our facility. Large customers have access to AT&T and WorldCom and others who provide direct access to the Internet over high-speed capacity and again without resort to the telephone company

facility. There simply is no bottleneck.

In addition, we do not have even a leadership, let alone dominant position with respect to advanced services. Perhaps the best evidence why there isn't a bottleneck is our competitors have four or five customers for every one we do. But despite the fact that there is no bottleneck, no control and despite the fact that we are not even in a leadership position, we're subject asymmetric regulation. The result of that asymmetric regulation is, on the one hand our competitors are completely free to operate the most efficient way they can, at the same time, we're subject to pervasive regulation.

It means we're handicapped. It means competitors are protected from competition and ultimately it means that consumers, the customers are denied a competitive marketplace and the benefits. Now there are many aspects to this, but the one that is the subject of this bill is of course the long distance restriction and because of that restriction we have significant handicaps in deploying **broadband** services to our customers. Takes many forms, but let me give a specific example.

Illinois has 12 ladders. We go in there to provide advanced services. That means because of the long distance restriction, we have to put an ATN switch in each ladder and we have to put a point of presence to the Internet in each ladder, very expensive, can't operate in an efficient, when you'd follow normal traffic algorithm and combine demand and use a combination of switches and trunks, can't do that.

Likewise, we can't demand for high-speed access in one community and combine it with another community. And in that way operate more efficiently, have a broader base deployment. The discussion has mentioned Project Pronto. We have been handicapped. We could have done it more efficiently. We could have reached many more customers without that restriction. Another example is the backbone, you all heard of the backbone discussed, the backbone of the Internet. Well, that's the high-level connection between the Internet hub.

And as was indicated several weeks ago when the Justice Department and the government took a position against the WorldCom merger. That was the principal reason because of the heavy concentration in three companies in provision of that backbone. We have the facilities, they're in the ground, we're not permitted to participate in them. Now there've been several suggestions in the comments today and in other places that we're seeking to turnaround the Telecom Act. That's not true.

Advanced services, DSL and cable modem, were not in commercial operation at the time that legislation was debated and certainly the marketplace and technology have gone well beyond the situation that existed at the time of the Act. Furthermore, I would tell you, we're not even seeking in any way to change our obligations to open the network. Indeed, it is absolutely critical that we be able to offer a complete package or we're not going to have a business. We must have the opportunity to offer voice telecommunications, fact, 70, 80 percent of our revenues are from voice. That won't change. We will continue to have that obligation.

But the fact is the basic underlying principles behind the '96 act. That is existence of a bottleneck and dominant control of the local exchange simply do not apply in the case of advanced services. That is we have neither bottleneck nor a dominant position. I'd make

one other point that's been referenced to how many POPs there I would simply say that the real question is whether the rural customer has the access to high-speed, access to the Internet? And the fact is according to NTIA, about five percent of rural customers have that access and we'd like to change it. Thank you.

REP. STEARNS: Thank you very much, sir. We'd like to now welcome the senior vice president federal government relations for Verizon Communications here in Washington, D.C., Mr. Edward Young.

REP. MARKEY: Mr. Chairman. When I was a boy growing up, Mr. Chairman, we had a nice company it was called New England Telephone.

We all knew how to pronounce that and it was passed on by our mothers and our fathers and then about 15 years ago, Mr. Chairman, after paying about paying about a million dollars, they decided to change the name into something that was absolutely unpronounceable NYNEX and it took us about 10 years to figure out to say this word, okay, because it's some kind of test that you would give to, you know, someone who was in some advanced foreign language course.

This would be the last word you'd give someone learning the English language NYNEX and so we all finally mastered it.

Then Bell Atlantic purchases or merges with NYNEX and they decide to give up this word and then we all have to learn in my hometown, a new word, Bell Atlantic, which we'd just about gotten used to saying. Then this year paying another million dollars, not withstanding the fact that 98 percent of all people who look at say Verizon, which is probably how they should pronounce if that's how the public wants to pronounce, there's a new name called Verizon. Now it captures a whole bunch of concepts that are supposed to be subliminally influencing up towards this horizon.

REP. TAUZIN: It's pronounced Verizon. (Laughter.)

REP. MARKEY: Yes, Mr. Chairman. So now after another million dollars, we now have a new name for this company, all providing the exact same services in my hometown with the hope that they will receive relief by the end of this year so they can move into them with a new horizon of new services, but the company is Verizon.

REP. TAUZIN: Thank you very much, Mr. Markey. (Laughter.) Mr. Young of Verizon Communications.

MR. EDWARD D. YOUNG: Thank you, Mr. Chairman. Good afternoon to the members of the committee and Congressman Markey, thank you for correcting that. The combination of Horizon and Vericas (sp), which we can talk about later, I should note that this is the first appearance before this subcommittee by Verizon. We were formed by a merger with GTE at the end of last month and I'm delighted that this first appearance is in support of H.R. 2420. The legislation that you, Mr. Chairman and Mr. Dingell have introduced to assure that all the urchins will realize the benefits of the Internet as fast as possible and affording more choices. That the bill has already gathered 225 co-sponsors is a testament to your leadership and the importance of this issue.

In my brief time, I'd like to emphasize two key points, first H.R.2420 will help bring more quickly advanced Internet services to more Americans and at competitive prices. And then secondly, I want to emphasize that this bill does not, does not undercut the incentives that were put in place in the act to open up local markets to competition. Okay, how will 2420 accelerate deployment of Internet services? Well, the Bell Companies have the unique ability to provide vital pieces of the high-speed Internet infrastructure, the links and hubs in the middle of the Internet architecture.

At one end you have the high-speed Internet backbone, at the other end you have the local connections that connect pounds and businesses to the Internet, but in between there's a whole host of links, hubs, interconnections, interoffice facilities that the Bell Companies have at their disposal as a result of providing ubiquitous local service that could be used to increase the capacity of the Internet and to provide more access to more customers. A good analogy is if you think of the big Internet backbone as the interstate highway what we provide is we provide the state roads, the access roads that run next to the highways and the onramp that allow that interstate to get to the local communities to provide Internet service.

So we have hundreds of thousands of miles of fiber among all the local exchange companies to help provide these services and the benefits that H.R. 2420 provide is it allows us to use those facilities for a very narrow purpose and that's just to provide Internet data services. It allows us to use these backbones in places where there aren't facilities today, Charleston, West Virginia, Duluth, Minnesota, Batesville, Arkansas where we'll be able to use those facilities once this bill passes so that anybody can deploy high-speed Internet services. I emphasize anybody, Covad, Rhythms can take advantage of this local architecture. They'll have equal access to it to offer their own services under the Internet. So they won't have to go as far to get high-speed connections. They'll be able to provide services as well as we will and therefore the customer wins.

Now I say this a narrow exemption because it only applies to data. This does not affect at all the requirement that we meet the 271 requirements for long distance relief for voice services. So what we're focusing on is a narrow exemption, an incidental inter-light (ph) exemption in the same way that you saw fit to allow us to provide cellular long distance service. So if this bill as a narrow focus benefits everyone, why do people oppose it? Well the main opposition comes from those who claim that this bill would gut the incentives in the act to open up our local markets and that's just simply not so for a number of reasons.

First of all, this bill does nothing to eliminate Section 251 of the act. Section 251 contains the market opening provisions, the 14- point checklist if you will that the Bell Companies have to meet in order to get into the long distance business. The interconnection obligation still remains. The bill does nothing with respect to that. With respect to voice service, there's still a valuable incentive for us to get into that market. It's a hundred billion dollar plus market a year. We have every incentive to get into it.

Secondly, under our merger conditions, we have every incentive to get into it. Verizon, for example, cannot offer long distance service through its data affiliate, which it had to separate at its merger with GTE until it meets the 271 requirements. So the point here is that there are lots of incentives for us to continue to meet the 251 requirements. The FCC has enforcement authority under which it can continue to monitor the hundreds of measures that we have to report to them every month to demonstrate that our markets are

open.

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

REP. TAUZIN: Thank you very much, Mr. Young. We're next pleased to welcome Mr. Arne "Skip" Haynes, president of the Rainier Group. Now what's interesting about Skip here is that in his bio he tells us that his great grandfather, Pete, won the company in a pinochle game in 1912. Your great grandfather actually won the company in a pinochle game in 1912?

MR. ARNE "SKIP" HAYNES: Yes sir.

REP. TAUZIN: That's amazing.

MR. HAYNES: The actual story is there're not sure if he won the company or if he won enough change to buy the company. (Laughter.) Because I can all tell you I'm fourth generation manager of our company and when my father took over the company in 1954, the gross revenues were \$32,000 a year and we're still very small.

REP. TAUZIN: Mr. Haynes, you're recognized, sir, for five minutes.

MR. HAYNES: Thank you very much. The point of my testimony here, sir, is to support H.R. 2420. I thank you, Mr. Chairman and members of the committee for the opportunity to give that support. I have submitted a record of the testimony and just for the record my son just graduated from college. He's joined the firm in our interactive media business and we have a commitment to telecommunications in small communities.

REP. TAUZIN: You're not doing pinochle on the Internet year are you?

MR. HAYNES: No, no. (Laughter.)

REP. TAUZIN: Thank you.

MR. HAYNES: We also have a lot of small company friends around the country. For example, Smokey Scanlan (sp) down in E-tel (sp) is competing with Bell South in New Orleans and many of our friends throughout the country, small companies, are competing. I'm going to be moving into Mr. Stearns area and competing in Ocala with high-speed wireless data and anxious to do that, looking forward to it.

Again, I want to stress we're a small company. Our incumbent phone company has 3,800 access lines. That's fewer than the number of employees in most of the companies here. We have about a thousand cable customers. Those we've acquired since the act was passed in '96. We have about a thousand Internet customers and we have about 400 CLEC customers and those are primarily residential and small business. I think our largest CLEC customer so far is six lines.

We're excited about being in telecommunications, staying in telecommunications and I would note that our employee base is now up to 50 individuals, which is about triple what it

was when the act passed in 1996. I'm testifying on behalf of our company as well as the United States Telecom Association of which I am vice chairman.

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

We need relief from regulation both at the federal and the state level and I'd like to point out that's extremely important and there are some aspects of deregulatory effort here and more of that should continue for small companies as well as all companies. There is no digital divide in the operations that we serve. We have cable modem service available to our cable customers. We will be rolling out DSL within 90 days to 100 percent of our incumbent customers as well as our CLEC customers and that's in the state of Washington. Our wireless, they haven't even got the technology to where they're selling it for public use yet, but that is where we're going soon in California and Florida.

I'm either a very bright person for working the last 10 years to develop a data oriented telecommunications network or I'm really stupid because I invested millions of dollars of our shareholders money to make a data-ready network. And I'd like to invite Mr. Largent and any member of the committee to come to the foothills of Mount Rainier so that I could show you why line sharing, as the FCC put it forward, would devastate the operations of our company and be absolutely a bad thing for residual customers who only want to use voice services.

The line-sharing concept is flawed. I've submitted some of the details in the record and I would be happy to explore those with anyone. And I would also like to suggest that, while the record indicates our costs are high in our incumbent area approaching a hundred dollars a month to serve a customer, 20 or so of which we get out of local rates, those are not unusual or unrealistic costs in rural areas. Any RBOC will also have high-cost areas to serve as any mid-size company would. It's a question of geography and the cost of facilities and the cost of employees who have to maintain these networks.

So again, it costs money to run these businesses, competition is opening a lot of opportunities. It would be better served without any regulation, but the regulation needs to be much lighter and much more fair than what it's been to incumbents. I think that H.R. 2420, if passed, would allow us to continue to expand our operations in

Washington State. If that and other regulatory efforts continue, we will be in trouble and that's not good for any of our customers. I'm amazed and I see my red light's already come on, but a couple of points, if just have a second.

State regulators are drooling to fill a vacuum that any FCC regulation relief might come with. So I'm pleased that every effort you make will be to reduce state regulation as well. Relieving the large companies of the inter-latté obligation is very positive for our customers because as Mr. Young point out, there's a link that's broken and it's not at our end and it's not in the middle and we high-speed all the way through and that'll benefit our customers. Thank you, Mr. Chairman.

REP. TAUZIN: Thank you very much, Mr. Haynes. Next we're pleased to welcome Mr. Dhruv Khanna, the executive vice president and general counsel of Covad

Communications. I understand one of the founders of Covad, actually helped create it, not even in a pinochle game. We welcome you, Mr. Khanna.

MR. DHARUV KHANNA: Thank you very much. Good afternoon. I am Dhruv Khanna. I'm co-found and EVP and general counsel, helped start Covad.

REP. TAUZIN: See if you can get the mike real close because we've got a recorder who has to pick up your words.

MR. KHANNA: I recall sending NYNEX a interconnection request from my home fax machine on March the 7th, 1997. Thank you, Mr. Chairman and members of the subcommittee. Thank you very much for the Telecom Act of 1996, but for the Telecom Act of 1996, Covad would not exist. When the Telecom Act was being debated in Congress in 1995, the first of the Internet stocks, Netscape, went public back in the fall of 1995. There were a couple of things that we knew. I was an in-house counsel at Intel at the time.

I knew about the massive demand for bandwidth. I knew about the massive PC penetration into the homes across the United States. I also knew about the Netscape IPO and about the Internet revolution that was brewing at the time. I also knew about DSL technology, a technology that the local phone companies had hoarded, had put in mothballs because they did not want to deploy the service that would radically cut their T-1 revenues.

The Telecom Act of 1996 allowed us to break into that marketplace and compete with the phone companies and we've done so reasonably well. To date, standing here today or sitting here today, Covac provides service to almost 40 percent of all homes and businesses in the United States. By the end of this year, we've gone on record saying it'll be 50 percent. By the end of next year, we have gone on record promising it will be 75 percent of all homes and businesses in the United States.

So I'm proud to sit here today and state that our footprint, our network deployment exceeds that of SBC's and that of Bell Atlantic with respect to DSL. While were busy exercising our entrepreneurial wicks and growing our footprint, the phone companies chose instead to merge. There was the number two employee at US West, Mr. Bob Knolling (sp), who decided to quit that company and join Covad as our CEO. We have recently acquired Blue Star, a small data CLEC based in the Southeast, that competes in rural areas with Bell South.

To give you an idea of our growth, we are today one of the fastest growing companies in the United States. Our quarter-over- quarter line and revenue growth is approximately 40 percent. We did this, as I said, through our enterprise and based on the Telecom Act of 1996. Our footprint towards that of Bell Atlantic and of SBC, we beat them to marketplace. We were the first to offer two-wire DSL. We were the first to cut prices. We brought prices down for consumers, for example in the US West territory, from \$200 a month ISDN to \$20 a month for greater bandwidth.

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