SUMMARY

Incumbent telecommunications providers are facing significant competitive pressure from the voice over Internet Protocol (voice over Internet) services of cable operators and from cellphones. One analysis projects that by 2012 the market share of incumbent telecommunications providers will have dwindled to 51 percent nationwide (in fact, this has already happened in some metropolitan areas).

An opportunity now exists in the market for local phone service for lawmakers to rely on competition instead of regulation to deliver new technologies, improved service quality, choice among providers and ultimately lower prices for consumers. This is a proven approach. Regulatory reform opened the long-distance market to competitors in the early 1980s and eliminated vestiges of utility regulation that inhibited full competition. The average price for a minute of long-distance calling dropped from 15 cents in 1992 to 6 cents in 2006, a decrease of 60 percent. Wireless services were completely deregulated early in the Clinton administration, and the average cost per minute of cellphone use has fallen 85 percent, from 47 cents in 1994 to 6 cents in 2007. Meanwhile, the quality of long distance and wireless services has consistently improved. The same thing can happen with local phone service.

In the past year, competition has pushed down the rates for bundles of Internet, phone and TV service by up to 20 percent, to as low as $80 per month, 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.

Indiana moved confidently into this new competitive era in 2006 by reforming utility regulation which inhibits competition and innovation. Specifically, it provided pricing flexibility and eliminated tariff filing requirements; addressed the problem of cross subsidies by significantly reducing intrastate access charges; barred possible utility regulation of competitive voice over Internet and wireless services; and it transferred responsibility for consumer protection and promoting broadband deployment from the utility commission to agencies better suited to perform those tasks.

These changes equip telecommunications providers to offer more competitive services and to attract capital to fund broadband expansion, which is the main reason policymakers should undertake regulatory reform. New investment in the telecom sector is necessary if consumers are to receive the services they want at competitive prices. And the states that attract it will also reap the added rewards of job creation and economic growth.

A survey of Southeastern states indicates that significant and harmful vestiges of legacy regulation remain. These include:

- Tariff filing requirements which ensure that rivals receive detailed information – sometimes in advance – about a competitor’s new or improved products and services. This reduces a competitor’s incentive to improve its offerings and it relieves rivals of pressure to constantly improve their own as the only way to avoid competitive surprises which may cause a loss in sales.

- Requirements to offer similar terms to all customers. These rules prevent incumbents from developing customized offerings, such as volume and term discounts, which are necessary to retain valuable customers who will contribute to the cost of maintaining service for everyone else. Allowing the market to set prices would spread the benefits of competition in both urban and rural areas.

- Rules which impose costs on some providers but not others – such as the requirement to act as a provider of last resort where the market is competitive and consumers can choose between multiple providers. These obligations are anticompetitive.

- Hidden subsidies intended to hold some prices at or below cost. These subsidies cannot be maintained in a competitive market where competitors can choose to serve profitable customers and ignore everyone else. Reducing hidden subsidies alone could improve the availability of advanced services in rural areas.

- No constitutional or statutory prohibitions on imposing utility regulation on competitive providers. To the extent a utility commission may attempt to assert jurisdiction to regulate competitive services it is a target for commercial rivals seeking a regulatory advantage, activists seeking to promote a policy agenda or even a formerly regulated entity seeking protection.

- The absence of restrictions on utility commissions from intervening in the marketplace to promote broadband deployment. This risks recourse to unnecessary and inefficient subsidies and overlooks the more valuable role that state economic development and education departments can play in promoting broadband deployment. Removing unnecessary regulation will spur broadband deployment – even in smaller, more rural and economically distressed areas, where the benefits of broadband tend to be largest in terms of higher residential property values and more jobs and businesses in the community.

- Utility commission jurisdiction for consumer protection. This is redundant since the attorney general, commerce department or some other state agency already protect consumers. Redundant jurisdiction can lead to different consumer protection rules according to the type of service or provider. This could have anticompetitive implications.

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 resisting 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 Southeastern states facing contraction of traditional sources of employment. By removing the statewide cobwebs of regulations that afflict telecom, they can open up new technological opportunities and economic efficiencies that promise a direct economic stimulus of at least $24 billion throughout the region over the next five years in the form of lower prices for voice services, plus an additional $25 billion in economic impact annually from increased broadband availability and use. By simple reforms of outmoded laws, they 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.