DISCOVERY INSTITUTE

Georgia's Unfinished Telecom Agenda:

Regulatory Reform Would Grow Georgia's Economy

HANCE HANEY and GEORGE GILDER | JANUARY 2010

SUMMARY

Legislators may confidently rely on competition instead of regulation to deliver new technologies, improved service quality, choice among telecommunications providers and ultimately lower prices for consumers.

Competition between cable and wireline telephone companies pushed down the rates for bundles of Internet, phone and TV service by up to 20 percent in 2008, to as low as $80 per month in 2008, according to *Consumer Reports.*

The traditional rationale for utility regulation – *i.e.,* that fixed landline telephone service is a natural monopoly – is gone. Lawmakers must face the reality that continued reliance on utility regulation is not only unnecessary but will harm consumers by distorting competition.

In Georgia, several harmful vestiges of legacy regulation remain. These include:

- Prohibitions on pricing flexibility which prevent telecom providers from developing customized offerings, such as volume and term discounts, which are necessary to compete.

- Hidden subsidies – such as inflated intrastate access charges – cannot be maintained in a competitive market where competitors can choose to serve profitable customers and ignore everyone else.

- Filing requirements which ensure rivals receive detailed information about a competitor's new or improved services or products.

- Utility commission jurisdiction for numerous consumer issues – many of which are antiquated as a result of changes in technology – which is redundant and leads to inconsistent enforcement with anticompetitive effects.

- Obligations to serve, usually referred to as provider-of-last-resort, which impose costs on some providers but not others and are anticompetitive wherever consumers can choose between multiple providers.

Georgia's neighbors have taken important steps to update the regulatory climate in the past year. Alabama exempted telecom services from Public Service Commission jurisdiction altogether beginning January 1, 2011. Florida, North Carolina, South Carolina and Tennessee also updated their telecom statutes in the same direction.

Meanwhile, Georgia's telecommunications providers remain subject to unnecessary and anticompetitive regulation which depresses industry valuations and thus investment.

Even when pursued in the name of "competition," legacy regulation restricts service strategy flexibility and creativity needed for real competition in the Internet age. By delaying regulatory reform, legislators will limit customer choice, increase prices, and cripple the broadband expansion necessary to economic growth and technological progress.

This is a moment of truth for Georgia. By removing the statewide cobwebs of regulations that afflict telecom, they can open up new technological opportunities and economic efficiencies that promise a direct private market economic stimulus of at least $3.3 billion over the next five years in the form of lower prices for voice services, plus an additional $3.9 billion in economic impact annually from increased broadband availability and use – including over 70,000 new jobs per year by one estimate.

By simple reforms of outdated laws, Georgia can ignite a new spiral of innovation and revival based on new technologies and services tapping into new worldwide webs of glass and light and air.

COMPETITION RULES THE MARKET

As we previously observed in a paper assessing the state of competition and need for regulatory reform in Illinois, Indiana, Ohio, Michigan and Wisconsin, and in a subsequent paper addressing Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, competition in the telecommunications industry got off to a slow start following enactment of the federal Telecommunications Act of 1996 but began to grow rapidly in 2004 as a result of changes in the "pro-competition" policies implemented by regulators.[1] Today, incumbent telecommunications providers are facing significant competitive pressure from Voice over Internet Protocol (VoIP) providers, from cable operators, from wireless providers and from other certificated wireline providers.

The local providers' share of some markets is already approaching 50 percent or less. The FCC has provided regulatory relief for local services in Omaha[2] and Anchorage.[3] However, it declined to deregulate local services in Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach[4] and in Denver, Minneapolis-St.Paul, Phoenix and Seattle,[5] where opposition from noncable- and nonwireless-competitors who lease facilities from Verizon and Qwest was vociferous. But in June, the U.S. Court of Appeals for the D.C. Circuit vacated the Verizon decision because the FCC departed from precedent by relying solely on actual, and not potential, marketplace competition.[6]

Professor Alfred E. Kahn, a former chairman of the New York Public Service Commission and top official in the Carter administration, says:

> *The industry is obviously no longer a natural monopoly, and wherever there is effective competition—typically and most powerfully, between competing platforms—land-line telephony, cable and wireless—regulation of the historical variety is both unnecessary and likely to be anticompetitive—in particular, to discourage the heavy investment in both the development and competitive offerings of new platforms, and to increase the capacity of the Internet to handle the likely astronomical increase in demands on it for such uses as on-line medical diagnoses and gaming.*[7]

Cable phone service

Cable phone services – primarily utilizing VoIP technology – was available to approximately 84 percent of U.S. cable-passed households nationwide at the end

of 2008, according to research cited by economist Jeff Eisenach.[8] He further notes that cable telephony was available in rural study areas which account for 87 percent of the rural population.[9]

Several of the top cable companies with a Georgia presence report higher national average percentages of homes passed within their service territories.

Charter Communications

Charter reports that 87.3 percent of the homes passed by its video cable services are also passed by its telephone services.[10]

Charter serves the cities of: Athens, Bremen, Buford, Carrollton, Cedartown, Cohutta, Colbert, Columbus? Comer, Dalton, Danielsville, Dublin, Duluth, East Dublin, Hull, Flowery Branch, Gainesville, LaGrange, Lanette, Lula, Manchester, Milledgeville, Newnan, Oakwood, Ringgold, Rocky Face, Smyrna, Stockbridge, Thomaston, Tunnel Hill, Valdosta, Varnell, Villa Rica and Winterville.

Comcast

Digital phone services are available to approximately 92 percent of homes in areas served by Comcast.[11] The company recently became the third largest phone services provider in the U.S.[12]

Comcast serves the cities of: Adrian, Ailey, Alamo, metro Atlanta, Argyle, Augusta, Bellville, Blythe, Brunswick, Calhoun, Carrollton, Cartersville, Chichamauga, Claxton, Daisy, Dallas, Fort Oglethorpe, Glennwood, Glenville, Hagan, Hiram, Homerville, Hephzibah, Jasper, Lafayette, Lookout Mountain, Madison, Metter, Millen, Montezuma, Mt. Vernon, Mt. Zion, Oglethorpe, Plainville, Quitman, Resaca, Rome, Rossville, Soperton, Sylvania, Tallapoosa, Twin City, Villa Rica, Waco, Warrenton, Waynesboro, Whitesburg and Wrightsville.

Comcast also serves Brooks County, Candler County, Carroll County, Clinche County, Emanual County, Evans County, Floyd County, Gordon County, Glynn County, Hamilton County, Haralson County, Johnson County, Macon County, Madison County, Montgomery County, Paulding County, Tattnall County, Treutlen County and Wheeler County.

Cox

Digital telephone service was available in all Cox markets in 2006.[13] Cox serves Macon and Warner Robins.

Mediacom

Phone services are now available across 92 percent of Mediacom's 2.8 million homes nationwide, and beginning in March 2009, the company launched across much of its footprint a multi-line phone product as part of its suite of business services.[14]

Mediacom serves the cities of: Albany, Americus, Ashburn, Bainbridge, Cairo, Camilla, Cecil, Columbus, Cordele, Dawson, Donalsonville, Eastman, Ellaville, Hahira, Lakeland, Leesburg, Moultrie, Nashville, Omega, Pearson, Ray City, Remerton, Sandersville, Swainsboro, Thomasville, Tifton, Valdosta, Vienna and Willacoochee. The company also serves Harris County and Muscogee County.

Time Warner

Nearly all of the homes and small- and medium-sized businesses Time Warner passes had the option to subscribe to the company's digital phone services as of December 31, 2008.[15] Time Warner serves Fort Benning.

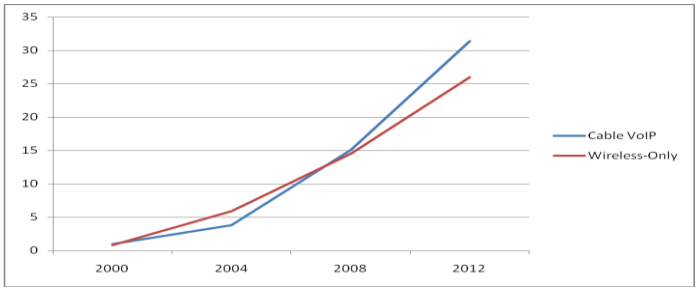
Competitive local exchange carriers – a category dominated by cable operators providing competitive voice services, but also including other VoIP and wireline providers – are serving customers in 88 percent of Georgia's zip codes, according to the FCC.[16] There are four or more CLECs in 65 percent of Georgia's zip codes.[17] Nationwide, there was at least one CLEC

serving customers in 82 percent of zip codes, and about 97 percent of households resided in those zip codes.[18] The FCC recently required providers to report service availability in individual Census Tracts as opposed to zip codes, and this data will be available soon.[19]

Meanwhile, competition has pushed down the rates for bundles of Internet, phone and TV service by up to 20 percent in 2008, to as low as $80 per month, according to *Consumer Reports.*[20]

One study estimates that the market potential for cable voice service over the next 15 years to be 38.8 million residential and 1.6 million small business subscribers.[21] The study also projects consumer benefits of $17.2 billion over five years based on an estimated cost savings of $11.70 per residential subscription per month[22] and $811 million in savings to small businesses over the same period ($19.70 per customer per month).[23] Aside from these direct savings to customers who sign up for cable phone service, the customers who stick with incumbent local exchange carriers (LECs) typically also see lower bills because the incumbents have to lower their prices to retain customers. The study claims that the combined savings to consumers and small businesses equals $111 billion over five years.[24] This equals $3.3 billion in Georgia.[25]

Rapid Growth Projected in Competitive Services
(Million Households, 2012 est.)



Sources: NCTA, FCC, CDC, SNL Kagan

Wireless

Approximately 99.6 percent of the total U.S. population – and approximately 98.5 percent of the U.S. population living in rural census blocks – have one or more different operators offering mobile telephone service in the census blocks in which they live, according to the FCC.[26]

More than 95 percent of the U.S. population lives in census blocks with at least three mobile telephone operators competing to offer service, and more than 60 percent of the population lives in census blocks with at least five competing operators.[27]

There were 255.3 million cellphones and only 154.6 million landline phones in service in mid-2008.[28]

A growing number of cellphone customers are "wireless-only" or "mostly-wireless." Almost one-third of the nation's households fell into one of these two categories in the first half of 2008, according to a study conducted by the Centers for Disease Control of the U.S. Department of Health and Human Services.[29]

More than one of every five American homes (20.2%) had only wireless telephones.[30] Adults living in the South (21.3 percent) were more likely than adults living in any other region to be living in households with only wireless telephones.[31]

In addition, one of every seven American homes (14.5%) received all or almost all calls on wireless telephones, despite having a landline telephone in the home.[32]

One analysis projects that by the year 2012 there will be 26 million households who opt for wireless-only phone connections and another 31.4 million cable VoIP subscribers, which would leave local

telecommunications providers collectively with a 51 percent market share nationally.[33]

The *Economist* recently predicted that if consumers discontinue landline telephone service at the current rate, "the last cord will be cut sometime in 2025."[34]

Verizon is giving up on the landline business, according to the *New York Times*.[35] Verizon is aiming to convert most of its landline operation to an unregulated fiber-based network capable of leveraging the decentralized structure of the unregulated Internet to cut costs sharply – which could include eliminating central offices, call centers and garages.[36]

There is no plausible basis to claim that incumbent landline providers are dominant entities requiring close government scrutiny. However, we predict a vocal few will continue to demand traditional utility regulation because they have a vested interest in the status quo.

INVESTMENT AND JOBS

The main reason policymakers should undertake regulatory reform is to attract new investment to the telecom sector so consumers can receive the services they want at competitive prices. New investment in telecom is necessary to deliver this result, and the states that attract it will also reap the added rewards of job creation and economic growth.

Experts foresee the need for continuing massive investment by network operators. It could cost more than $350 billion to achieve universal access to the fastest broadband speeds, according to the staff of the Federal Communications Commission.[37]

Another analysis, by Bret Swanson and George Gilder, concludes that the U.S. Internet of 2015 will be at least 50 times larger than it was in 2006 in order to accommodate the transition from text and low-resolution graphics to visually rich, interactive, high-resolution images.[38] They estimate that total new network investments – to expand bandwidth, storage, and traffic management capabilities in core, edge, metro, and access networks – will exceed $100 billion by 2012.

Every $5 billion invested in broadband infrastructure would directly create 100,000 new jobs in the telecommunications and information technology industries in the year in which the spending occurs, according to President Larry Cohen of the Communications Workers of America.[39]

A study by the Brookings Institution found that 300,000 private non-farm jobs are created throughout the entire economy for every one percentage point increase in broadband penetration.[40] The authors call broadband "an important basic infrastructure that is expected to produce spillover and wide-reaching benefits across the economy."

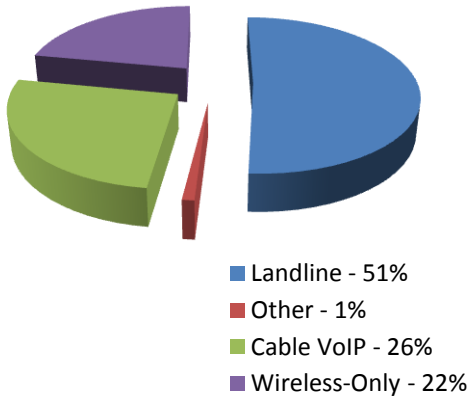
One study estimates that just a 7 percent increase in broadband adoption nationwide – similar to the higher household broadband adoption in Kentucky versus national growth that was achieved by addressing local supply and demand issues – would lead to the creation of 2.4 million new jobs per year – including 71,059 jobs in Georgia.[41]

Regulatory reform will improve the ability of telecommunications providers to offer more competitive services and maintain stock valuations necessary to attract sufficient investment capital for broadband expansion.

Investors funded wireless expansion by the incumbent telecommunications providers on the strength of their landline business, and now telecommunications providers require competitive market returns from both their wireline and wireless operations so investors will

back their broadband expansion. Investors will back broadband if they perceive it has the potential to make money, not be forced to subsidize local services.

Market Shares for Voice Services
(2012 est.)



Sources: FCC, SNL Kagan

The widespread availability of competitive alternatives to landline phone service limit the ability of incumbent telecommunications providers to dictate rates or terms or otherwise injure consumers, because most of their customers now have a choice of providers. Comprehensive regulation isn't needed to protect consumers today, and will actually do more harm than good by limiting the ability of incumbent telecommunications providers to improve their products and services and to adjust their pricing in response to competition.

Regulatory reform of landline phone service is lagging far behind wireless[42] and cable,[43] both of which were largely deregulated during the Clinton administration when they faced far less actual competition than the telecommunications providers have now. Preemption of state regulation of wireless services in 1993 coincided with the auctioning of additional spectrum – not the loss of market share – because Congress reasonably assumed competitors would materialize. The elimination of cable rate regulation in 1996 occurred while cable operators still retained 91 percent of all subscribers, because Congress saw that new entrants such as Direct Broadcast Satellite service providers were attracting customers at a rapid rate.[44]

NEEDED REFORMS

Price Regulation

Georgia still caps rates for basic local exchange services for residential and single line business customers.[45]

Requirements to offer similar terms to all customers prevents incumbents from offering volume and term discounts or other customized offerings which are necessary to retain valuable customers who contribute to the cost of maintaining service for everyone else.

Pricing inflexibility makes it highly profitable to serve customers in low cost areas and unprofitable to serve customers in high cost areas. As a result, customers in high cost areas have no competitive choices, and customers in low cost areas pay artificially high prices due to a pricing umbrella which permits competitors to charge unreasonably high prices because the incumbent is helpless to cut its prices selectively.

Allowing the market to set prices would spread the benefits of competition in both urban and rural areas. The alternative is to deny high-cost consumers of both competitive choices and ultimately the heavily subsidized service they need, as low-cost customers take advantage of competitive offerings.

Access Charges

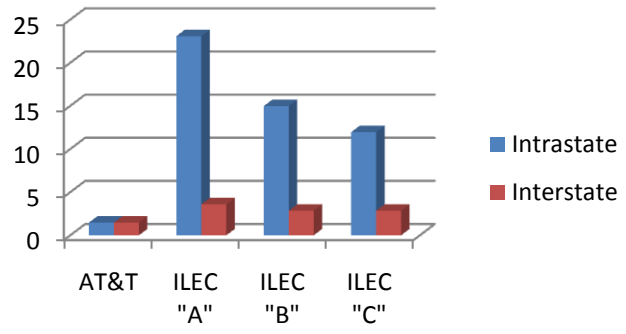
Hidden subsidies intended to hold some prices at or below cost – such as inflated intrastate access charges – cannot be maintained in a competitive market where competitors can choose to serve profitable customers and ignore everyone else.

The most acute example of an unsustainable cross subsidy are the intrastate access charges which long-distance and wireless providers pay to smaller rural local phone providers and new entrants who originate or terminate calls for them. Access charges historically were set far above cost to generate significant subsidies for local service. For example, as part of the cost of making an interstate long distance call in 1985, a long-distance caller had to pay an average of 17.66 cents per minute to subsidize someone else's local phone service. In recent years the FCC and incumbent local providers subject to competition have worked to remove implicit subsidies from interstate access charges. Interstate access charges averaged 1.59 cents per minute for large providers like AT&T and Verizon and 4.07 cents per minute for smaller carriers as of August, 2008.[46]

In Georgia, AT&T was required to adjust their intrastate switched access charges to parity with their similar interstate access rates pursuant to the 1995 Georgia Telecommunications Act.[47] AT&T charged 1.48 cents per minute in 2008 both for interstate access and for intrastate access.[48]

Intrastate access charges can be much higher for all other carriers.[49] For example, one provider in Georgia was charging 23.09 cents per minute for intrastate access but only 3.60 cents per minute for interstate access earlier this year when we conducted a survey. A second provider was charging 14.98 cents per minute and only 2.85 cents per minute for interstate access, and a third provider was charging 11.96 cents per minute for intrastate access versus 2.85 cents per minute for interstate access.

Georgia Intrastate v. Interstate access charges



Sources: FCC, filed tariffs

Reducing intrastate access charges does not necessarily mean forcing rural and residential consumers to pay higher prices for basic service. Indirect subsidization through intrastate access charges can be replaced with an explicit funding mechanism into which all competitors must contribute equitably and out of which any competitor who wishes to serve a high-cost area may receive adequate funding.

But the subsidies generated by intrastate access charges must be reduced because they are particularly unsustainable in a competitive market. Providers of VoIP service pay either interstate access charges for intrastate calls or an even a lower charge (referred to as "reciprocal compensation") applicable to local traffic.[50] Since VoIP providers can profitably offer lower prices for long distance than an incumbent landline provider, competition will erode the significant subsidies that intrastate access charges generate.

Wireless service providers do not pay intrastate access charges for the vast majority intrastate wireless traffic, which the FCC has classified as local.[51]

Reducing access charges could also improve the availability advanced services in rural areas. Access charges were originally set to reflect the cost of copper-

based, circuit-switched network technology that VoIP is rendering obsolete. Smaller rural providers are still under "rate-of-return" or "cost-plus" regulation entitling them to recover their costs plus earn a reasonable return of approximately 10-15 percent. Since the return is defined as a percentage of the costs they incur, as costs go up so do profits.

Smaller rural providers and new entrants are faced with a dilemma when they are entitled to assess high access charges but VoIP providers do not have to pay them and they do not apply to the vast majority of wireless traffic. Their customers may try to save money by making more use of the cheaper VoIP or wireless offerings. One rural phone company attempted to block its customers from accessing a competing VoIP, however the FCC intervened.[52]

Since VoIP and wireless services deprives smaller rural providers and new entrants of access charges, there is a penalty for these providers if they market those services. States should therefore reduce intrastate access charges for smaller rural providers and new entrants to remove this disincentive and to facilitate the more widespread use of efficient VoIP and wireless technologies, which will help to reduce the need for rural subsidies.

It is not possible to preserve the status quo, nor is it desirable to postpone reform. If incumbent telecommunications providers are forced to charge or pay inflated prices, they will lose customers to lower-priced VoIP and wireless offerings. If they are required to reduce intrastate access charges at least to the same level as interstate access charges they can provide a more competitive offering.

Filing Requirements

Telecom providers in Georgia must file tariffs or contracts with the PSC stating the rates, terms and conditions of basic services.[53]

The requirement to file tariffs stating the rates, terms and conditions ensures that rivals receive detailed information about a competitor's new or improved products and services. This reduces the incentive to consistently offer a superior value proposition as the best defense against competitive surprises which may cause a loss in sales.

The FCC concluded during the Clinton administration that it would be pro-competitive to neither require *nor allow* long-distance carriers to file tariffs because it would increase incentives for innovation, make it easier to offer discounts and customized service arrangements as a way of retaining lucrative customers – who contribute to the joint and common costs of maintaining the network for the benefit of all consumers – and reduce the possibility of tacit coordination in price-setting.[54]

Georgia should eliminate mandatory and permissive tariff filing, which harms consumers by inhibiting rapid competitive responses needed to constantly improve the value proposition of products and services.

Consumer Issues

The PSC still follows rules it adopted in 1976 – before the advent of fiber optics, cellphones and the Internet – that were designed to govern the operation and maintenance of copper-based, circuit switched phone service by a single provider.[55] These rules are hopelessly outdated and unnecessary as a result of the widespread competition that exists today.

Utility commission jurisdiction for consumer issues is redundant since the Governor's Office of Consumer Affairs already protects consumers. It can also lead to inconsistent consumer protection enforcement according to the type of service or provider, since VoIP and wireless services are unregulated. This could have anticompetitive implications.

PSC jurisdiction to act on consumer complaints should be eliminated.

Obligations to Serve

Georgia requires telecom providers to provide basic phone service to anyone upon reasonable request.[56] Georgia also allows any provider to satisfy this obligation by providing service through an affiliated company and through the use of any technology or service arrangement, if the provider has elected alternative regulation.[57]

Traditionally, the *quid pro quo* for a monopoly franchise was the obligation to serve anybody upon reasonable request. The federal Telecommunications Act of 1996 eliminated the monopoly franchise, but the obligation to provide basic service remains.

An obligation to serve imposes costs on some providers that don't have to be borne by others. It is anticompetitive and should be eliminated wherever the market is competitive and consumers can choose between multiple providers.

Broadband, Wireless and VoIP Regulation

The PSC has no authority over setting of rates or terms and conditions for the offering of broadband service, VoIP, or wireless service pursuant to the "Competitive Emerging Communications Technologies Act" of 2006.[58]

GEORGIA'S NEIGHBORS

Other states have made significant strides reforming outdated telecom regulation in the past year.

Alabama

The Alabama Public Service Commission will have no jurisdiction to regulate basic telephone service or optional telephone features beginning January 1, 2011, pursuant to Senate Bill 373 which was approved in the Alabama Senate by a vote of 19-8, in the House by a vote of 67-24 and signed by Governor Bob Riley on May 8, 2009.[59]

Florida

Gov. Charlie Crist signed Senate Bill 2626 into law on June 24, 2009.[60] Broadband and VoIP services – which were previously free of state regulation – are now exempt from commission jurisdiction, except as necessary to ensure interconnection.

Basic local telecommunications service is now limited to single-line residential service, and a telecommunications company may now compete with the offerings of competitive providers by deaveraging the price of any nonbasic service in a specific geographic market or to a specific customer using volume discounts and term discounts, or offering individual contracts.

Florida's provider of last resort obligations expired on January 1, 2009.[61]

North Carolina

The North Carolina Utilities Commission may not regulate a local exchange company's stand-alone basic

residential lines – except to ensure these lines are available to any customer who chooses to subscribe, rural and urban rates are comparable and rate increases do not exceed the Bureau of Labor Statistics' Gross Domestic Product Price Index – or retail services, according to House Bill 1180 signed by Governor Beverly E. Purdue on June 30, 2009.[62]

South Carolina

The Public Service Commission of South Carolina may not regulate a local exchange company's stand-alone basic residential lines that were in service on the date that LEC elects alternative rate regulation under the statute – except to ensure rate increases do not exceed the Bureau of Labor Statistics' Gross Domestic Product Price Index – or retail services, including any stand-alone basic residential lines put into service after the election date of a particular LEC.

The commission also may not regulate the retail interexchange services of a LEC which elects alternative regulation under the statute, nor require it to file schedules of rates, terms and conditions.

Gov. Mark Sanford signed H*3299 into law on May 6, 2009.[63]

Tennessee

Senate Bill 1954 was signed by Gov. Phil Bredesen on May 21, 2009.[64] The legislation automatically limits the jurisdiction of the Tennessee Regulatory Authority in the case of new entrants and carriers who serve between 3,000 and 1 million access lines.

After one year, other – large or small – incumbent LECs may request that the TRA order limited jurisdiction if it can show that each exchange has at least two non-affiliated telecommunications providers that offer service to customers in each zone rate area of each exchange. A cable television provider that offers telephone and broadband services to residential customers may be included. And non-affiliated providers of wireless service may be included, but shall only count as one provider regardless of the number of wireless providers.

On January 1, 2015, the limitations on jurisdiction shall automatically become applicable to any provider which has elected market regulation whether or not a petition seeking limited jurisdiction has been filed or granted.

GEORGIA

The Georgia PSC has authority to deregulate a telecom service or to modify or eliminate tariffs.[65] The commission is considering a petition to exempt competitive portions of the wireline industry from specific retail regulations.[66] So far this process has not produced regulatory reform.

CONCLUSION

Anticompetitive tariffs, pricing inflexibility, cross subsidies, redundant consumer protection are not in the public interest. These things prevent telecommunications providers from offering competitive services and generating revenues for broadband expansion. They serve chiefly as obstacles to investment that reduce asset values of all telecom suppliers.

Legacy regulation restricts service strategy flexibility and creativity needed for real competition in the Internet age, even when pursued in the name of "competition."

By embracing regulatory reform, legislators will expand customer choice, decrease prices, and ignite the broadband expansion necessary to economic growth and technological progress. We recommend that state

legislators give urgent consideration to the following specific regulatory reforms:

- Allow pricing freedom so incumbents can compete.
- Reduce inflated intrastate access charges for smaller rural providers and new entrants at least to the same level as interstate access charges.
- Eliminate filing requirements which ensure rivals receive detailed information about a competitor's new or improved services or products.
- Eliminate utility commission jurisdiction for numerous consumer issues – many of which are antiquated as a result of changes in technology – which is redundant and leads to inconsistent enforcement with anticompetitive effects.
- Terminate obligations to serve, which impose costs on some providers but not others and are anticompetitive wherever consumers can choose between multiple providers.

These proposals all rest on the principle that all providers of voice services should be subject to minimum regulation which does not discriminate on the basis of technology or history, just like in any competitive market.

These reforms aren't novel or unprecedented. In the Southeast region alone, these reforms have already been adopted in Alabama – and other neighboring states are moving in the same direction.

This is a golden opportunity for Georgia to open up new technological opportunities and economic efficiencies that promise a direct private market economic stimulus of at least $3.3 billion over the next five years in the form of lower prices for voice services, plus an additional $3.9 billion in economic impact annually from increased broadband availability and use – including over 70,000 new jobs per year by one estimate.

By simple reforms of outmoded laws, Georgia can ignite a new spiral of innovation and revival based on new technologies and services tapping into new worldwide webs of glass and light and air.

AUTHORS

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George Gilder is a senior fellow at the Discovery Institute and the founder of Discovery's Technology & Democracy Project. He is also chairman of George Gilder Fund Management, LLC and moderator of the Gilder Telecosm Forum. His best-selling book, Microcosm (1989), explored the quantum roots of new electronic technologies. A subsequent book, Life After Television (1990), was a prophecy of the future of computers and telecommunications and a prelude to his book on the future of telecommunications, Telecosm (2000).

The views expressed herein are those of the authors and do not necessarily reflect the views of the Discovery Institute or its directors or staff.

NOTES

[1] Hance Haney and George Gilder, "More Broadband, Increased Choice and Lower Prices Begin With Regulatory Reform," *Discovery Institute* (Aug. 2008) *available at* http://www.discovery.org/a/7371 and "Stimulate Broadband and Lower Utility Bills With Regulatory Reform," *Discovery Institute* (Feb. 2009) *available at* http://www.discovery.org/a/9241.

[2] "In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area," *Memorandum Opinion and Order,* WC Docket No. 04-223 (rel. Dec. 2, 2005) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-170A1.pdf.

[3] "In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area," *Memorandum Opinion and Order,* WC Docket No. 05-281 (rel. Jan. 30, 2007) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-188A1.pdf.

[4] "In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas," *Memorandum Opinion and Order,* WC Docket No. 06-172 (rel. Dec. 5, 2007) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-212A1.pdf.

[5] "In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, *Memorandum Opinion and Order,* WC Docket No. 07-97 (rel. Jul. 25, 2008) a*vailable at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-174A1.pdf.

[6] *Verizon Telephone Companies v. FCC et al.,* D.C. Cir. (decided June 19, 2009) a*vailable at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291513A1.pdf.

[7] Remarks of Alfred E. Kahn before the Federal Trade Commission (Feb. 13, 2007) *available at* http://www.ftc.gov/opp/workshops/broadband/presentations/kahn.pdf. Kahn is the Robert Julius Thorne Professor of Political Economy (Emeritus) at Cornell University who has also served as chairman of the New York Public Service Commission, chairman of the Civil Aeronautics Board, Advisor to the President (Carter) on Inflation, and chairman of the Council on Wage and Price Stability.

[8] Jeffrey A. Eisenach, "Universal Service Subsidies to Areas Served by Cable Telephony," *included as Attachment B in* "Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition," *Petition for Rulemaking* (Nov. 5, 2009) *available at* http://www.ncta.com/DocumentBinary.aspx?id=858 at 15.

[9] *Id.* at 17.

[10] "Charter Reports Fourth Quarter and Full Year 2008 Financial and Operating Results," *Charter Communications* (Mar. 16, 2009) *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=112298&p=irol-newsArticle&ID=1266279&highlight=.

[11] http://www.cmcsk.com/secfiling.cfm?filingID=1193125-09-33975.

[12] "Comcast Now the Third Largest Residential Phone Services Provider in the U.S." *Comcast* (Mar. 11, 2009) *available at* http://www.comcast.com/About/PressRelease/PressReleaseDetail.ashx?PRID=844.

[13] Annual Report (2006) *available at* http://www.coxenterprises.com/corp/pdfs/annual_report2006.pdf.

[14] Annual Report (2009) *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NTI1NHxDaGlsZElEPS0xfFR5cGU9Mw==&t=1.

[15] Annual Report (2008) *available at* http://files.shareholder.com/downloads/TWC/766932144x0x287628/d1dbe5f9-0063-452b-b84f-67b832c14e09/2008_AR.pdf

[16] Local Telephone Competition: Status as of June 30, 2008, Federal Communications Commission (Jul. 2009) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf at Table 17.

[17] *Id.*

[18] *Id.* at 3 and Tables 15-16.

[19] In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, WC Docket No. 07-38, *Report and Order and Further Notice of Proposed Rulemaking* (rel. Jun. 12, 2008) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-89A1.pdf.

[20] "Fiber-Optic Providers Are Leading Choices for Internet, Television, and Telephone Service," *Consumer Reports* (Jan. 5, 2009) *available at* http://pressroom.consumerreports.org/pressroom/2009/01/consumer-reports-fiber-optic-providers-are-leading-choices-for-internet-television-and-telephone-service.html ("intense competition for cable and satellite customers between AT&T U-verse and Verizon FiOS high speed fiber providers has driven down rates for Internet, phone and TV service and is likely the reason that companies allow these savings to continue past the promotional period. In the past year, bundles of the three services have dropped in price by up to 20 percent, to as low as $80 a month."). *See also:* "Price War Erupts for High-Speed Internet Service," by Vishesh Kumar, *Wall Street Journal* (Sept. 2, 2008) *available at* http://online.wsj.com/article/SB122031009737388555.html.

[21] "Consumer Benefits from Cable-Telco Competition," by Michael D. Pelcovits, Ph.D. and Daniel E. Haar (Nov. 2007) *available* ay http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf at 10, 24.

[22] *Id.,* at 12.

[23] *Id.,* at 25.

[24] *Id.,* at 27.

[25] *Id.,* at 29.

[26] In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 08-27, *Thirteenth Report* (rel. Jan. 16, 2009) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf at 5.

[27] *Id.*

[28] Local Telephone Competition: Status as of June 30, 2008, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC (Jul. 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf.

[29] Stephen J. Blumberg and Julian V. Luke, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2008 (May 2009) *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.htm.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] "SNL Kagan Forecasts Rapid Shift in Composition of Residential Phone Service," *SNL Kagan* (Apr. 28, 2008) *available at* http://www.snl.com/SNL-Financial/Press_Releases/20080428.aspx.

[34] "Cutting the cord," *The Economist* (Aug. 13, 2009) available at http://www.economist.com/opinion/displaystory.cfm?story_id=14214847.

[35] Saul Hansell, "Verizon Boss Hangs Up on Landline Phone Business," *New York Times* (Sept. 7, 2009) a*vailable at* http://bits.blogs.nytimes.com/2009/09/17/verizon-boss-hangs-up-on-landline-phone-business/.

[36] *Id.*

[37] Commission Open Meeting Presentation on the Status of the Commission's Processes for Development of a National Broadband Plan, *Federal Communications Commission* (Sept. 29, 2009) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293742A1.pdf.

[38] Bret Swanson and George Gilder, "Estimating the Exaflood: The Impact of Video and Rich Media on the Internet – A Zettabyte By 2015?" *Discovery Institute* (January 2008) *available at* http://www.discovery.org/a/4428.

[39] National Broadband Strategy Call to Action, *Communications Workers of America* (Dec. 2, 2008) *available at* http://www.cwa-union.org/news/national-broadband-strategy-call-to-action.html.

[40] Robert W. Crandall, Robert E. Litan and William Lehr, "The Effects of Broadband Deployment on Output and Employment: A Cross-Sectional Analysis of U.S. Data," *Brookings Institution* (Jun. 2007) *available at* http://www.brookings.edu/papers/2007/06labor_crandall.aspx.

[41] "The Economic Impact of Stimulating Broadband Nationally," *Connected Nation* (Feb. 21, 2008) *available at* http://www.connectednation.com/research/economic_impact_study/index.php at 8, 15-16.

[42] Hundt, Reed E. You Say You Want a Revolution: A Story of Information Age Politics (Yale Univ. 2000) at 15 ("in the Omnibus Budget Reconciliation Act, passed by Al Gore's tie-breaking Senate vote, the Democratic Congress gave the FCC authority to dissolve this oligopoly by auctioning new licenses") and 98 ("by auctioning spectrum with no rules attached and preempting all state regulation, we had totally deregulated the wireless industry.")

[43] Hundt at 170 ("Our intent was to communicate our great support for cable's investment in renovating its systems. The 1996 law had repealed rate regulation, effective in two years. That topic was behind us. Now cable had to take on the telephone industry.").

[44] "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Second Annual Report)," *Federal Communications Commission* (Dec. 11, 1995) ("We conclude that cable television systems remain the primary distributors of multichannel video programming services and continue to enjoy market power in local markets, although some progress has begun toward a competitive marketplace for the distribution of video programming. In the last year, DBS systems have attracted many subscribers to newly available services ... In sum, while subscribership for distributors using alternative technologies has generally increased over the last year, overall subscribership for all distributors using alternative technologies is just 9% of total multichannel video programming distributor ("MVPD") subscribership, whereas cable systems account for 91% of the total.").

[45] O.C.G.A. § 46-5-166(b).

[46] "Trends in Telephone Service," Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (Aug. 2008) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf at Table 1.2 and Table 1.4.

[47] O.C.G.A. § 46-5-166(f).

[48] "Trends in Telephone Service," see note 46, at Table 1.4.

[49] These examples reflect "total charges per conversation minute," which include the four separate components of access charges: originating access, terminating access, switched usage and switched non-usage. Regulators choose which category to assign various costs. Sometimes regulators over-assign costs, and parties cite one or more categories of access charges as either desirable for a particular social purpose or as unsustainable in a competitive market.

[50] *See:* "Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption," WC Docket No. 08-8 (Jan. 11, 2008) *available* at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519823033 at 4-5 ("a growing number of interconnected VoIP providers, and interconnecting carriers, are stretching the ESP exemption to cover traditional voice traffic. This phone-to-phone traffic consists of real-time voice calls originating on IP-based systems and terminating on the PSTN …. Carriers routing interconnected non-local VoIP calls to LECs for termination on the PSTN have always been subject to access charges. For the same reason, non-local IP-to-PSTN traffic cannot lawfully be routed through local interconnection trunks for purposes of reciprocal compensation under section 251(b)(5) of the Act. Nonetheless, some interconnected VoIP providers and their carrier partners are doing so in an attempt to justify refusing or threatening to refuse to pay access charges." [footnote omitted]).

[51] In the Matter of Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, CC Docket No. 95-185 (rel. Aug. 8, 1996) *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1996/fcc96325.pdf at paragraphs 1034-1036 (Instead of applying state-defined local service areas – of which there are thousands – to wireless traffic, the FCC defined the largest FCC-authorized license territories ("Major Trading Areas" or MTAs) – of which there are only 51 – as the local service areas for wireless traffic. Since MTAs are very large, a significant portion of wireless calls originate and terminate within a single MTA. Access charges to not apply to these calls, because they are deemed "local."). A map depicting the 51 MTAs is available at http://wireless.fcc.gov/auctions/data/maps/mta.pdf.

[52] In the Matter of Madison River Communications, LLC and affiliated companies, File No. EB-05-IH-0110, *Consent Decree* (Mar. 3, 2005) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-543A2.pdf.

[53] O.C.G.A. § 46-5-166.

[54] "In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace," *Second Report and Order,* (rel. Oct. 31, 1996) *available at* http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1996/fcc96424.txt at paragraph 53 ("The record in this proceeding supports our tentative conclusion that not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will promote competition in the market for such services. Even under existing streamlined tariff filing procedures, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes vigorous competition in the market for such services by: (1) removing incentives for competitive price discounting; (2) reducing or taking away carriers' ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs. Moreover, we believe that tacit coordination of prices for interstate, domestic, interexchange services, to the extent it exists, will be more difficult if we eliminate tariffs, because price and service information about such services provided by nondominant interexchange carriers would no longer be collected and available in one central location.")

[55] A rulemaking petition filed by AT&T lists several examples of retail service regulation that does not apply to competitive intermodal providers. *See:* Petition of BellSouth Telecommunications, Inc., d/b/a AT&T Georgia for Rulemaking to Modify Commission Rules, Docket 29890 (Jun. 3, 2009) *available at* http://www.psc.state.ga.us/facts/documentresults.asp.

[56] O.C.G.A. § 46-5-169(2).

[57] O.C.G.A. § 46-5-1(a)(5).

[58] O.C.G.A. § 46-5-222.

[59] Act No. 2009-461 *available at* http://arc-sos.state.al.us/cgi/actdetail.mbr/detail?year=2009&act=%20461&page=bill.

[60] Consumer Choice and Protection Act (Chapter 2009-226) *available at* http://laws.flrules.org/files/Ch_2009-226.pdf.

[61] Fla. Stat. § 364.025(1).

[62] Consumer Choice and Investment Act of 2009 (Session Law 2009-238) *available at* http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1180v7.pdf.

[63] Customer Choice and Technology Investment Act of 2009 (H. 3299) *available at* http://www.scstatehouse.gov/cgi-bin/query.exe?first=DOC&querytext=telecom&category=Legislation&session=118&conid=5099567&result_pos=0&keyval=1183299.

[64] Market Regulation Act of 2009, Public Chapter No. 278, Senate Bill No. 1954, *available at* http://state.tn.us/sos/acts/106/pub/pc0278.pdf.

[65] O.C.G.A. § 46-2-23.

[66] Docket 29890.