

Stimulate Broadband and Lower Utility Bills With Regulatory Reform

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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.

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INTRODUCTION

“The local loop is the most competitive arena in the global economy, with wireless, 3G cellular, cable, wireline, satellite, even the power companies involved, and new generations of technology launched every year.”

*George Gilder*³

“The industry is obviously no longer a natural monopoly...”

*Alfred E. Kahn*⁴

Since the Great Depression the telecommunications industry has been subject to comprehensive regulation, with the Federal Communications Commission (FCC) in charge of *interstate* services and state public utility commissions overseeing *intrastate* services. This regulatory regime sufficed in the days of copper wires and mechanical switches but is anachronistic in an era of fiber optics, routers, cellphones and Internet “teleputers.”

The Telecommunications Act of 1996 began a process of gradual regulatory reform intended to encourage the rapid deployment of new technologies and bring improved services and lower prices. Although there was significant investment in the core of the network, regulation reduced incentives for investment in “last mile” connections.⁵ Investment was skewed because the 1996 law deregulated the local exchange competitors of BellSouth and the other “Baby Bells,” though not the Bells themselves. Pursuant to the law, the FCC implemented a so-called “pro-competition” regulatory framework which deprived incumbent telecommunications providers of an competitive return on investment by making it highly profitable for new entrants to serve lucrative segments of the market. In addition, preexisting regulation of basic phone rates made it unlikely new entrants would compete for residential and rural customers. Therefore, regulation – not deregulation – created a disincentive for the Bells to invest in their local networks.

Most states have taken important steps to update the regulatory climate, however incumbent telecommunications providers remain heavily regulated in statewide cobwebs of bureaucracy that depress industry valuations and thus investment. We have previously examined this phenomenon in Illinois, Indiana, Ohio, Michigan and Wisconsin.⁶ Here, we update our previous analysis and shift our focus to a different region with its own unique legacy.

³ *Id.*

⁴ [Remarks of Alfred E. Kahn before the Federal Trade Commission](#) (Feb. 13, 2007). 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.

⁵ See, e.g., [“Tumbling into the Telechasm,”](#) by George Gilder, *Wall Street Journal* (Aug. 6, 2001).

⁶ [“More Broadband, Increased Choice and Lower Prices Begin With Regulatory Reform,”](#) by Hance Haney and George Gilder (Aug. 2008). As we noted, there were serious installation and repair delays in the Midwest in the aftermath of the overhyped Telecommunications Act of 1996. Since we suspected that experience could account for lingering reluctance to pursue regulatory reform, we began our inquiry in the Midwest.

With the need for massive outlays for broadband infrastructure over the next decade to spur economic growth, in this paper we examine the need for regulatory reform in a region which differs from the Midwest in important respects, i.e., the incumbent phone company in the Southeast traditionally enjoyed a stronger reputation for service quality and higher levels of customer satisfaction relative to its peers.⁷ Yet despite these differences, we find there is still a substantial need for further regulatory reform in the Southeast.

In 2006, Indiana legislators passed the most comprehensive set of regulatory reforms in the country and Gov. Mitch Daniels signed the bill into law. House Enrolled Act 1279 eliminates hidden subsidies in intrastate access charges, ends tariff filing requirements, permits pricing flexibility, expressly provides that the state commission does not have jurisdiction to regulate competitive services, streamlines provider of last resort regulation and assigns responsibility for consumer protection and broadband deployment to other state agencies.

These reforms may seem radical to anyone who remembers back when incumbent telecommunications providers were a monopoly. But the monopoly is gone. The reforms enacted in Indiana are an appropriate and necessary response to the surge of competition which has transformed the telecommunications industry.

⁷ According to statistics compiled by the Federal Communications Commission, the Southeast region historically generated significantly fewer customer complaints per million access lines served. *See*: [“Quality of Service Report of the Local Operating Companies”](#) (Table 1(a)), Industry Analysis Division, Wireline Competition Bureau, Federal Communications Commission (1995-2006). J.D. Power and Associates ranked BellSouth as #1 in Local Residential Telephone Customer Satisfaction each year from 1996-1999, and the company has won numerous other accolades. *See, e.g.*, [“BellSouth Ranked Top Performer In 1998 J.D. Power and Associates Residential Local Telephone Service Satisfaction Study,”](#) news release (Aug. 6, 1998).

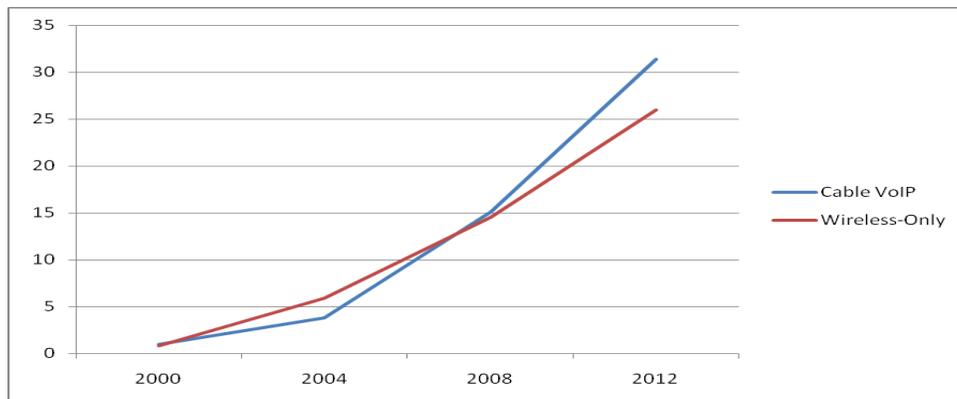
HIGHLY COMPETITIVE

Competition in the telecommunications industry got off to a slow start initially but began to grow rapidly in 2004 as a result of changes in the pro-competition policies implemented by regulators. Today, incumbent telecommunications providers are facing significant competitive pressure from voice over Internet service provided by the cable operators and from cellphones.

Cable voice over Internet

Cable phone service is presently available to over 100 million homes nationally, and more than 15.1 million currently subscribe according to the National Cable and Telecommunications Association.⁸ Cable voice subscribership has been growing by more than one million per quarter.⁹ Cable operators report that their voice over Internet services are both profitable and reduce customer “churn.” Comcast has a higher profit margin in phone than in video.¹⁰ Sixty percent of Cox’s telephone subscribers take video, voice and data services from Cox and “churn [i.e., customers who switch providers] is much, much lower for the folks who are taking phone.”¹¹

Rapid Growth Projected in Competitive Services



Sources: NCTA, FCC, CDC, SNL Kagan

Cable voice over Internet is a result of a \$130 billion investment by cable operators in network upgrades spurred by the deregulation of cable rates in 1996.¹² When the 1996 law passed, several cable

⁸ “Digital Phone / Cable Telephony - Full Brief,” National Cable and Telecommunications Association (NCTA) available at <http://www.ncta.com/IssueBrief.aspx?contentId=3023&view=2>

⁹ “Digital Phone / Cable Telephony (VoIP - Voice over Internet Protocol),” NCTA, available at <http://www.ncta.com/IssueBrief.aspx?contentId=3023>.

¹⁰ “When Is the Cable ‘Buy’ Set to Come?” by Vishesh Kumar, *Wall Street Journal* (Apr. 3, 2008) (“Comcast, for instance, has a profit margin of 55% in video but 70% in phone and 80% for broadband, estimates Bernstein's Mr. Moffett.”).

¹¹ Remarks of Alexandra Wilson, Vice President, Public Policy and Regulatory Affairs, Cox Enterprises, Inc. at the [2007 Telecommunications Symposium: Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers](#) (Nov. 29, 2007) sponsored by the Antitrust Division of the U.S. Department of Justice.

¹² [Testimony of Kyle McSlarrow](#), CEO, National Cable & Telecommunications Association before the Committee on Commerce, Science & Transportation, United States Senate (Apr. 22, 2008) (“Cable operators have invested

operators planned to offer competitive phone services in a venture that included Sprint Corp.¹³ These plans were shelved, according to Sprint CEO William T. Esrey, due the FCC's "pro-competition" policies: "If we provided telephony service over cable, we recognized that they would have to make it available to competitors."¹⁴ Thus, the local competition rules which were intended to speed effective competition actually delayed it.¹⁵ Cable voice services gained significant momentum beginning in 2004 when the FCC scaled back its pro-competition rules.¹⁶ Those changes prompted telecommunications providers to enter the video market dominated by cable operators, who in turn accelerated their entry into the voice market dominated by incumbent telecommunications providers.

The vigor and speed with which [telecommunications providers] make investments in broadband infrastructure will affect the vigor and speed with which cable and wireless broadband companies will continue to invest in response, and the ferocity of intermodal competition.¹⁷

\$130 billion in private capital since the passage of the Telecommunications Act of 1996 to build broadband networks across the United States. Today 92% of American households, or about 117 million homes, have access to cable broadband service, including 96% of American homes to which cable television service is available." [footnotes omitted.]

¹³ See, e.g., "[Sprint makes 'triple play' with cable companies to bid for PCS licenses; group plans to offer wireless local loop services](#)," *Mobile Phone News*, (Oct. 31, 1994).

¹⁴ "[AT&T-TCI: Telecom Unbound](#)," *Business Week* (Jul. 6, 1998).

¹⁵ Crandall, Robert W. *Competition and Chaos* (Brookings Inst. 2005) at 157 ("In the post-1996 era of telecom regulation, considerable effort was put into creating an environment conducive to the entry of new carriers into the fixed-wire local markets. The entrants this attracted offered little in the way of innovation or new services. They were mainly interested in exploiting the arbitrage opportunities created through the regulation of wholesale and retail rates, and most of them failed with a vengeance when the telecom stock market bubble burst in 2000-02 these policies simply transferred billions of dollars from incumbent telecommunications providers to fund marketing campaigns required to sell the same service under a different name. Instead, competition has developed in ways totally unanticipated by regulators, namely through unregulated wireless providers and cable broadband platforms.").

¹⁶ *First*, the FCC set new rules for telephone network unbundling which freed incumbent telecommunications providers from the obligation to make fiber-to-the-home loops, hybrid fiber-copper loops and the portion of copper loops which could be used for competitive DSL services available to competitors on a wholesale basis. See: In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, [Report and Order and Order on Remand and Further Notice of Proposed Rulemaking](#), CC Docket No. 01-338 (adopted Feb. 20, 2003; rel. Aug. 21, 2003). Then-SBC Communications (now AT&T) and Verizon quickly responded. Verizon announced it would begin installing fiber to the premises (FTTP) in Keller, Tex. and that it planned to pass "about 1 million homes in parts of nine states with this new technology by the end of the year." See: "[Verizon, in Historic First, Begins Large-Scale Rollout of Advanced Fiber-Optic Technology With Keller, Texas, Deployment; Announces Plans for Offering New Services](#)," news release (May 19, 2004). SBC outlined its own plans to deploy fiber to nodes (FTTN) within 5,000 feet of existing customers in order to deliver 20 to 25 Mbps DSL downstream to every home (and that it would construct fiber to the premises for all new builds). See: "[SBC Communications to Detail Plans for new IP-Based Advanced Television, Data and Voice Network](#)," news release (Nov. 11, 2004). *Second*, the FCC changed the regulatory status of broadband services provided by telecommunications providers from a "telecommunications service" subject to common carrier requirements to an "information service" free from such requirements. See: In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, [Report and Order and Notice of Proposed Rulemaking](#), CC Docket No. 02-33 (rel. Sept. 23, 2005). *Third*, the FCC adopted national guidelines for local franchise authorities to remove unreasonable barriers to entry for telecommunications providers seeking to provide cable services. See: In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, [Report and Order and Further Notice of Proposed Rulemaking](#), MB Docket No. 05-311 (adopted Dec. 20, 2006; rel. Mar. 5, 2007).

¹⁷ "[Investment in Next Generation Networks and Wholesale Telecommunications Regulation](#)," by Debra J. Aron and Robert W. Crandall (Nov. 21, 2008) at 21.

Comcast is now the nation's third or fourth largest phone company.¹⁸ And 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*.¹⁹

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.²⁰ 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 month²¹ and \$811 million in savings to small businesses over the same period (\$19.70 per customer per month).²² 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.²³

This equals \$24 billion in the Southeast region, or \$1.8 billion in Alabama, \$7.3 billion in Florida, \$3.3 billion in Georgia, \$1.6 billion in Kentucky, \$1.7 billion in Louisiana, \$1.1 billion in Mississippi, \$3.4 billion in North Carolina, \$1.7 billion in South Carolina and \$2.3 billion in Tennessee.²⁴

¹⁸ [“Move Over Bells: Comcast Corporation Becomes The Fourth-Largest Phone Service Provider In The U.S.”](#) (Comcast press release) Jan. 8, 2008; [“Comcast’s on the line,”](#) by Bob Fernandez, *Philadelphia Inquirer* (Aug. 24, 2008) (“Comcast Digital Voice could be the third-largest landline phone provider in the nation by early 2009, Avgiris said”) and [“The Dark Lord of Broadband Tries to Fix Comcast’s Image,”](#) by Daniel Roth, *Wired* (Jan. 19, 2009) (“Comcast is now the third-largest telephone company in the US”).

¹⁹ [“Fiber-Optic Providers Are Leading Choices for Internet, Television, and Telephone Service,”](#) news release (Jan. 5, 2009) (“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).

²⁰ [“Consumer Benefits from Cable-Telco Competition,”](#) by Michael D. Pelcovits, Ph.D. and Daniel E. Haar (Nov. 2007) at 10, 24.

²¹ *Id.*, at 12.

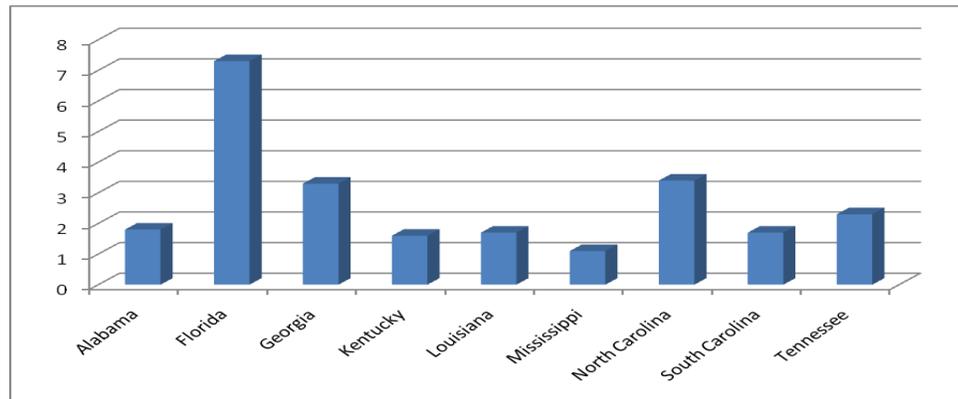
²² *Id.*, at 25.

²³ *Id.*, at 27.

²⁴ *Id.*, at 29.

Projected Consumer Savings from Cable Voice Competition

Billions \$



Source: Michael D. Pelcovits, Ph.D. and Daniel E. Haar

Wireless

Cellphones are the other competitive tide engulfing the telecom sector. There were 158.4 million land lines and 249.2 million cellphones in service at the end of 2007.²⁵ And 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.

Preliminary results from the January-June 2008 National Health Interview Survey (NHIS) indicate that the number of American homes with only wireless telephones continues to grow. More than one out of every six American homes (17.5%) had only wireless telephones during the first half of 2008, an increase of 1.7 percentage points since the second half of 2007. In addition, more than one out of every eight American homes (13.3%) received all or almost all calls on wireless telephones despite having a landline telephone in the home.²⁶

Adults living in the South (19.6 percent) were more likely than adults living in any other region to be living in households with only wireless telephones.²⁷

²⁵ “[Local Telephone Competition: Status as of Dec. 31, 2007](#),” Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (Sept. 2008).

²⁶ “[Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2008](#),” by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics (Dec. 17, 2008).

²⁷ Adults in the Midwest (17.8%), Northeast (9.8%) or West (13.7%) were less likely to be living in households with only wireless telephones, according to Blumberg and Luke. Among the other findings: Adults aged 25-29 (35.7%) are more likely than adults aged 65 and over (2.8%) to live in wireless-only households. Adults renting their home (33.6%) were more likely than adults owning their home (9%) to be living in households with only wireless telephones, adults living in poverty (26%) were more likely than higher income adults to be living in households with only wireless telephones and non-Hispanic white adults (14.6%) were less likely than Hispanic adults (21.6%) or non-Hispanic black adults (18.5%) to be living in households with only wireless telephones.

Verizon recently released a survey of 800 consumers showing that 83 percent intend to continue using their landline phone indefinitely.²⁸ However, these sentiments are based on how consumers perceive the competing voice services as they now exist. Rapid improvements in the capability, functionality, quality and price of wireless services mean that more and more consumers will choose cellphones as their primary or exclusive voice service.²⁹

Not only will cellphones become more reliable and less costly in the future, they are beginning to feature television,³⁰ location services based on global positioning systems,³¹ the capability to monitor blood sugar levels in diabetics and track aerobic activity in dieters,³² and Internet access. Wireless providers already have 51 million high-speed data subscribers (more than either the cable or telecommunications providers),³³ even though wireless broadband services are currently slow compared to DSL and cable modem services. Cellphone companies have nearly completed the roll out of third-generation wireless networks with typical download speeds of 400-800 kilobits per second, and approximately 92 percent of the U.S. population lives in census blocks with at least one provider delivering mobile broadband service.³⁴ This is just the beginning.

Adults living in the South (19.6 percent) were more likely than adults living in any other region to be living in households with only wireless telephones.

For example, a consortium which includes Google, Intel, Comcast, Time Warner, Clearwire and Sprint Nextel are teaming up to build a wireless broadband network based on WiMAX technology that will rival DSL and cable modem services³⁵ and is much cheaper to deploy than DSL, cable modem

²⁸ [“New Survey Shows 83 Percent of Consumers Continue to Rely on Landline Voice Service for its Quality, Safety Features,”](#) news release (Mar. 27, 2008).

²⁹ See, e.g., [“More Americans Cutting the Cord,”](#) by Walaika Haskins, *TechNewsWorld* (May 14, 2008) (“the trend is moving up to older and more affluent households All three analysts expect the trend toward wireless households to continue and spread to businesses as well.”); [“Cutting the phone cord? Not so fast,”](#) by Andrea Coombes, *CBS.MarketWatch.com* (Oct. 11, 2004) (“For each concern, there is ‘a dynamic going on in the market that in the next couple of years will change these people’s thinking,’ said Charles Golvin, a principal analyst at Forrester Research.”) and [“SNL Kagan Forecasts Rapid Shift in Composition of Residential Phone Service,”](#) news release (Apr. 28, 2008) (“The maturing of the younger, more tech-savvy demographic combined with emerging technologies (such as femtocell) set to improve wireless coverage and reduce costs, will further promote the position of wireless services,” says Ian Olgeirson, Senior Industry Analyst for SNL Kagan.”).

³⁰ [“Mobile TV Spreading in Europe and to the U.S.,”](#) by Kevin J. O’Brien, *New York Times* (May 5, 2008).

³¹ [“Global Positioning by Cellphone,”](#) by Larry Magid, *New York Times* (Jul. 19, 2007).

³² [“Qualcomm plans move into health business,”](#) by Kathryn Balint, *San Diego Union-Tribune* (May 18, 2007).

³³ [“High-Speed Services for Internet Access: Status as of December 31, 2007,”](#) Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (Jan. 2009) at 6 See also: [“The Mobile Connection: Wireless Broadband,”](#) Cellular Telecommunications Industry Association (Feb. 5, 2007).

³⁴ [“Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,”](#) WT Docket No. 08-27 (rel. Jan. 16, 2009) (*Wireless Competition Report*) at 9.

³⁵ [“Clearwire, Sprint Nextel to form \\$14.55B wireless company,”](#) by Michelle Chapman/AP, *TIME* (May 7, 2008) (“WiMax promises faster download speeds than the latest networks run by cell-phone operators, and it’s even seen as a potential competitor to fixed-line broadband. ...The new company is looking for a U.S. network deployment reaching 120 million to 140 million people by the end of 2010.”). See also: [“Clearwire: We’re Ready for Primetime,”](#) *Unstrung* (Jun. 12, 2008) (“This will allow Clearwire to offer download speeds of ‘6 to 15 megabits per second per user,’ Wolff says. Once that level of spectrum horsepower is in place, the company will be able to offer services such as wireless high-definition TV (HDTV) and mobile gaming, as well as more standard services, such as unwired Internet capabilities, claims Clearwire.”).

service or the 3G networks³⁶ Verizon Wireless and AT&T have deployed. According to CEO Benjamin Wolff, Clearwire will offer a broadband voice and data service costing half as much as typical bundles from phone and cable companies.³⁷

The consortium is determined to beat Verizon and AT&T to the market.³⁸ But AT&T and Verizon Wireless are preparing to deploy their own fourth-generation networks. Verizon Wireless expects that it will have 4G in service somewhere in the U.S. sometime in late 2009.³⁹ AT&T is contemplating a rollout beginning in 2010.⁴⁰ These 4G wireless networks could provide between 28-58 megabits per second for up link transmission and 63-173 Mbps for downlink transmission.⁴¹

Meanwhile, Verizon Wireless has launched (and AT&T is reportedly preparing to launch) a personal cell tower for homes and small businesses which routes wireless calls over a broadband Internet connection.⁴² Femtocell devices, as the wireless base stations are known, promise better indoor wireless coverage and lower voice over Internet pricing. Sprint, which divested its local wireline network in 2006, is evaluating getting back into the business with voice over Internet utilizing femtocells which would connect directly with the Clearwire WiMAX network.⁴³

There's also the possibility that cellphones may one day become free. The CEO of Google believes that your mobile phone could be free, subsidized by targeted ads.⁴⁴

Even if many Americans are not prepared to cut the cord at the present time, cellphones are a good substitute for a large and growing number of people. Cellphones do not have to be a *perfect* or identical substitute for landline phones in order to prevent the phone company from unreasonably raising prices or degrading the quality of landline service if it wanted. The issue is whether consumers could cancel their landline subscriptions if they choose. The widespread availability and popularity of cable voice over Internet and wireless substitution prove that they can.

³⁶ Remarks of Ben Shen, Vice President, Broadband Product Management, Sprint Nextel Corp. ("We think the WiMAX technology will achieve one-tenth of the current 3G cost, and that will give us a lot of flexibility driving adoption by the mass consumer market."); and Remarks of William F. Wallace, Chairman, Digital Bridge Communications Corp. ("Why is WiMAX so economic in reaching smaller communities and other technologies? First, it is highly capital efficient, although it takes a lot of capital to reach many cities, within any one city [w]e spend \$40 to \$60 per household covered versus a DSL or cable company that is going to spend \$800 or \$1,200. It is a radically different set of economics.") at the [2007 Telecommunications Symposium: Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumers](#) (Nov. 29, 2007) sponsored by the Antitrust Division of the U.S. Department of Justice.

³⁷ "[Clearwire to Operate as Independent Firm](#)," by Roger Cheng, *Wall Street Journal* (Dec. 1, 2008).

³⁸ "[Technology Group Plans Wireless Network](#)," by Matt Richtel, *New York Times* (May 7, 2008).

³⁹ "[Verizon Expects 4G Wireless In A Year](#)," by David Gardner, *InformationWeek* (Dec. 11, 2008).

⁴⁰ "[Q&A: Ralph De La Vega CEO, AT&T Mobility: We're a 'wireless centric' company](#)," by Kristi E. Swartz, *Atlanta Journal-Constitution* (Oct. 29, 2008). AT&T anticipates that the rollout will be rapid. See: "[AT&T Plans Fast 4G Wireless Rollout](#)," by David Gardner, *InformationWeek* (Apr. 4, 2008)

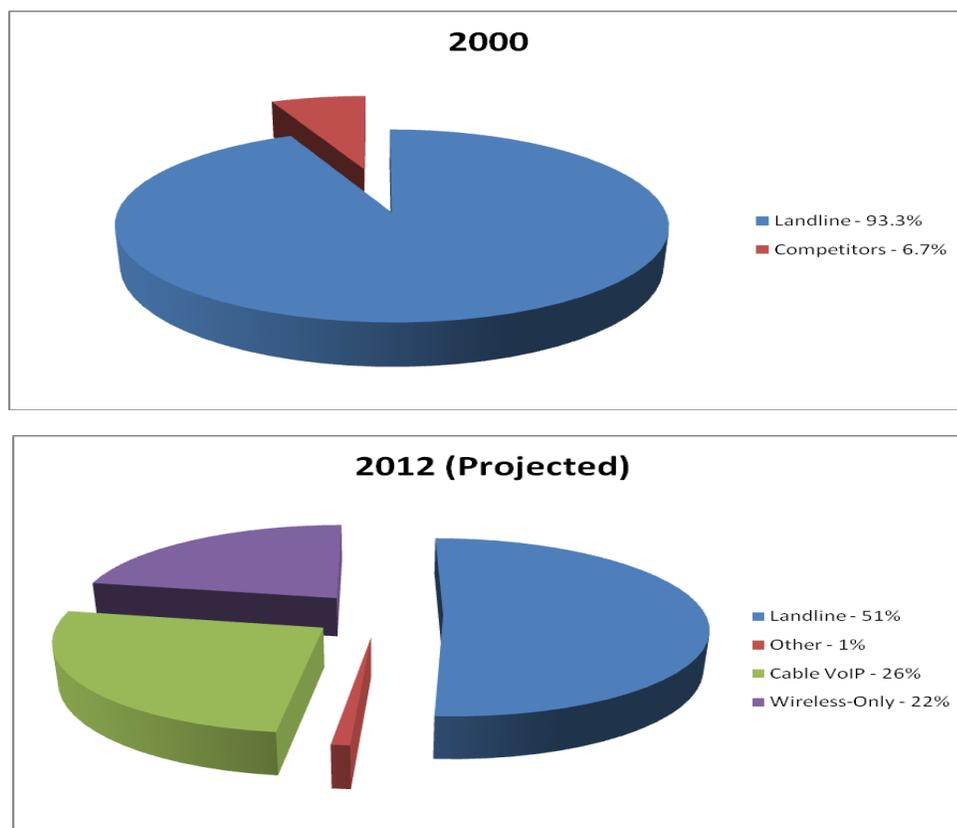
⁴¹ *Wireless Competition Report*, see note 33, at 69.

⁴² "[Verizon launches femtocell, but is better coverage enough?](#)" by Sarah Reedy, *Telephony* (Jan. 26, 2009) ("AT&T's service, although not officially released, suggests that unlimited calling is in the pipeline, Verizon's announcement focused solely on better voice coverage.").

⁴³ "[Sprint sees WiMAX as path back into fixed broadband](#)," by Kevin Fitchard, *Telephony* (Feb. 9, 2009).

⁴⁴ "[Google CEO sees free cell phone service](#)," *Reuters* (Nov. 13, 2006).

Market Shares for Voice Services



Sources: FCC, SNL Kagan.

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 voice over Internet subscribers, which would leave local telecommunications providers collectively with a 51 percent market share nationally.⁴⁵ At that point no one could plausibly claim the incumbent landline provider is dominant anymore. However there will be a vocal few who argue for continued regulation because they have vested interests in the status quo.

⁴⁵ [“SNL Kagan Forecasts Rapid Shift in Composition of Residential Phone Service,”](#) (press release) Apr. 28, 2008 (“The SNL Kagan analysis illustrates the telcos’ loosening grip on the market and the opportunity created for alternative services. In the past two years, the telcos’ share has dwindled from 90% to 74% of total connections, with the five-year outlook estimating another 23% drop. The main competition in the space has come from the increased availability of IP voice services from cable operators coinciding with the phase-out of older switched-circuit technology. SNL Kagan projects a steady increase in IP voice subscribers, reaching 31.4 million in 2012, putting cable’s market share at 26%. The 10-year forecast shows cable penetration of homes passed stabilizing at 27%.... Concurrent with cable’s advance, SNL Kagan sees wireless replacement services gaining momentum, perhaps posing an even greater threat to telco’s hold on the market. Approximately 12 million households currently opt for a wireless-only phone connection, with that number expected to increase to about 26 million in 2012 (equal to about 22% of market share.).

The local providers' share of some markets is already approaching 50 percent or less. The FCC has already provided regulatory relief for local services in Omaha⁴⁶ and Anchorage.⁴⁷ However, it declined to deregulate local services in Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach⁴⁸ and in Denver, Minneapolis-St.Paul, Phoenix and Seattle,⁴⁹ where opposition from noncable- and nonwireless-competitors who lease facilities from Verizon and Qwest was vociferous.

This means that, for lawmakers, the political challenge of enacting regulatory reform will not decrease if legislative deliberation is delayed, because there is little prospect of eventual consensus among all of the interested parties.

The strength of the various competitive offerings are fully adequate to act as a constraint on the behavior of incumbent telecommunications providers in the absence of regulation. The incumbents will simply lose further market share to their competitors if they unreasonably raise rates or sacrifice service quality.

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.

The U.S. Internet of 2015 will be at least 50 times larger than it was in 2006.⁵⁰ Internet growth at these levels will require a dramatic expansion of bandwidth, storage, and traffic management in core, edge, metro, and access networks. Building the infrastructure needed to cope with this exaflood will be very expensive, likely requiring some \$137 billion in global new investment over the next two years alone and at least \$50 billion in the U.S.

The good news is that this investment will be a powerful generator of new jobs and economic growth. A study by the Brookings Institution found “for every one percentage point increase in broadband penetration in a state, employment is projected to increase by 0.2 to 0.3 percent per year. For the entire U.S. private non-farm economy, this suggests an increase of about 300,000 jobs ...”⁵¹ The authors call broadband “an important basic infrastructure that is expected to produce spillover and wide-reaching benefits across the economy.”

⁴⁶ “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).

⁴⁷ “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).

⁴⁸ “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).

⁴⁹ “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).

⁵⁰ “[Estimating the Exaflood](#),” by Bret Swanson and George Gilder, *Discovery Institute* (Jan. 29, 2008).

⁵¹ “[The Effects of Broadband Deployment on Output and Employment: A Cross-Sectional Analysis of U.S. Data](#),” by Robert W. Crandall, Robert E. Litan and William Lehr, *Brookings Institution*, (Jun. 2007).

NOT A NATURAL MONOPOLY

The traditional rationale for comprehensive regulation of local phone service by public utility commissions is that competition used to be impractical if not impossible both due to the enormous cost of building rival networks plus the fact that the cost of operating the network declines, on a per-customer basis, as more customers are added. These conditions can be expected to give rise to a “natural monopoly,” as opposed to an artificial monopoly which is created through legislation or anticompetitive behavior. But affordable, ubiquitous wireless and voice over Internet services which can ride a broadband connection for a small cost have eroded the “natural monopoly” justification for regulation.

The transition from natural monopoly to naturally competitive has been apparent for at least a decade. For example, Richard A. Posner observed in 1999 that a remarkable competitive transformation was occurring in the telecommunications industry:

With the advent of cellular phones, cable television, satellite systems, and low-cost fiber-optic networks, even local telephone service is rapidly becoming naturally competitive, though the refusal of state regulatory agencies to abandon their control over the pricing structure of local telephone service means that most of the benefits of the new competition have gone to business users.⁵²

Cornell Professor Alfred E. Kahn, formerly a leading regulator and advisor to President Jimmy Carter, recently confirmed that the transition is complete and that comprehensive regulation of landline phone services is both unnecessary and will likely harm consumers by inhibiting competition and diminishing investment.⁵³

States have been moving cautiously to remove unnecessary regulation, such as eliminating price regulation and tariff filing for non-basic phone service, by creating statewide video franchises to encourage the deployment of broadband networks and by exempting competitive services from utility regulation. Indiana enacted one of the nation’s most sweeping reforms in 2006. A study conducted by the Digital Policy Institute at Ball State University found that telecommunications providers reported investing more than \$516 million and creating over 2,200 jobs during an 18-month period in Indiana alone following the enactment of HEA 1279.⁵⁴

Southeastern states have adopted some important pricing and tariff reforms and in most cases have excluded wireless and voice over Internet services from state utility commission jurisdiction. But additional reforms should be considered.

The question is frequently asked whether it is necessary to remove all regulation, or whether consumers could benefit more from a combination of regulation and competition than from one or the other. The answer is that competition and regulation are incompatible. As Kahn points out, regulation is

⁵² Richard A. Posner, “Effects of Deregulation on Competition: The Experience of the United States,” 23 *Fordham Int’l. L.J.* 7 (2000).

⁵³ Kahn, *see* note 4 (“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.”).

⁵⁴ “An Interim Report on the Economic Impact of Telecommunications Reform in Indiana: A White Paper by the Digital Policy Institute/Ball State University,” (Feb. 15, 2008) ([Executive Summary](#)) ([Full Report](#)).

frequently anticompetitive and discourages heavy investment in network facilities.⁵⁵ Robert W. Crandall of the Brookings Institution advises policymakers to deregulate completely.

The economic lesson from the history of regulation is that regulation and competition are a bad emulsion. Once the conditions for competition exist, it is best for regulators to abandon the field altogether. This is particularly true in a sector that is undergoing rapid technological change and therefore requires new entry and new capital. The politics of regulation favor maintaining the status quo, not triggering creative destruction.⁵⁶

For example, incumbent telecommunications providers – who are struggling to keep up with their voice over Internet and wireless competitors – might be able to reduce their costs by substituting more efficient voice over Internet or wireless technology within their own networks. But service quality regulation was designed for circuit-switched service powered through a telephone company central office with a backup generator. Voice over Internet and wireless services are not powered independently, nor do voice over Internet and some wireless technologies utilize a single circuit. Yet millions of consumers prefer voice over Internet and wireless.⁵⁷

There may be millions of consumers who prefer their traditional wireline phone service or who don't care. But the real issue is how will the phone company continue to pay for for the traditional service if there are more efficient alternatives which cost less, have more features and improve every year in terms of reliability and sound quality? The phone company has to have flexibility to utilize the best technology overall to satisfy the demand of cost- and feature-conscious consumers; and if there are others who want to keep their traditional phones, the phone company has to be able to charge them a price which fully recovers the cost of providing the service.

Regulatory reform of landline phone service is lagging far behind wireless⁵⁸ and cable,⁵⁹ 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.⁶⁰

⁵⁵ *Id.*

⁵⁶ Crandall, *see* note 15, at 166.

⁵⁷ “[Consumers are the winners as wireless plans get cheaper](#),” by Leslie Cauley, *USA TODAY* (Jun. 13, 2008) (“Piecyk says carriers with big landline businesses — such as Verizon and AT&T — are basically stuck. If they make it easy and financially attractive to dump landlines, they help speed up erosion of that 100-year-old business. ‘But if they don't, they just lose customers,’ he says.”). *See also*: “[Verizon to give discounts for landline-less bundles](#),” by Peter Svensson, *Associated Press* (Jun. 13, 2008).

⁵⁸ 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.”)

⁵⁹ 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.”)

⁶⁰ “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

Congress' willingness to make these predictive judgments in part probably reflects the fact that it waited too long to deregulate the railroads in 1979, when President Jimmy Carter stated in a message to Congress that deregulation was necessary to avert an industry crisis.⁶¹ States are not in the position of having to make a difficult predictive judgment with respect to phone service, since incumbent telecommunications providers already face significant competition. Without regulatory reform,

telecommunications providers could eventually face the same predicament as the railroads in 1980, since current telephone regulation is modeled after former railroad regulation.⁶² Among other things, the regime forces the regulated entities to set some prices below cost (*e.g.*, residential and rural services) – forcing them to operate those services at a loss and discouraging competitive entry that would produce more choices for consumers; and set other prices well above cost – creating magnets for competition and eroding subsidies to support the services priced below cost. Eventually the system implodes.

One reason policymakers should undertake regulatory reform sooner rather than later is so telecommunications providers can offer more competitive services and maintain stock valuations necessary to attract sufficient investment capital for broadband expansion. At the beginning of this year, it was already clear that AT&T and Verizon, the nation's two largest telecommunications providers, were losing residential phone lines at a rate of at least 10 percent per year for reasons including voice over Internet and wireless substitution and a softening economy.⁶³ Year end results show that the companies each lost approximately 12 percent of their landlines in 2008.⁶⁴

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.

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."

⁶¹ President Carter's message to Congress on his proposals to deregulate the nation's freight rail industry (Mar. 23, 1979) ("Deregulation presents the only viable option to either massive increases in federal subsidies to the railroads or increased government intervention in their operation – both of which are highly undesirable Without the changes I am recommending, we will face a catastrophic series of rail bankruptcies, sharply declining service and massive federal expenditures."). Congress's efforts to revitalize the railroads in the 1970s included the preemption state and local taxes which discriminated against railroad property (49 U.S.C. §11501(b)). Incumbent phone companies remain subject to similar special tax rates.

⁶² Huber, Peter W.; Kellogg, Michael K. and Thorne, John. Federal Telecommunications Law (Aspen 2d ed. 1999) at 214-220.

⁶³ "[Who Needs Wirelines? Bernstein Says Verizon, AT&T Seeing Accelerating Residential Line Losses](#)," by Eric Savitz, *Tech Trader Daily* (Feb. 7, 2008).

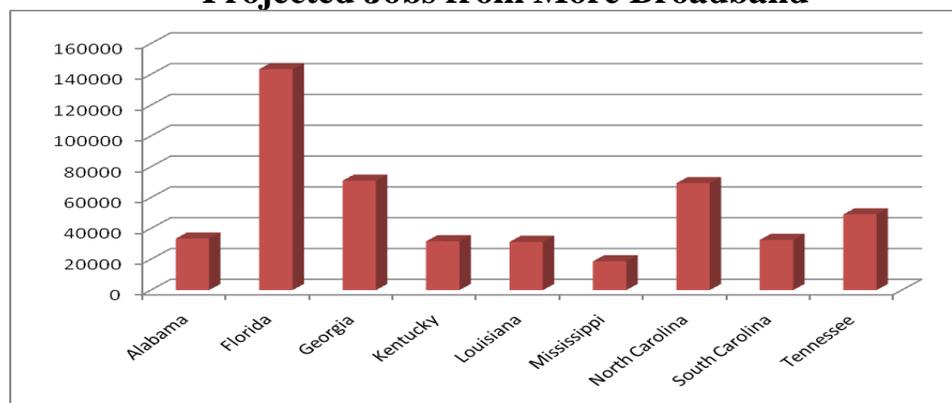
⁶⁴ See: "[Investor Briefing - AT&T Reports Fourth-Quarter and Full-Year Results Highlighted by Robust Wireless Data Growth, Accelerated U-verse TV Ramp, Continued Double-Digit Growth in IP Data Services](#)," (Jan. 28, 2009) at 21. See also: "[Investor Quarterly Q4 2008](#)," (Verizon) (Jan. 27, 2008) at 17.

Investors will back broadband if they perceive it has the potential to make money, not be forced to subsidize local services.⁶⁵

Every \$5 billion in broadband investment 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.⁶⁶ As previously noted, 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.⁶⁷

One study estimates that a 7 percent increase in broadband adoption nationwide would lead to the creation of 2.4 million new jobs per year – 33,451 new jobs in Alabama, 143,405 in Florida, 71,059 in Georgia, 31,699 in Kentucky, 31,313 in Louisiana, 18,723 in Mississippi, 69,432 in North Carolina, 32,629 in South Carolina and 49,142 in Tennessee – and various other tangible benefits (see Appendix I).⁶⁸

Projected Jobs from More Broadband



Source: Connected Nation

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 prices in response to competition.

⁶⁵ Earlier this month, when Cablevision Systems Corp. sought to raise \$500 million in debt to meet coming maturities, it ended up with \$750 million from investors seeking higher returns than they can earn from Treasury bonds. See: "[Cablevision Debt Offer Draws \\$750 million](#)," by Vishesh Kumar, *Wall Street Journal* (Jan. 9, 2009) ("Cablevision sold five-year notes with a yield of 11.38%, according to a person familiar with the matter. The company is the first to raise financing in the high-yield bond market in almost a month, highlighting the improved tone and interest in the asset class as investors, faced with exceptionally low Treasury yields, turn back to corporate bonds The deal could prompt other companies to look for financing after months of being left out in the cold. The \$750 billion speculative-grade, or junk, bond market is a vital source of financing for the country's major car makers, airlines, retailers, utilities, restaurant chains and media companies, among others.").

⁶⁶ "[National Broadband Strategy Call to Action](#)," news release (Dec. 2, 2008).

⁶⁷ See note 42.

⁶⁸ "[The Economic Impact of Stimulating Broadband Nationally](#)," *Connected Nation* (Feb. 21, 2008) at 8.

NEXT STEPS

States should ensure that all providers of voice services are subject to minimum but effective regulation which does not discriminate on the basis of technology, just like in any competitive market. There are a number of features of utility regulation, discussed below, which were appropriate in a monopoly environment but are now unnecessary and anticompetitive. By removing the statewide cobwebs of regulations that afflict telecom, Southeastern states facing contraction of traditional sources of employment 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, states 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.

By simple reforms of outmoded laws, states 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.

Tariffs

The requirement to file a tariff, schedule of charges or make another type of formal notification containing detailed descriptions of products and services to be provided along with rates, terms and conditions is intended to prevent a common carrier from discriminating.⁶⁹ This type of disclosure sounds harmless and pro-consumer, but it is often anticompetitive and harmful to consumers.

Telecommunications providers have to file a tariff in advance of the introduction of a new or improved offering. The utility commission reviews the tariff and decides whether it is in the public interest. Many states allow tariffs to go into effect automatically at the conclusion of a notice period unless the state utility commission chooses to conduct a hearing. In Florida, for example, a change may not be made in any rate, toll, rental, contract, or charge which has been filed and published by any telecommunications company not subject to price cap regulation (typically smaller providers) except after 60 days' notice to the commission and publication. Further, the proposed change may not be made without the commission's consent or without a hearing, if requested by a substantially affected party prior to the date the rates go into effect. In that event, the Florida commission has 12 months to take final action and enter a final order.⁷⁰ As the FCC has observed, if competitors are free to inspect an incumbent's tariff and beat the incumbent to market with a slightly more competitive offering of its own, tariffs diminish the incentive for both incumbents and for rivals to innovate.⁷¹

⁶⁹ *Keogh v. Chicago & N. W. R. Co.*, 260 U.S. 156 (1922) (“The legal rights of shipper as against carrier in respect to a rate are measured by the published tariff ... The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier ... This stringent rule prevails, because otherwise the paramount purpose of Congress-prevention of unjust discrimination-might be defeated.”)

⁷⁰ Fla. Stat. §364.05.

⁷¹ In the Matter of Access Charge Reform, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-262 (rel. Aug. 27, 1999) (“*Pricing Flexibility Order*”) at 20 (“[New entrants] that have notice of a price cap [provider]'s Section 69.4(g) petition may be able to begin offering the service before the incumbent [phone company] has been granted permission to establish new rate elements for the new service, thus diminishing the incumbent's incentives to develop and offer new services.” [footnote omitted]).

In a competitive market, tariffs mean that rivals never have to worry about losing sales because they failed to anticipate the introduction of new or improved products, services, prices and/or terms by a competitor. Rivals can wait until they receive formal notice of a competitor's intentions before they lower the price or improve the quality of their own product or service as necessary to avoid losing sales. This is a cat and mouse game which reduces the incentives both for the incumbent and the rival to innovate.

Florida also allows telecommunications providers subject to price cap regulation (typically large incumbent telecommunications providers) to maintain tariffs with the commission or otherwise publicly publish the terms, conditions, and rates for their *nonbasic services*, and to change, on one day's notice, the rate for nonbasic services.⁷² The elimination of *advance* notice and approval requirements is a significant improvement, but it does not go far enough in a competitive market

Formal notification inhibits full competition, even if all market participants are subject to the same rules. For example, when airlines were deregulated they were allowed to publish tariffs which could take effect immediately, but were no longer required to file them and await approval by regulators before they could take effect. Even this streamlined approach led to problems, and it illustrates how tariffs can harm the consumers they were intended to protect.

The U.S. Department of Justice sued eight of the largest U.S. airlines and the Airline Tariff Publishing Co. in 1992 for using tariffs to communicate and negotiate unlawful pricing agreements.⁷³ If, for example, an airline wanted to eliminate an unwanted discount fare, it could tell ATP that the fare would terminate at a future date. The other airlines could follow along or, if they didn't, the change could be withdrawn before there was a risk of losing sales to a lower-priced rival. Fare increases would not take effect until the airline proposing the change could see whether it was matched. A Justice Department official called the system "an electronic smoke-filled room."⁷⁴ A consent decree prohibits airlines from using tariffs to communicate without risk. Airlines can now only publish currently-available fares or sale fares for which travel can only begin in the future, such as offering fares in the summer for travel in the winter.

Perhaps it may be possible to design a tariff regime for a competitive market which is impervious to manipulation, but more likely it is not. In most competitive markets all competitors are forced to anticipate their rivals' initiatives and responses and plan to their own moves without the benefit of information which a rival has not chosen to disclose for a valid business purpose.

The FCC concluded in 1996 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.⁷⁵

⁷² Fla. Stat. §364.051

⁷³ See, e.g., "[Roundtable on Facilitating Practices in Oligopolies – Note by the United States](#)," Directorate for Financial and Enterprise Affairs, Competition Committee, Organization for Economic Co-operation and Development (OECD), *DAF/COMP/WD(2007)112* (Oct. 4, 2007) at 11-14.

⁷⁴ "[Six Airlines Settle Suit by Government on Fares](#)," by Martin Tolchin, *New York Times* (Mar. 18, 1994).

⁷⁵ "In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace," [Second Report and Order](#), (rel. Oct. 31, 1996) 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,

Florida still requires incumbents to file tariffs covering all services.⁷⁶ Louisiana will allow telecommunications providers the option of replacing current tariffs for competitive services with online guidebooks and pricelists and to continue filing tariffs for basic services for two years, followed by guidebooks and pricelists.⁷⁷ Kentucky and Tennessee require tariffs for any telecommunications service offered separately, but not when the same service is offered as part of a bundle. Alabama and South Carolina exempt bundles as well as services offered pursuant to a contract from tariffing. Georgia, Mississippi, and North Carolina require tariffs for basic services; in Georgia, this requirement only applies when a consumer subscribes to a single line; and in Mississippi, only when a consumer subscribes to a single line on a stand-alone basis.

Tariffs were appropriate in a monopoly environment where there was no need to worry about information sharing because there were no competitors. This situation no longer exists. Neither tariffs nor similar disclosures are helpful to consumers anymore, because disclosure inhibits rapid competitive responses needed to constantly improve the value proposition of a product or service. There should be no formal notification requirements.

It is anticompetitive and anticonsumer to deny pricing flexibility. To do so runs the risk of eliminating a competitor (the incumbent).

Pricing Flexibility

The requirement to offer similar terms to all customers is the essence of common carrier regulation, but it prevents incumbents from developing customized offerings, such as volume and term discounts necessary to meet or beat the competition. Precluding incumbents from negotiating with individual customers and offering customized terms creates another pricing umbrella for competitors, depriving the public of vigorous competition.

In 1999, the FCC adopted a pricing flexibility policy which allows incumbents to lower or raise prices when certain competitive triggers are met.⁷⁸ Commissioner Susan Ness commented,

During the past decade, exchange access competition has increased significantly. I am optimistic that the investment and infrastructure deployment that has occurred

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.”)

⁷⁶ For nonbasic services, each company may, at its option, maintain tariffs with the commission or otherwise publicly publish the terms, conditions, and rates for each of its nonbasic services. The commission may require that the publication contain as much information as is required to be filed with a tariff. *See*: Fla. Stat. §364.051(5)(a).

⁷⁷ By order of the Louisiana Public Service Commission on Dec. 10, 2008 in Docket R-30347 – *AT&T, Louisiana, ex parte. In re: Petition for Modification of Rules and Regulations Necessary to Achieve Regulatory Parity and Modernization* (written order forthcoming).

⁷⁸ *Pricing Flexibility Order*, *see* note 70 (Pricing flexibility is triggered incrementally beginning when an incumbent phone company can demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide services within a particular metropolitan area.).

demonstrates a strong and irreversible trend toward a multiplicity of carriers in the marketplace. We must ensure that our regulations do not impede this progress.

Part of the calculus is to determine not just when to regulate, but when to deregulate.⁷⁹

There is no pricing flexibility in Florida.⁸⁰ There are varying degrees of pricing flexibility in Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. There is full pricing flexibility in Indiana.⁸¹

Pricing flexibility refers to the opportunity to lower *or raise* prices. It would never make sense to allow a monopoly to set its own prices. But when competitors – such as cable voice and wireless services – can enter a market, become preferred providers for many consumers and are capable of offering continuously improving service at lower cost, it is anticompetitive and anticonsumer to deny pricing flexibility. To do so runs the risk of eliminating a competitor (the incumbent).

Deregulation opened the long-distance market to competitors in the early 1980s and subsequently reformed vestiges of utility regulation which inhibited full competition such as tariffs, price floors, price ceilings and implicit subsidies. The results were innovation, improved service quality, greater choice of providers, and lower prices. Average revenue per minute of long-distance calling dropped from 15 cents in 1992 to 6 cents in 2006, a decrease of 60 percent. During 2007, the price of interstate toll service rose 2.4 percent compared to a 4.1 percent increase in the overall consumer price index.⁸²

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 2006.⁸³ Minutes of cellphone use are significantly less expensive in the U.S. than in Western Europe (where revenue per minute averaged 20 cents in the last quarter of 2006) and Japan (26 cents).⁸⁴ Price regulation in other countries has had the unintended effect of preserving higher prices.⁸⁵

Full pricing flexibility could also bring more innovation, improved service quality, choice of providers and lower prices for local voice, video and advanced data services. Capping rates discourages

⁷⁹ [“Statement of Commissioner Susan Ness,”](#) Federal Communications Commission (Aug. 5, 1999).

⁸⁰ Florida affords telecommunications providers some ability to raise rates, but it is insufficient given the competitiveness of the market. A provider may adjust its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent. The provider is also required to give 30 days’ notice. *See*: Fla. Stat. §364.051(3). This provision merely allows a provider to adjust its geographically averaged rates to account for inflation, but not to survive in a competitive market where it must be able to adjust prices selectively (i.e., raise some prices when necessary to recover the actual cost of providing service (minus support from universal service mechanisms) or lower certain prices as necessary to retain customers. Florida has a separate formula for nonbasic services. The price for any nonbasic service may be increased to a maximum of 6 percent within any 12-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period. *See*: Fla. Stat. §364.051(5)(a). This provision is unnecessary, because competition does not allow a telecommunications provider to unreasonably raise rates without losing sales. Retaining this requirement would be harmful, because tariffs or public disclosure requirements would be necessary for enforcement.

⁸¹ Indiana Code, 8-1-2.6-13(e).

⁸² [“Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service,”](#) Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (2008) at iv.

⁸³ *Wireless Competition Report*, see note 35, at 8.

⁸⁴ *Id.*, p. 10.

⁸⁵ [“Lessons from America on pricing mobile calls,”](#) by Stephen Littlechild, *Financial Times* (May 21, 2006).

competition by making it highly profitable to serve some customers and unprofitable to serve others. High-cost consumers are deprived both of competitive choices and ultimately of the heavily subsidized service they need as low-cost customers take advantage of competitive offerings. Meanwhile, the competition for low-cost customers is illusory: Competitors are free to charge unreasonably high prices because the incumbent is helpless to cut its prices selectively.

There is scant dissent whether phone services should be deregulated when there is competition, but wide differences of opinion as to when there is sufficient competition to warrant regulatory reform. Opponents of deregulation have previously proposed that a market is not competitive until every consumer has a choice of providers or the incumbent loses significant market share. The FCC has rejected both of these ideas.

As to waiting until every consumer has a choice of providers, the FCC concluded this approach might allow competitors to “game the system” in that they could prevent an incumbent from obtaining pricing flexibility indefinitely by choosing not to serve certain customers.⁸⁶ Moreover, the FCC expressed the view that it isn’t administratively possible to determine the exact moment relief should be granted under this type of test.⁸⁷

A market share analysis is also problematic as a practical matter, as the FCC confirms, because such analyses “require considerable time and expense, and they generate considerable controversy that is difficult to resolve.”⁸⁸

Experience shows that a market is competitive whenever there are no barriers to entry, such as exclusive franchises or prohibitive investment costs, and where actual and/or potential competitors can offer reasonable substitute products or services.⁸⁹ This describes the telecom market, since telecommunications providers, wireless providers, and cable voice over Internet operators provide services that large numbers of consumers consider substitutes in many circumstances. Technological change and regulatory reform have reduced barriers to entry, allowing dissatisfied consumers to take their business elsewhere. Competition, not regulation, is keeping prices low and consumers satisfied.

⁸⁶ [Pricing Flexibility Order](#), see note 70, at 75-76.

⁸⁷ [Pricing Flexibility Order](#), see note 70, at 76 (“because regulation is not an exact science, we cannot time the grant of regulatory relief to coincide precisely with the advent of competitive alternatives for access to each individual end user.” [footnote omitted]).

⁸⁸ [Pricing Flexibility Order](#), see note 70, at 50-51. The FCC also considered a “competitive checklist” like the one Congress wrote into the 1996 law to govern entry by the Regional Bell Operating Companies into what was then a highly profitable long-distance market (47 U.S.C. §271) and concluded that the benefits weren’t worth the administrative burden (“As a result of our review of several BOC 271 applications, the Commission has found that ascertaining whether the BOC adequately has demonstrated that it is providing these checklist items on a nondiscriminatory basis is not administratively simple or easily verifiable. These applications produce voluminous records in which the parties hotly contest BOC compliance with the checklist, and resolution of these disputes within the ninety days permitted by the statute imposes considerable burdens on both industry and the Commission.”) at 47.

⁸⁹ Baumol, William J. and Sidak, J. Gregory, [Toward Competition in Local Telephony](#) (MIT and AEI, 1994) at 42-45.

Provider of Last Resort

A now-obsolete way of providing high-quality, affordable telecommunications to all consumers in a monopoly environment was to award an exclusive franchise giving one service provider a legal monopoly and, in exchange, requiring it to extend service to all consumers at similar rates. The monopoly made it easy for the service provider to subsidize high-cost customers, as previously noted, through rate averaging.

Exclusive franchises are now prohibited as a result of the 1996 Telecommunications Act, but the obligation remains on incumbent telecommunications providers to be carriers of last resort (COLR) or providers of last resort (POLR), providing service throughout the existing service territory at similar rates with their losses covered by federal and state high-cost funds. Similarly, even though cable markets are now competitive in virtually all markets, many cities still impose build-out requirements on new entrants, requiring them to submit plans to serve the entire community by some deadline.

The problem with both carrier/provider of last resort and build-out requirements is that low-cost customers no longer can be forced to subsidize high-cost customers. They can now sign up with a competing service provider who can offer lower rates by choosing to serve only low-cost customers. The incumbent, as the provider of last resort, is still required to serve everyone else. But there are fewer low-cost customers to generate a subsidy for the high-cost customers, so an incumbent either has to be able to recover its costs from the remaining customers through rate increases, or policymakers must find ways to distribute the cost of providing subsidized service to high-cost customers equitably among the competing providers.

Rate averaging requirements should be eliminated. They can be replaced with a competitively-neutral subsidy mechanism in which all providers participate to maintain parity between urban, suburban and rural retail rates.

Next, an incumbent should not be required to act as a carrier/provider of last resort where the market is competitive and consumers can choose between multiple providers. In a competitive market rivals sometimes sign exclusive deals with property developers or landlords. If the incumbent has a COLR/POLR obligation, it may be required build costly facilities to serve a single customer in an office park, shopping mall or housing development.⁹⁰ The revenue may be inadequate to cover the cost without rate averaging. Regulation which imposes costs on some providers but not others is anticompetitive.

The Indiana law addresses this problem by relieving an incumbent from any provider of last resort obligations for any particular geographic area, building, or group of residences and businesses if a competitor operates under an arrangement by which it is the exclusive provider of basic telecommunications service in that particular geographic area, building, or group of residences and businesses.⁹¹ Florida ended all carrier of last resort obligations on telecommunications providers effective January 1, 2009.⁹² It previously automatically relieved a carrier of last resort of its obligation to provide basic local telecommunications service to any customer in a multi-tenant business or residential property

⁹⁰ See, e.g., "BELLSOUTH unplugged: No more last resort? Utility wants to make service unavailable to developments that cut deals with rivals," by Scott Leith, *Atlanta Journal-Constitution* (Jul. 11, 2006).

⁹¹ Indiana Code, 8-1-32.4-16.

⁹² Florida's transitional universal service and carrier-of-last-resort mechanism, Fla. Stat. §364.025, sunset on Jan. 1, 2009.

when an owner or developer permits only one communications service provider to install its facilities or equipment and under other circumstances.⁹³

Incumbent cable companies often operate under mandates in their franchise agreements to provide universal service to the community. A “level playing field” could require that competitors be subject to the same requirement – that they “build out” their network to cover the entire community by some deadline. But there is no social purpose served by requiring that every customer be served before a single customer is given a second, third, or even fourth choice of cable provider. The “level playing field” goal can better be met by relieving both the incumbent and new competitors from build-out requirements.⁹⁴

Also, in high-cost areas where a carrier/provider of last resort is necessary to deliver basic service, the provider should be allowed to choose the most efficient technology, such as voice over Internet or a wireless technology. Florida, Georgia, Kentucky, Louisiana, Mississippi, South Carolina and Tennessee take this approach, which relieves the provider from having to offer costly service using outmoded network facilities and then find a way subsidize it.

Finally, it is anticompetitive to deny competitors the opportunity to become carriers/providers of last resort. They ought to be allowed to receive adequate and equitable support from an explicit funding mechanism to serve high-cost areas, if they wish.

⁹³ Fla. Stat. §364.025(6)(b).

⁹⁴ [“The Consumer Benefits of Video Franchise Reform in Illinois,”](#) by John Skorburg, James Speta and Steven Titch, *Heartland Policy Study* No. 112 (Apr. 2007).

Cross Subsidies

A principle aim of regulation in telecommunications service providers is to ensure that high-quality phone service is available and affordable everywhere. But there are dramatic variations in the cost of providing traditional analog phone service depending on population density. This type of phone service would not be affordable in many rural areas and would be more expensive in residential areas if rates were set according to cost.

A number of direct and indirect subsidy mechanisms provide support for rural and residential phone services. One of the indirect subsidies at the state level is intrastate access charges that long-distance and wireless providers pay to local telecommunications providers who originate or terminate calls for them. Telecommunications providers historically over-charged long-distance and business customers, and in some cases still do, so they can offer lower prices for rural and residential phone service and still recover their total costs.

Such cross subsidies cannot be maintained in a competitive market if competitors can choose to serve profitable customers and ignore everyone else. Since competitors are free to choose their customers, cross subsidies discourage competitive entry in high-cost areas because the incumbent is charging a lower price than a competitor would need to charge to cover its costs plus earn a reasonable profit. In the low-cost areas, competitive entry is extremely profitable when the incumbent's services are priced high enough to subsidize other customers. Competitors can profitably under-price the incumbent in low-cost areas while the incumbent is helpless to match the price decreases. The incumbent loses the profitable customers it needs to generate subsidies which enable it to serve high-cost customers.

Allowing the market to set prices would spread the benefits of competition in both urban and rural areas.

Consumers suffer the consequences. High-cost consumers will be deprived both of competitive choices and ultimately of the heavily subsidized service they need. Low-cost consumers will also be harmed – even if they have a choice of providers – because the inflated price charged by the incumbent acts as an umbrella which guarantees that competitors can also maintain a high price without fear that the incumbent could cut its prices below theirs. Allowing the market to set prices would spread the benefits of competition in both urban and rural areas.

For states, 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, 2008.⁹⁵

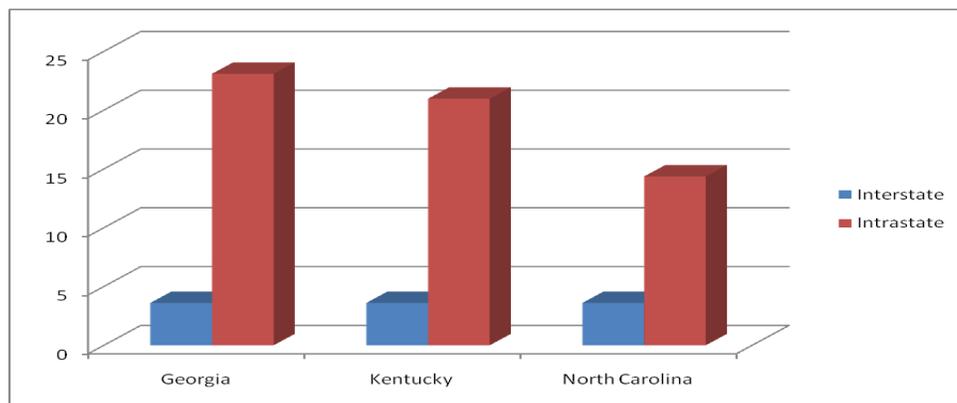
⁹⁵ “[Trends in Telephone Service](#),” Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (Aug. 2008) at Table 1.2 and Table 1.4.

However, intrastate access charges can be much higher – particularly the intrastate access charges that smaller rural providers and new entrants are permitted to charge.⁹⁶

- One provider in Georgia charges 23.09 cents per minute for intrastate access but only 3.60 cents per minute for interstate access.
- A provider in Kentucky charges 20.97 cents per minute for intrastate access versus 3.60 cents per minute for interstate access.
- In North Carolina, a provider receives 14.36 cents per minute for intrastate access and 3.60 cents per minute for interstate access.

Intrastate access charges also exceed interstate access charges in Alabama, Florida, Louisiana, Mississippi, South Carolina and Tennessee, albeit by smaller margins. This policy ought to be changed, because interstate access charges are fully compensatory and a telephone company does not incur a unique set of costs when it provides intrastate versus interstate access. In Indiana there is parity – the cost of intrastate access does not exceed the cost of interstate access.⁹⁷

Interstate vs. intrastate access charges cents



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. Voice over Internet, as previously noted, is a popular

⁹⁶ 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.

⁹⁷ Indiana Code, Title 8, Article 1, Chapter 2.6, Section 1.5(c).

alternative to traditional phone service, largely because it is extremely economical.⁹⁸ The regulatory status of voice over Internet service is fuzzy because the FCC has so far declined to make it clear.⁹⁹ The FCC is still considering whether voice over Internet is a “telecommunications” or an “information” service. If it is a telecommunications service it is subject to access charges, otherwise it is not. Although that question remains unresolved, recently the FCC ruled that for jurisdictional purposes, certain voice over Internet services are interstate and therefore do not pay intrastate access charges for what would otherwise be intrastate service.¹⁰⁰ The FCC served notice in the same order that it is likely in the future to designate other voice over Internet services as interstate.

Therefore, providers of voice over Internet service pay either interstate access charges for intrastate calls or an even a lower charge (referred to as “reciprocal compensation”) applicable to local traffic.¹⁰¹ Since voice over Internet 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 most intrastate wireless traffic, which the FCC has classified as local.¹⁰² This helps explain why wireless providers were the first to offer flat-rate long-distance plans.

Wireline companies providing flat-rate long distance plans – which most consumers prefer – have to price those plans high enough to cover intrastate access charges in the range of 14 to 23 cents per minute versus the 3.6 cents per minute (or less) that voice over Internet and wireless competitors pay. Policymakers could not only reduce intrastate long distance rates for most consumers by reducing intrastate access charges, they could also promote the availability of more affordable flat rate long distance plans. Ideally, the current system of high intrastate access charges and lower interstate access charges ought to be replaced with uniform rates.

⁹⁸ “[David Pogue’s Tech Predictions](#),” by Wayne Hanson, *Government Technology* (May 21, 2007) (“Land line phone calls will be free, because of VoIP such as Vonage, Skype and others, said Pogue. Today, you can plug an existing phone into a box that plugs into a cable modem, \$15 to \$20 per month, for unlimited calls, no taxes or fees [he hesitated briefly noting that perhaps he should avoid making that point to a government audience.]”).

⁹⁹ Huber, Kellogg and Thorne, *see* note 54, at 163-166.

¹⁰⁰ In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211, [Memorandum Opinion and Order](#) (rel. Nov. 12, 2004) (“*Vonage Order*”).

¹⁰¹ *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) 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]).

¹⁰² 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) 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 do not apply to these calls, because they are deemed “local.”).

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 voice over Internet 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 voice over Internet providers do not have to pay them and they do not apply to a significant volume of wireless traffic. Their customers may try to save money by making more use of the cheaper voice over Internet or wireless offerings. One rural phone company attempted to block its customers from accessing a competing voice over Internet service, however the FCC intervened.¹⁰³

Since voice over Internet 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 voice over Internet 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 voice over Internet and wireless offerings.

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 voice over Internet 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.

Jurisdiction to Regulate Competitive Services

One way to reform regulation of competitive communications services is to direct the agency with jurisdiction to use its best judgment in determining when regulation is no longer necessary. This is the approach Congress took in the 1996 law. It did not work.

Congress even included a provision authorizing regulated entities to petition for regulatory relief and provided that the petition will be “deemed” granted if the FCC fails to issue an appealable written decision within 15 months explaining why it is denying the petition.¹⁰⁴ Ten years later, this provision has had only limited success.

Indiana took a better approach by prohibiting its state commission from exercising jurisdiction over communications services. Nonbasic telecommunications service, commercial mobile service, advanced and broadband services, information services, and Internet Protocol-enabled communications

¹⁰³ In the Matter of Madison River Communications, LLC and affiliated companies, File No. EB-05-IH-0110, [Consent Decree](#) (Mar. 3, 2005).

¹⁰⁴ 47 U.S.C. §160.

services were placed outside state commission’s jurisdiction by the 2006 law as of Mar. 27, 2006.¹⁰⁵ Basic telecommunications service will follow after June 30, 2009.¹⁰⁶

Wireless and voice over Internet services share many of the same basic characteristics as traditional landline telephone service, and in many states the public utility commission retains jurisdiction to regulate competitive communications.

It has been argued that if the underlying objectives of regulation (protecting consumers) are valid, some services should not be permitted to escape regulation just because they rely on different technology. A related argument is that regulation of the incumbent telecommunications providers could be threatened unless regulation is expanded to cover their competitors.

The latter argument at least recognizes the fact that regulation imposes burdens such as subsidy obligations. If the same burdens apply to all competitors, regulation-based competitive advantages and disadvantages will not distort competition. But if such regulation is unnecessary, then it imposes an unnecessary cost on providers and consumers and serves only to discourage investment in the industry. The best way to “level the playing field” among competitors is to eliminate, not add, regulations.

There is no reason for a utility commission to assume jurisdiction to intervene in a marketplace that has become competitive, because the market will take care of most regulatory objectives. Partial regulation is unsustainable, so the only solution can be to phase out the current regulations. If competitive services are not expressly exempted from utility regulation, a state commission becomes a target for commercial rivals seeking a regulatory advantage, activists seeking to promote a policy agenda or even a formerly regulated entity seeking protection.

If a utility commission can 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.

Competitive Services Expressly Free From Utility Regulation		
	Voice over Internet	Wireless
Alabama	★	★
Florida	★	★
Georgia	★	★
Kentucky	★	★
Louisiana		
Mississippi	★	
North Carolina	★	★
South Carolina	★	★
Tennessee	★	★

Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee and most other states have statutes expressly exempting wireless services from state commission jurisdiction. The Louisiana and Mississippi commissions retain authority to regulate wireless services to the extent permitted under federal law.¹⁰⁷

Voice over Internet services are expressly not subject to state commission jurisdiction in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee. There is no express exemption

¹⁰⁵ Indiana Code, 8-1-2.6-1.2.

¹⁰⁶ *Id.*, 8-1-2.6-1.4

¹⁰⁷ 47 U.S.C. §332(c)(3) prevents state regulation of entry or the rates charged by wireless providers in most cases, but does not prohibit a state from regulating other terms and conditions.

in Louisiana of voice over Internet services from state commission jurisdiction. As previously noted, the FCC is currently considering whether voice over Internet is a telecommunications or an information service. If the former, it is subject to legacy telephone regulation unless the FCC elects to forbear from applying regulation (in which case the states would be preempted); if the latter, it is unregulated. But the FCC has already ruled that for jurisdictional purposes, certain voice over Internet services are interstate and therefore may not be subject to utility-type regulation by the states.¹⁰⁸ This conclusion is currently being tested in the courts.¹⁰⁹ The FCC has also warned that this preemption will likely be expanded in the future to cover similar voice over Internet services.¹¹⁰

From a business perspective, a law which expressly provides that competitive communications services are not subject to the jurisdiction of an agency which practices utility regulation would make it easier to plan massive investments in network upgrades. Investment flows not only to the arena with the least regulation but also the lowest threat of regulation.

Thus the wisest approach from the standpoint of minimizing unnecessary risk and uncertainty is for states to remove all competitive services (including wireless, voice over Internet, basic and nonbasic landline services and broadband) from state commission jurisdiction.

Broadband Deployment

Economists have found higher residential property values and more jobs and businesses in communities with broadband, particularly in smaller, more rural and economically distressed areas.¹¹¹ They also point to staggering potential savings in the cost of health care as a result of broadband.¹¹² The

¹⁰⁸ “In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission,” *Memorandum Opinion and Order*, WC Docket No. 03-211 (rel. Nov. 12, 2004) (“*Vonage Order*”) (“We express no opinion here on the applicability to Vonage of Minnesota’s general laws governing entities conducting business within the state, such as laws concerning taxation; fraud; general commercial dealings; and marketing, advertising, and other business practices. We expect, however, that as we move forward in establishing policy and rules for DigitalVoice and other IP-enabled services, states will continue to play their vital role in protecting consumers from fraud, enforcing fair business practices, for example, in advertising and billing, and generally responding to consumer inquiries and complaints.”).

¹⁰⁹ The U.S. Court of Appeals for the 8th Circuit affirmed the FCC’s decision preempting state regulation of certain Voice over Internet services in *Minnesota Public Utilities Com’n v. F.C.C.*, 483 F.3d 570 (8th Cir. 2007). The New York Public Service Commission argued that fixed Voice over Internet telephony typically provided by cable operators and telephone providers “is no different from traditional landline telephony” but the Court declined to rule on New York’s claim since the FCC preempted only the nomadic Voice over Internet services of non-facilities based competitors like Vonage and not the fixed Voice over Internet offerings of facilities based competitors like cable operators and telephone providers. *Id.* at 581. In *Clark v. Time Warner Cable*, 523 F.3d 1110 (9th Cir. 2008), the U.S. Court of Appeals for the 9th Circuit declined to rule whether Voice over Internet service provided by a cable operator qualifies as a telecommunications service which can be regulated by states, holding that the FCC has primary jurisdiction to decide this question.

¹¹⁰ *Vonage Order*, see note 102, at paragraph 1 (“Similarly, to the extent that other VoIP services are not the same as Vonage’s but share similar basic characteristics, we believe it highly unlikely that the Commission would fail to preempt state regulation of those services to the same extent.”).

¹¹¹ “[Measuring Broadband’s Economic Impact](#),” by Sharon Gillett, William H. Lehr, Carlos A. Osorio and Marvin A. Sirbu, *Economic Development Admin., U.S. Dept. of Commerce* (Feb. 28, 2006).

¹¹² Robert E. Litan, “[Great Expectations: Potential Economic Benefits to the Nation From Accelerated Broadband Deployment to Older Americans and Americans with Disabilities](#),” (Dec. 2005) (“Three types of benefits from broadband deployment and use are addressed: lower medical costs; lower costs of institutionalized living; and additional output generated by more seniors and individuals with disabilities in the labor force. Considered together,

economic impact of accelerating broadband access and use in the Southeast by 7 percent would be \$25 billion annually – ranging from \$900 million in Mississippi to \$7.5 billion in Florida – according to one study (*see* Appendix II).¹¹³

No one disputes the importance of broadband, but here has been debate for years whether current subsidies for traditional phone service should be expanded to cover not only basic but also advanced services.

As previously noted, cross subsidies have spawned the now-urgent need for lower intrastate access charges, pricing flexibility and detariffing we describe.

If lawmakers want to subsidize broadband they should employ an explicit, competitively-neutral funding mechanism. But beware. The Universal Service Fund administered by the FCC which subsidizes basic phone service has been criticized for years as wasteful and inefficient. A recent report by the U.S. Government Accountability Office (GAO) notes that Congress anticipated that competition and new technologies would eliminate the need for universal service support mechanisms, but the explicit fund grew nearly 153 percent between 1998 and 2007.¹¹⁴ Reform of the subsidy mechanisms has been seriously considered on many occasions but has proven to be politically problematic every time.

Many providers have deployed broadband networks throughout much of rural America without receiving subsidies.

Many providers have deployed broadband networks throughout much of rural America without receiving subsidies.¹¹⁵ There are some areas where broadband service remains uneconomical with today's technology, but the technology is continually improving.

An innovative public-private partnership in Kentucky has shown how broadband deployment can be deployed nearly ubiquitously without a universal service subsidy mechanism.

“When we began, 60 percent of the households in Kentucky had the ability to subscribe. Today it's about 95 percent,” says Brian Mefford, executive director of Connected Nation. “That means about 600,000 new households have been able to subscribe to broadband who could not before.” The number of people actually using broadband jumped from 22 percent to 44 percent.¹¹⁶

these three benefits are estimated to accumulate to at least \$927 billion in 2005 dollars ... This amount is equivalent to half of what the United States currently spends annually for medical care for all its citizens (\$1.8 trillion).”).

¹¹³ *Connected Nation*, *see* note 67.

¹¹⁴ “[FCC Needs to Improve Performance, Management and Strengthen Oversight of the High-Cost Program](#),” U.S. Government Accountability Office, GAO-08-633 (Jun. 2008) at 2-3 (“While considering legislation codifying universal service, the Senate Committee on Commerce, Science, and Transportation anticipated that competition and new technologies would reduce or eliminate the need for universal service support mechanisms. However, rather than decreasing, the cost of the high-cost program has grown substantially to \$4.3 billion in 2007, increasing nearly 153 percent between calendar years 1998 and 2007.”)

¹¹⁵ Testimony of Kyle McSlarrow, note 15 (“92% of American households, or about 117 million homes, have access to cable broadband service, including 96% of American homes to which cable television service is available. This investment and expansion took place without any government subsidies.” [footnotes omitted].)

¹¹⁶ “[High speed to the Hinterlands: Getting high-speed Internet to the remaining 6 percent of the population that lacks it takes a concerted effort](#),” by Gary Boulard, *State Legislatures Magazine* (Jan. 2008). *See also*, “[Faster and Stronger](#),” by Ann Carrns, *Wall Street Journal* (Jul. 28, 2008).

ConnectKentucky identified and addressed a number of factors affecting both supply (e.g., availability of market research) as well as demand.

For example, our research indicated that while industry assumed that the monthly fee was a primary barrier to the adoption of household broadband the lack of a computer at home ranked even higher. We developed No Child Left Offline as a partnership based solution. No Child Left Offline has facilitated cooperation among private partners, corporate foundations and state governments to place computers and printers into the homes and schools of disadvantaged children.¹¹⁷

Connected Nation was recently formed to foster the creation of other partnerships between the public and private sectors. Tennessee has implemented the Connected Nation model.¹¹⁸ Congress recently passed the Broadband Data Improvement Act which, among other things, creates a matching grant program to be administered by the Secretary of Commerce which will assist states entering into public-private partnerships to provide each state with a baseline assessment of broadband deployment. The grants can be used to collect data and create a geographic inventory map of broadband service in each state in order to identify any gaps in service.¹¹⁹

Alabama has established the Alabama Broadband Initiative.¹²⁰ And Florida, Georgia and Mississippi have enacted broadband tax initiatives.¹²¹ State officials are leveraging a wide number of opportunities to promote private investment in broadband.

To make sure broadband is available to everyone, lawmakers are creating incentives for providers through grants, loans and tax credits, streamlining regulatory structures and improving access to public rights-of-way. To help create demand for broadband services, legislators are promoting technology literacy among citizens by funding or encouraging distance education programs and telemedicine or health care initiatives. More and more government and public safety services are available through high-speed broadband networks.¹²²

This experience suggests that direct subsidies may not be necessary for broadband deployment.

Another lesson is that state economic development and education departments can play a valuable role promoting broadband deployment and that the goal of broadband deployment does not provide a justification for the state utility commission to retain jurisdiction of competitive telecommunications services. The Indiana legislation provided that the state's finance authority shall determine underserved areas within Indiana for purposes the state's broadband development program.¹²³

¹¹⁷ [Testimony of Brian R. Mefford](#), CEO of Connected Nation, before the Committee on Small Business of the U.S. House of Representatives (May 9, 2007).

¹¹⁸ [Connected Tennessee](#).

¹¹⁹ The Broadband Data Improvement Act became [Public Law 110-385](#) on Oct. 10, 2008.

¹²⁰ [Executive Order 42](#) (May 22, 2008).

¹²¹ "[Issue Brief: State Efforts to Expand Broadband Access](#)," by Ryan Miller, *National Governor's Association* (May 20, 2008).

¹²² *High speed to the Hinterlands*, note 72.

¹²³ Indiana Code, 8-1-33-15-16.

Consumer Protection

Cramming, identity theft, noncompliance with the do-not-call registry, fraud, spamming, telemarketing scams, unauthorized charges, etc., are all examples of real problems consumers face in cyberspace. Although utility regulation and consumer protection are related, a utility commission's expertise in network architecture, utility cost allocation or the principles of common carriage doesn't make it better suited to protect consumers than a state attorney general.

In fact, a utility commission typically acquires less expertise due to its narrow jurisdiction. This fact was evident recently when the GAO found that although the FCC received 454,000 complaints between 2003 and 2006, it closed about 83 percent without taking any enforcement action and that it has not set measurable enforcement goals, developed a well-defined enforcement strategy, or established performance measures that are linked to the enforcement goals.¹²⁴ The GAO found that the Federal Trade Commission (FTC), which has primary responsibility for consumer protection throughout the economy as a whole and which shares responsibility with the FCC for consumer protection against violations of the do-not-call list and telemarketing fraud, has set specific goals and performance measures which allows it to target its enforcement activities and efficiently use its limited resources.¹²⁵ In short, consumer protection doesn't furnish a compelling reason for maintaining state utility commission jurisdiction over telecommunications services.

In fact, states should want to ensure that consumer protection rules do not vary according to the type of service or provider, which tends to occur when multiple agencies share jurisdiction.

Consumers who are dissatisfied with their provider's service quality are now mostly free to take their business elsewhere. Consumer dissatisfaction with early termination fees (ETFs) in the wireless industry demonstrates how consumer preferences ultimately prevail in a competitive market in the absence of regulation. Sensing an opportunity for competitive advantage, Verizon Wireless voluntarily replaced its flat early termination fee with a pro-rated fee for customers who cancel their service early.¹²⁶ The rest of the wireless industry voluntarily followed suit, and today every national wireless carrier has announced they will pro-rate early termination fees.¹²⁷

Although the Indiana law withdraws state commission jurisdiction to regulate telephone services, the commission may continue to require communications service providers – other than commercial mobile service providers – to report annually on service quality when basic phone service is deregulated after June 30, 2009.¹²⁸ The commission will not have jurisdiction over quality of service aside from mandating reports, however. Although state utility commissions do have expertise for service quality issues, regulatory reform will address service quality by increasing the incentives for service providers to invest in their networks.¹²⁹

¹²⁴ [“FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations, and Additional Actions Are Needed,”](#) (GAO 08-125), U.S. Government Accountability Office (Feb. 2008).

¹²⁵ *Id.*, at 29.

¹²⁶ [Testimony of Lowell C. McAdam](#), President and CEO, Verizon Wireless, before the Committee on Commerce, Science and Transportation, United States Senate (Oct. 17, 2007).

¹²⁷ [“How to Keep Wireless Innovation Moving Forward in Arizona—Avoid State Regulation,”](#) by Steve Largent, *Arizona Capitol Times* (Jan. 18, 2008) (“The wireless industry also abides by a voluntary Consumer Code. Followed in all 50 states, the Code requires wireless carriers to make extensive disclosures to consumers at the point of sale, provide detailed coverage maps, and itemized billing distinguishing monthly charges from taxes and fees.”).

¹²⁸ Indiana Code, 8-1-2.6-13(d)(9).

¹²⁹ [“Principles for Texas Communications Law,”](#) by Raymond L. Gifford and Adam Peters, *Progress on Point* (Dec.

States should assign a single agency with responsibility for enforcing consumer protection laws to ensure uniform treatment of all commercial entities. The advent of robust competition in telecommunications makes it counterproductive to maintain redundant jurisdiction for telecommunications providers by increasing the risk of uneven enforcement which could distort competition.

2005) at 14 (“Regulation is what creates the need for quality of service in the first instance, because a ‘firm forbidden to raise rates or ordered to reduce them may react by reducing the quality of its product or service.’” [citation omitted]).

CONCLUSION

Anticompetitive tariffs, pricing inflexibility, cross subsidies, utility regulation of competitive services, redundant consumer protection oversight and broadband deployment in the hands of bureaucrats whose specialty is outdated utility regulation 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.

The main reason policymakers should undertake regulatory reform is to attract new investment to the telecom sector to deliver new technologies, improved service quality, choice among providers and lower prices for consumers. Competition rather than regulation is necessary to deliver this result, as the success of the long-distance and wireless industries demonstrate. The states that attract investment will also reap the added rewards of job creation and economic growth.

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:

- Eliminate tariff filing requirements, which harm consumers by inhibiting rapid competitive responses needed to constantly improve the value proposition of a product or service.
- Allow freedom to set prices so incumbents can develop customized offerings – such as volume and term discounts – necessary to meet or beat the competition; and so they can recover the actual cost of providing services – plus earn an appropriate return, which is necessary to attract investment capital.
- Reduce intrastate access charges for smaller rural providers and new entrants at least to the same level as interstate access charges to improve the competitiveness of traditional phone services and promote the deployment of broadband.
- Eliminate the provider of last resort obligation wherever the market is competitive and consumers can choose between multiple providers, because imposing this costly burden on one market participant but not on its rivals is anticompetitive.
- Expressly exempt competitive services – which include basic and nonbasic wireline service, wireless, voice over Internet and broadband – from state utility commission jurisdiction so the state commission isn’t a target for competitors or other suitors seeking regulatory favors.
- Don’t allow the state utility commission to intervene in the marketplace to promote broadband deployment, because economic development and public education expertise can do more good than experience in managing inefficient subsidy regimes.
- Assign a single agency with responsibility for enforcing consumer protection laws to ensure uniform treatment of all commercial entities.

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.

The favorite argument of opponents of regulatory reform is that the timing is not right because there are still some consumers who have fewer competitive choices than other consumers. But the competition which exists today is fully sufficient to protect consumers. If incumbent telecommunications providers attempt to exploit consumers by unreasonably raising prices or degrading service they will face swift punishment in the marketplace when their customers switch to voice over Internet and wireless services. Today consumers are virtual regulators.

It would be wrong to withhold regulatory relief until a certain number of competitors are fully prepared to serve every consumer or the incumbent loses a particular market share. These tests are inherently arbitrary, exploitable and nearly impossible to administer.

This is a golden opportunity for Southeastern states struggling through a recession. By removing cobwebs of regulation 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.

APPENDIX I
ECONOMIC IMPACT BY STATE

	Total Annual Economic Impact	Jobs Created or Saved Annually	Direct Annual Income Growth from the Increase in Broadband	Average Annual Healthcare Costs Saved	Average Annual Mileage Costs Saved	Average Annual Hours Saved	Annual Value of Hours Saved	Average Annual lbs of CO2 Emissions Cut	Value of Carbon Offsets
Alabama	\$1,692,307,789	33,451	\$1,118,595,872	\$10,187,810	\$99,216,165	57,715,987	\$464,036,535	50,255,886	\$271,408
Florida	\$7,531,595,950	143,405	\$5,136,752,665	\$40,072,871	\$399,029,270	227,020,858	\$1,954,649,591	202,119,981	\$1,091,554
Georgia	\$3,907,660,865	71,059	\$2,639,837,894	\$20,743,080	\$197,143,135	117,513,714	\$1,049,397,466	99,858,756	\$539,290
Kentucky	\$1,587,239,467	31,699	\$1,061,603,244	\$9,317,330	\$91,153,941	52,784,546	\$424,915,597	46,172,134	\$249,354
Louisiana	\$1,556,816,993	31,313	\$1,030,199,954	\$9,498,299	\$91,233,861	53,809,773	\$425,635,307	46,212,615	\$249,572
Mississippi	\$905,743,973	18,723	\$570,305,184	\$6,447,452	\$61,452,087	36,526,113	\$267,371,146	31,127,277	\$168,104
North Carolina	\$3,626,061,051	69,432	\$2,466,214,037	\$19,619,004	\$190,523,446	111,145,595	\$949,183,383	96,505,690	\$521,182
South Carolina	\$1,628,562,600	32,629	\$1,089,806,446	\$9,572,467	\$93,461,551	54,229,946	\$435,466,470	47,341,006	\$255,666
Tennessee	\$2,450,739,704	49,142	\$1,682,608,846	\$13,377,207	\$130,689,201	75,784,562	\$623,706,946	66,197,898	\$357,503
TOTAL	\$24,886,728,392	480,853	\$16,795,924,142	\$138,835,520	\$1,353,902,657	786,531,094	\$6,594,362,441	685,791,243	\$3,703,633

Source: Connected Nation, see note 59.

**APPENDIX II
NEEDED REFORMS BY STATE**

	Alabama	Florida	Georgia	Kentucky	Louisiana	Mississippi	North Carolina	South Carolina	Tennessee
Eliminate Tariffs	Stand-alone services and multiple services not offered pursuant to a contract require detariffing.	All telecommunications services require detariffing.	Local single-line exchange service to business and residential consumers require detariffing.	Stand-alone local single-line exchange service to business and residential consumers and vertical features available on a stand-alone basis require detariffing.	All telecommunications services require detariffing.	Stand-alone local single-line exchange service to business and residential consumers require detariffing.	Basic local exchange service to business and residential consumers require detariffing.	Stand-alone services and services not offered pursuant to a contract require detariffing.	Individual telecommunications services require detariffing.
Extend Pricing Flexibility	Stand-alone services and multiple services not offered pursuant to a contract require pricing flexibility.	All telecommunications services require pricing flexibility.	Local single-line exchange service to business and residential consumers require pricing flexibility.	Stand-alone local single-line exchange service to business and residential consumers require pricing flexibility.	Basic local exchange service to business and residential consumers requires pricing flexibility.	Stand-alone local single-line exchange service to business and residential consumers require pricing flexibility.	Basic local exchange service to business and residential consumers requires pricing flexibility.	Stand-alone services and services not offered pursuant to a contract require pricing flexibility.	Individual telecommunications services require pricing flexibility.
Reform Provider of Last Resort Standard Obligation	<ul style="list-style-type: none"> - Eliminate POLR requirement in competitive markets. - Allow POLR flexibility to utilize most efficient technology. - Allow option for any provider to become POLR in high cost markets and receive support from explicit funding mechanism, if necessary. 	- No action needed.	<ul style="list-style-type: none"> - Eliminate POLR requirement in competitive markets. - Allow option for any provider to become POLR in high cost markets and receive support from explicit funding mechanism, if necessary. 	<ul style="list-style-type: none"> - Eliminate POLR requirement in competitive markets. - Allow option for any provider to become POLR in high cost markets and receive support from explicit funding mechanism, if necessary. 	<ul style="list-style-type: none"> - Eliminate POLR requirement in competitive markets. - Allow option for any provider to become POLR in high cost markets and receive support from explicit funding mechanism, if necessary. 	<ul style="list-style-type: none"> - Allow POLR flexibility to utilize most efficient technology. - Allow option for any provider to become POLR in high cost markets and receive support from explicit funding mechanism, if necessary. 	<ul style="list-style-type: none"> - Eliminate POLR requirement in competitive markets. - Allow POLR flexibility to utilize most efficient technology. - Allow option for any provider to become POLR in high cost markets and receive support from explicit funding mechanism, if necessary. 	<ul style="list-style-type: none"> - Eliminate POLR requirement in competitive markets. 	No action needed.
Reduce Intrastate access	Reduce <i>Intrastate</i> access	Reduce <i>Intrastate</i> access charges	Reduce <i>Intrastate</i> access	Reduce <i>Intrastate</i> access	Reduce <i>Intrastate</i> access charges	Reduce <i>Intrastate</i> access charges	Reduce <i>Intrastate</i> access	Reduce <i>Intrastate</i> access	No action needed.

	Alabama	Florida	Georgia	Kentucky	Louisiana	Mississippi	North Carolina	South Carolina	Tennessee
charges	charges		charges	charges			charges	charges	
Protect Against Voice over Internet Regulation	No action needed.	No action needed.	No action needed.	No action needed.	Commission should be prohibited from asserting jurisdiction to impose utility regulation on Voice over Internet services.	No action needed.	No action needed.	No action needed.	No action needed.
Protect Against Wireless Regulation	No action needed.	No action needed.	No action needed.	No action needed.	Commission should be prohibited from asserting jurisdiction to impose utility regulation on wireless services.	Commission should be prohibited from asserting jurisdiction to impose utility regulation on wireless services.	No action needed.	No action needed.	No action needed.
Broadband Deployment	No action needed.	No action needed.	No action needed.	No action needed.	Assign primary responsibility for assisting broadband deployment to entity with economic development expertise.	No action needed.	Assign primary responsibility for assisting broadband deployment to entity with economic development expertise.	No action needed.	No action needed.
Consumer Protection	Assign sole jurisdiction for consumer protection to attorney general or agency with responsibility for consumer protection in competitive industries.	Assign sole jurisdiction for consumer protection to attorney general or agency with responsibility for consumer protection in competitive industries.	Assign sole jurisdiction for consumer protection to attorney general or agency with responsibility for consumer protection in competitive industries.	Assign sole jurisdiction for consumer protection to attorney general or agency with responsibility for consumer protection in competitive industries.	Assign sole jurisdiction for consumer protection to attorney general or agency with responsibility for consumer protection in competitive industries.	Assign sole jurisdiction for consumer protection to attorney general or agency with responsibility for consumer protection in competitive industries.	Assign sole jurisdiction for consumer protection to attorney general or agency with responsibility for consumer protection in competitive industries.	Assign sole jurisdiction for consumer protection to attorney general or agency with responsibility for consumer protection in competitive industries.	Assign sole jurisdiction for consumer protection to attorney general or agency with responsibility for consumer protection in competitive industries.