

**H.R. 1542, INTERNET FREEDOM AND BROADBAND
DEPLOYMENT ACT OF 2001**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION**

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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MARCH 20, 2002
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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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WEDNESDAY, MARCH 20, 2002

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:35 a.m. in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM SOUTH CAROLINA

The CHAIRMAN. The Committee will come to order. We will respond to our hearing on H.R. 1542, the Tauzin-Dingell measure that has been sent over from the House side. I am going to put this long statement that the staff has prepared for me in the record, to cover all the points. Let me just try to cover one. I notice that Senator Tauzin says that he wants to be assured it is not a monopoly or monopoly controled and that the users will not, as he said, suffer the penalties of monopoly unregulated service.

I have the same concern. I am going to agree in a sense with my distinguished Ranking Member that the 1996 Act had not worked in that we have yet to take the major player, the Bell Company, and deregulate them.

We thought at the time that we would use just exactly what Judge Green had used in the long distance market. He required that AT&T sell at a cold sale and there developed some 500 long distance carriers; got to be very competitive. AT&T actually downsized, made a bigger profit, and we saw the benefits of competition.

However, we were totally deceived in that there has been really no effort whatsoever to get into the Internet services, the broadband service until recently and in some competition by the cable. Because they have been holding onto their monopoly.

Let me give the representations that were given to us at the very time in February 1996 when John Clendenin, the Chairman of Bell South said, and I quote, "Bell South intends to aggressively compete for our customers' long distance business. We are going full speed ahead and immediately offering Bell South long distance service to our satellite customers. And within a year or so, we can offer long distance to our residential and business wire line customers."

U.S. West, the head of that, I quote, "Customers have made it clear they want one-stop shopping for both their local and long dis-

tance service. We are preparing to give them exactly what they have been asking for. U.S. West will be able to reach a reasonable solution on the builds checklist requirements in the majority of its states within 12 to 18 months.”

Then the same with Ameritech Bell Atlantic. This is Jim Cullen, and incidentally he was the negotiator for the Southern Bell Company that I worked with over a 3-year period.

“This bipartisan bill can enable you to do one-stop shopping for your local and long distance phone service, cable service, and Internet access service. In short, we move closer to the wondrous promise of the information age and look to Bell Atlantic to take you there. The company would start offering long distance service outside its traditional region immediately and inside its region within a year.”

Seidenberg, again, said, “Nynex will offer one-stop shopping for a full array of communications services, local, long distance, wireline, wireless Internet, video entertainment, information services; and customers will be able to package what they want the way they want it.”

Pac Bell, I quote, “Pacific Telesys said it plans to be in the long distance market in 10 to 12 months.” And then SBC, “SBC’s incentive is the freedom to enter markets such as long distance that have been closed to us since the divestiture. The key to achieving that freedom is opening the local telephone market to competition.”

That is exactly what is guaranteed by H.R. 1542: namely that it remain closed, and that is why it is not working. That is our problem today. As was previously noted by the Federal Communications Commission—the Bells still have 91 percent of the last line. Finally, to make the point, none other than I quote Chairman Tauzin on Page 576 of the Congressional Record just a few weeks ago when the bill passed the House.

He was talking to Rep. Sensenbrenner. Quote, “He and I are equally committed to watch carefully and—at the performance of these companies and others to make sure that consumers have the benefits of competition and not the penalties of monopoly, unregulated service.” That is what we have is monopoly, unregulated service.

And they are about to extend it to broadband where we have got dynamic competition. Eighty percent of the country has got it. They do not subscribe to it but that is the problem. And in that sense, Chairman McCain, I agree with you. It had not worked. That has been the big bottleneck. I yield to Senator McCain.

**STATEMENT OF HON. JOHN McCAIN,
U.S. SENATOR FROM ARIZONA**

Senator McCAIN. I thank you, Mr. Chairman. And I thank you for your commitment for many, many years to provide telecommunications services to all Americans at a lower price.

If there has been a failure, it has not been because of your lack of effort and dedication to this proposition. As you and I have worked together for many years, the majority of our agenda is taken up with telecommunications issues. And this is a Committee that has very wide and broad jurisdiction, but there are no more vital issues to the future of this country.

In 1996, Congress passed the first major overhaul of telecommunications policy in 62 years. Supporters of the Telecommunications Act argue that it would create increased competition, provide consumers with a variety of new and innovative services at lower prices and reduce the need for regulation.

My principal objection to the Act at that time was that it fundamentally regulated, not deregulated the telecommunications industry and would lead inevitably to prolonged litigation. It has been 6 years since the passage of the Act. Six years since the passage of the Act but consumers have yet to benefit from lower prices or a competitive marketplace as promised, as promised by the Act's proponents.

In fact, local telephone rates are up 17 percent. Cable rates are up 36 percent. And some companies are now raising rates on basic long distance service. I believe that Congress must face reality and deal realistically with these obvious problems.

The latest effort in the telecommunications industry is focused on purported need to accelerate the deployment of broadband services. A 2002 Department of Commerce report entitled "A Nation Online", states that less than 11 percent of Americans currently subscribe to broadband services.

When it comes to these services, there is a stark disagreement about whether there is a supply problem, a demand problem, a combination of the two, or no problem at all. The one thing all parties agree on is that Americans and our national economy will benefit greatly from the widespread use of broadband services.

Given broadband's great promise, I believe we should make sure that the government is not impeding timely deployment of broadband services to more Americans.

In order to accomplish this goal, a truly deregulatory approach cannot be narrowly focused on one particular sector of the industry. Rather, I believe that such an approach should seek deregulatory parity among all segments of the telecommunications industry and ensure that ultimately consumers will have more choices, higher quality, and lower prices.

Finally, I commend FCC Chairman Michael Powell for his leadership in working to find ways to stimulate the roll out of broadband services across all industry segments.

Under Section 706 of the Act, Congress instructed the Commission to, quote, "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans by utilizing regulatory forbearance, measures that promote competition in a local telecommunications market or other regulating methods that remove barriers to infrastructure investment", unquote.

I believe that the Commission is working diligently to fulfill the obligations set forth by Congress in Section 706 of the Act. I thank the Chairman for today's hearing. And I thank our friends, Congressman Dingell and Congressman Tauzin for appearing before us. And I hope that as a result we will work closely together to deregulate the entire industry, which should have been what happened in 1996 and unfortunately did not, at least if you look at any measurable observations of the effect of the Act. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you. The Chairman and Ranking Member of our Defense Appropriations Subcommittee have witnesses waiting. I have got the permission then to, out of order, recognize Senator Inouye.

**STATEMENT OF HON. DANIEL K. INOUE,
U.S. SENATOR FROM HAWAII**

Senator INOUE. Thank you very much, Mr. Chairman. I commend you for holding this hearing on this important measure. Regrettably as noted, I must be leaving to conduct another hearing. But before I do, I would like to say that I share your concerns about this measure.

I ask unanimous consent that my full statement be made part of the record.

The CHAIRMAN. It will be included.

[The prepared statement of Senator Inouye follows:]

PREPARED STATEMENT OF HON. DANIEL K. INOUE,
U.S. SENATOR FROM HAWAII

A preeminent goal of the Telecommunications Act of 1996 is the opening of the local telecommunications market to competition. Competition is the key to sparking innovation, improving service, and reducing prices for residents and businesses. It also is helping to drive the rollout of broadband services.

Regrettably, we have yet to realize the enormous benefits of competition, primarily because of the obstacles that have been placed in its way by the bells since the passage of the 1996 act. The Bells have dragged their feet every step of the way; instead of embracing competition, the Bells have sought to squelch it by delaying access to their networks by companies seeking to compete with them.

The record shows that when given a chance to compete, the new competitive local exchange carriers—or CLECS—have made progress in offering competition in the local markets. In New York, CLECS have captured 23 percent of the local telecommunications market; in Texas CLECS have gained a 14 percent market share; in Massachusetts 12 percent, and in Pennsylvania 13 percent. And what has been the result of these developments: lower rates and a higher quality of service to customers, as was reported in a survey by the Yankee Group. Unfortunately, the success of CLECS has been limited by the fact that former Bell companies have met the market opening provisions of the 1996 Act in only ten states.

With that said, H.R. 1542 passed the House in February. My reading of the bill suggests that it assumes that competition should only be between local phone monopolies and cable companies, on the ground that consumers are best served by having two huge players in a market. Having multiple players in a given industry results in consumers having more choice, better service, innovative products, and lower prices.

Furthermore, the Bells claim they need the legislation in order to more rapidly deploy broadband services. They argue it is too costly to upgrade their infrastructure and at the same time open their network to competitors. However, they make these claims, notwithstanding the fact that the Bells, in some cases, already have deployed DSL technology to more than 70 percent of their market areas. This statistic alone suggests that there is no need for the House bill.

The Bells claim that, through the House legislation, they are merely seeking regulatory parity with cable companies. However, while the cable industry is working, even in the absence of a statutory requirement, to open their networks to competition, the Bells, on the other hand, continue to stifle competition in their main markets. Moreover, the Bells continue to dominate the lucrative business data market—a market in which the cable industry does not compete and where CLECS are the Bells' only real competitors. The reality is that the Bells lag behind in the residential market only because they waited to deploy DSL service—and deployed only after they were faced with competition from CLECS and cable.

Having multiple players in a given industry results in consumers having more choice, better service, innovative products, and lower prices.

- In the wireless industry, the companies are elbowing each other out of the way to offer new calling and internet features at lower prices;

- as competition became intense in the long distance sector, companies began offering a variety of calling plans, collect call services, and discount cards; and
- as the market opened in the satellite industry, satellite television companies began providing free installation and highly attractive programming packages.

We look forward to a day when consumers are courted in the same way with competitive offers for local telecommunications voice and data services—from multiple local telecommunications companies, multiple cable companies, multiple satellite companies, multiple wireless companies, and multiple internet service providers.

If our concern is for consumers, I believe our choice is clear—simply allow state and federal regulators to enforce the law. State and federal regulators, however, must have the courage to do just that. Taking any action such as those proposed in H.R. 1542 would only be a major step backwards from the ultimate goal of bringing competition to the local market place, and truly unleashing the power of the Internet.

Senator Stevens.

**STATEMENT OF HON. TED STEVENS,
U.S. SENATOR FROM ALASKA**

Senator STEVENS. Thank you very much, Mr. Chairman. I too must join Senator Inouye at the other hearing. I want the record to show I have some serious problems with H.R. 1542. I do not think that it is correct in its findings which state that the 1996 Act was designed to promote competition for local voice services only.

To me that is not correct. We had numerous hearings over the four years before we passed the Telecom Act where we discussed all facets of the communications system, fiber optics packets, package switching, the Internet as a component of the information highway.

We had 25 million people on the Internet in 1995, and [Title II of the 1996 Act deals extensively with the Internet and that pornography, which shows that we clearly knew about the Internet and package switch networks that provide the Internet services] when we finished the 1996 Act.

And it is no accident that the Telecom Act makes no distinction between voice and data networks. We knew then that data would surpass voice, and we wanted to be sure that pro-competitive rules applied to all types of networks.

The statute specifically says regardless of the facilities used in the definition of telecommunication service. And I think it means just what it says.

This bill would allow the regional Bells into the long distance markets without first opening their local markets to competition, and that is just what we thought we were doing when we passed the 1996 Act. The bill to me as it stands now would send the wrong message. It would preempt all form of federal and state regulation designed to carry out the purpose of the Act in the name of deregulation.

I do think that we have to take a look at what this does, because as a practical matter the core of the 1996 Act was competition, regulatory parity, and universal service all predicated on common carrier regulation with the underlying networks and web being involved.

I am concerned. I disagree with Senator McCain. I do believe the FCC is wrong to deregulate entirely the common carrier facilities to provide Internet access. The net result will be in my opinion that

the universal service and pro-competition divisions we adopted in the 1996 Act will cease to apply to the service used to provide Internet access.

And the FCC then is going to have to devise its own rules to safeguard consumers. We will be right back where we were in 1995 before the 1996 Act. And I do not think that is a good result.

I do believe we should force the compliance with the 1996 Act and proceed from there. I do agree with the end objective of Senator McCain, and that is to find a way to eliminate the type of regulation that is unnecessary. But until we have a concept that this law is being followed, I do not think we will have that.

I do hope that we will find a way to work with our two friends from the House. They have been very cooperative with us in trying to seek out our common objectives in a series of meetings we have had with members of the telecommunications industry, but I just disagree with the basic finding of the Act and the bill that was passed in the House.

And therefore, I could not support it as it stands.

The CHAIRMAN. Senator Burns.

**STATEMENT OF HON. CONRAD BURNS,
U.S. SENATOR FROM MONTANA**

Senator BURNS. Thank you, Mr. Chairman. I thank you for this hearing today.

I want to commend Chairman Tauzin and Ranking Member Dingell for their hard work in passing H.R. 1542 in the House. I know they have been tenacious about that and in trying to do some things to ensure a build-out of broadband services into our country.

I particularly applaud them for focusing attention on the topic of vital national interest, how best to foster universal broadband deployment. I remarked previously that the bill deserves a full and fair debate in the Senate. And today's hearing constitutes the beginning of that process.

I continue to have concerns about H.R. 1542 and do not support this legislation in its present form. But the goal of the bill is a worthy one. And I look forward to working with both of you as this legislation moves down the line.

Clearly, broadband is the central defining telecommunications issue of today. We are rapidly transforming from an information society of text and words, to one of video and dynamic multimedia.

The development of this rich media is only possible through a national broadband network. And this network would be as important to the national destiny as the building of the railroads in the 19th century, and the Rural Electrification Act in the 20th century.

Universal broadband should be the national priority early in this century, the same way as putting a man on the moon was a national priority in the last one.

The question then is how to achieve this vision of universal broadband. As I remarked, I have several concerns about H.R. 1542, particularly the preemption of all state public service commission authority to regulate the rates, charges, terms and conditions of high speed data services.

Given my experiences with the Bell Operating Company currently serving Montana, I am not at all confident that this full deregulation would serve the consumers.

In fact, until very recently, it had deployed advanced services in a grand total of one Montana city. And that is in Helena, despite years of promising more rapid deployment of broadband.

In stark contrast, there will soon be 121 small Montana communities that will have advanced services, courtesy of the Montana's independent and cooperative telephone companies. Included in this list are rural communities such as Circle, Mulda and Plentywood. And let me tell you, those are not metropolises.

[Laughter.]

Senator BURNS. Now, given this positive history of smaller operators, I fully support the Senate provision being considered in the farm bill conference that provides stable funding for low-interest broadband loans administered by the Rural Utility Service.

The Senate bill takes the existing broadband pilot program and makes it permanent and provides stable funding for the next 5 years. This is perhaps the most significant action that Congress can take to stimulate broadband deployment in rural areas.

The fact is that there are companies, local cooperatives and new startups that want to serve rural America and deploy those broadband services that will create jobs and stimulate the economy. Low-interest loans are one of the most effective ways to get broadband to rural America.

I should add that the RUS telecom program has never issued a bad loan in over 50 years. The government has actually made money off of those loans. Also because of existing RUS lending rules, these loans do not go for services that are duplicated.

So we are not subsidizing a competitor against someone else. The loans will only go to service what would otherwise not happen.

Another approach I believe that has a lot of merit is offering tax credits for rural build-out of broadband. I have worked closely with Senator Rockefeller on S. 88 which would create tax incentives for the deployment of high-speed Internet services to rural, low-income and residential areas.

The bill would grant a 10 percent credit for expenditures on equipment that provide a bandwidth of 1.5 megabytes per second to subscribers in rural and low-income areas, and a 20 percent credit for the delivery of 22 megabytes to these customers and other residential subscribers. This bill has over 64 co-sponsors.

Finally, I want to touch on the idea that has been offered that the authors of the Telecommunications Act of 1996 somehow never considered Internet during the debate surrounding the bill. Well, folks, I was there, and as many of us were on this Commerce Committee here. And this simply is not the case. In fact, I authored Section 706 of the Act with the specific aim of promoting broadband technologies in rural areas. And I think it is important to keep this historical context of the Act in mind when moving forward on critical issues.

Mr. Chairman, thank you for holding this hearing today. And I look forward to working with all the principals—

The CHAIRMAN. Thank you.

Senator BURNS.—so that we can ensure that broadband does make it into rural areas.

The CHAIRMAN. Thank you. Senator Breaux.

**STATEMENT OF HON. JOHN B. BREAUX,
U.S. SENATOR FROM LOUISIANA**

Senator BREAUX. Thank you very much, Mr. Chairman. Thank you very much for having this hearing. I would not miss it for all of the tea in China. You know, Washington may——

The CHAIRMAN. Let us get to the entertainment.

[Laughter.]

Senator BREAUX. You are right. Washington may not get the Mike Tyson heavyweight fight, but we have certainly got a heavy-weight battle today between long distance carriers and the local carriers.

I think we all want to talk about how everybody is committed to one thing. We all want to have a level playing field. I must have heard the term, “let us have a level playing field for all the competitors” since we started working on this legislation back when we first passed it.

And we still continue to say, “well, we want a level playing field.” And you ought to look at what is happening. I know in my State of Louisiana in a local service area I have got the cable companies, which are clearly monopolies, providing video, movies, communications over cable, as well as broadband Internet service.

They are a monopoly. They are not regulated. If the local phone company wants to do that, they have to meet all kind of rules and regulations and standards. You have got satellites doing the same thing in local communities that are providing broadband services, they are providing movies and videos. And they are not regulated and no one is opposing that.

So it seems that what you have right now in fact is a very unlevel playing field that the legislation is trying to address. I am not sure it is the perfect answer to the problem in creating a level playing field, but I think certainly something has to be done in this area.

When local companies go into new broadband services having to sell those services to competitors at less than the cost, is that a level playing field? It does not seem like it is to me.

If I was in business and had to come out with something new and innovative and had to sell it to my competitors for below what it costs and then they say, well, go compete on a level playing field, well, that is not a level playing field. And I think that there ought to be some way to establish what I think everybody can agree with and that is equal competitors. I want competition. I do not want to have just one phone company. I do not want to have just one cable company. But we have got that.

And I think that is patently unfair and look forward to the testimony. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Brownback.

**STATEMENT OF HON. SAM BROWNBACK,
U.S. SENATOR FROM KANSAS**

Senator BROWNBACK. Thank you, Mr. Chairman. And thank you for holding the hearing today. You did not have to do this, to hold this hearing, but it is good that you did so that we could get into this debate. And I think it is a good debate. We need to have this debate.

As I look at how we can grow our economy in this country over the next several years, I think this issue of broadband deployment and high-speed Internet access is one of the key ways that we can really grow this economy, along with issues like trade and some other items there.

I think this is one of the really key debates. And we are all, I think, kind of struggling with the past Act and we are saying, well, it covered this issue, it covered that issue. It did this. It did not do that.

I would ask, I think we all ought to look at where we are today and how we can grow this economy and what do we need to do to move forward, not whether somebody complied with what was the intent of this Act or that one.

What we have got is a situation that is different today than it was in 1996 when the Telecom Act passed. That is not to say that we just look past the Telecom Act. We do not. It is law. It is as it should be.

But we have got a different situation that is out there today. And I would hope we could look just at that. Our society is transitioning from an analog to a digital world characterized by bandwidth intensive Internet applications and broadband connections.

This transition I believe holds great promise for continued industry innovation and productivity as well as opening up a whole new world for consumer and community access to information, entertainment, education, health care.

The digital revolution—the emergence of broadband connectivity—could be the largest factor in the continued economic growth and development of our nation in the 21st century.

Broadband connections are having a powerful impact on underlying service industries. Cable TV, wireless, satellite and telephone companies are converging with each deploying new technologies that will permit them to offer the same voice, video and data services over their respective platforms.

Broadband connections will enable cable TV subscribers to make phone calls over the cable network, and telephone subscribers to watch multi-channel video over the telephone network. Broadband could usher in a new era of intermodal competition in telecommunications.

Incumbent local telephone companies are heavily regulated in the broadband space. And their cable competitors are not. This regulatory disparity saps incentives. Telephone companies and consumers are the people that suffer for it.

Broadband services offered by incumbent phone companies are available only sporadically and tend to be less capable than the existing and anticipated services of their cable competitors.

This ensures that phone companies that exist with existing connections to most homes in America are not putting real competitive pressure on their intermodal competitors.

These developments raise the ultimate question as put forth by the Tauzin-Dingell bill and by legislation that I put forward last year, the Broadband Deployment and Competition Enhancement Act of 2001. And that is this question: How do we balance our commitment to the Telecom Act's, local telephone market opening provisions which everybody agrees with, yet also recognize and provide for the continued deployment of intermodal competition which everybody around this table would agree is taking place at this point in time now.

I think that is the central question that we should focus on. And I would hope that all of us working together could see ways that we could come up with that solution.

I do not think that should be an overly difficult process for us to do. I think tax credits are important as Senator Burns talked about. Loan guarantees I think are important as well on this as a number of other people have cited.

Yet, I also believe that regulatory reform is going to have to serve as one of the cornerstones to be able to get this done. And I would really hope that we as members looking at the national economy (and I think all of us would agree this is one of the major things that can grow this economy in the future to make it a competitive force), we should be able to craft those tools that we have (whether it is tax credits, loan guarantees, regulatory incentives, or deregulation) to be able to come up with a national broadband strategy that helps us move this economy and this industry on forward.

I think we ought to seek to do it just that way. Thank you, Mr. Chairman.

The CHAIRMAN. Let the record show I am a co-sponsor of the Burns' bill. Senator Smith.

**STATEMENT OF HON. GORDON SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Thank you, Mr. Chairman. I was not a Member of this Committee in 1996 when the Act was passed. But I have seldom encountered a more technical and complicated issue than this. And so I am here to learn and listen and anxious to hear our witnesses, so I will be very brief.

I think that access to broadband will truly determine whether a community flourishes in the new economy or is left behind. I thank you, sir, for this hearing because we are now beginning to work on closing the digital divide that will help ensure all Americans have choices for high-speed Internet services.

I am concerned that the service disparity may be growing wider and wider throughout this country and potentially affecting rural America.

The CHAIRMAN. Senator Smith, if you would hold just a minute. I understand, Billy, there is a vote on in the House and there is about 10 minutes left. If you all want to make that vote while we finish up with these opening statements?

Mr. TAUZIN. I think it is a vote on the journal, Mr. Chairman, and we are OK to pass on it.

The CHAIRMAN. Thank you. Excuse me. I apologize.

Senator SMITH. That is fine. Mr. Chairman, I want to make sure that no one is left behind in the new economy. Millions of Americans in small towns and rural areas and inner cities are blocked at the on-ramp to the information superhighway because they just cannot get broadband services.

And while I am still weighing some of the difficult issues implicated by the Tauzin-Dingell bill, I am certain of one thing: public policy needs to encourage all potential providers to deploy new last mile broadband facilities.

And that includes the incumbent phone companies and the competitive local exchange carriers. We need to continue to debate the issue to find ways to encourage more investment in competition. Making high bandwidth, high-speed broadband widespread and affordable is going to require tens of billions of dollars of risky investment by any company in the telecommunications industry.

The companies who take the risk of deploying the last mile of broadband facilities should get the benefit if they succeed.

I thank Chairman Tauzin and Representative Dingell for taking the time to appear before this Committee. And I thank you, sir.

The CHAIRMAN. Thank you. Senator Carnahan.

**STATEMENT OF HON. JEAN CARNAHAN,
U.S. SENATOR FROM MISSOURI**

Senator CARNAHAN. Thank you, Mr. Chairman, for holding this hearing today and for your leadership on these issues. I am pleased that we are continuing to consider the issue of broadband high-speed Internet services. As policymakers, we must remain focused on how we can help our nation, our entire nation, realize the vast benefits that high-speed Internet services offer.

It is important that we do so while maintaining robust competition in the provision of local telecommunications services. First and foremost, we need to ensure that current generation broadband services are available to all segments of the population. We must look at how to ensure that the benefits of broadband are available in rural America, in our inner cities and to lower income Americans.

We should also consider how we can generate increased demand for the services that are currently available. The Congressional Record, I am sorry, the Congressional Research Services reports that while approximately 85 percent of households have access to broadband services, less than 15 percent choose to subscribe.

At the same time, Mr. Chairman, we should be looking ahead at promoting the roulette of even more advanced broadband services. We need to redouble our commitment to improving the capability, reliability, and availability of high-speed data networks.

In doing so, we should ensure that our policies reward innovation, encourage investment and promote job creation. Hastening the deployment and utilization of high-speed Internet services has the potential of reinvigorating our economy and fueling economic expansion.

Broadband can spur growth by creating jobs, educating our work force and increasing productivity. If America is going to continue to lead the way in the new economy, we must focus on a pragmatic, common sense broadband agenda that we can enact now.

Again, Mr. Chairman, I appreciate your leadership on this timely issue and I look forward to hearing from our witnesses.

The CHAIRMAN. Thank you. Senator Boxer.

**STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. Mr. Chairman, I will be very brief. I want to see affordable broadband deployment as soon as possible. I agree with my colleagues who said this is crucial for our economy. And I want to see it in rural areas and I want to see it all over the country.

But I want to see it in a way that is fair to consumers and that means competition. Mr. Chairman, in California 45 percent of our people have no access to cable modem service, no access. So if we get a situation where we freeze that and there is no competition, 45 percent of my state is going to be disadvantaged.

And we have 34 million people in our state. So this is a very important point. So I am concerned about Tauzin-Dingell because essentially we freeze in that monopoly situation in 45 percent of my state.

So in conclusion, three principles will guide me as we reach a solution. That would be swift deployment, in other words a policy that would lead to swift deployment, consumer support for what we do, and competition. Thank you.

The CHAIRMAN. Thank you. Senator Dorgan.

**STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, thank you. There is a certain pageantry about opening statements in the Senate, especially when we have an audience of House colleagues.

I must say, as I said before, I am so tired of in the morning standing before a mirror shaving with the television set on and hearing about Tauzin-Dingell.

[Laughter.]

Senator DORGAN. The one side describes it as a cure for hiccups and gout and virtually everything else that ails mankind, and the other says it is a precursor to economic collapse.

We have been listening to these claims for, what, 2 years now. I have no idea how much money has been spent for and against that bill, but simply the bill is not going to pass the U.S. Senate. That is a starting point.

And I think my colleagues have described it, a circumstance where we have all had some tough experiences with deregulation in areas where we have had in North Dakota for example we deregulated in this country the airlines, and we ended up with less service that cost more. We deregulated the railroads, we end up with less service that costs more. We have had really a bellyful of deregulation. What we really want is an opportunity to have the build-out of advanced services. And I must say to my colleagues, I was dismayed to see in Congress Daily this a.m. that Tauzin-Din-

gell supporters are sending a signal to senators that they are going to strip this provision out of the Ag Bill, as my colleague from Montana described.

They are going to do that so they will send a message to Senators that they will not get anything on broadband without accepting Tauzin-Dingell. There are a lot of ways to solve this issue. There are many different approaches.

I have introduced The Broadband REA Program, part of which is now in the Ag Bill and conference. That is one approach. There is a tax credit approach. There are several different ideas.

I think in the end all we care about is an aggressive, robust build-out. And that is not going to happen in my judgment with Tauzin-Dingell because that is not going to pass the Senate. I am anxious to hear the witnesses. I will defer the rest of my statement later.

The CHAIRMAN. Senator Allen.

**STATEMENT OF HON. GEORGE ALLEN,
U.S. SENATOR FROM VIRGINIA**

Senator ALLEN. Thank you, Mr. Chairman. Thank you for calling this hearing today. And I want to thank both Congressman Tauzin and Congressman Dingell for appearing here today.

I want to associate myself with the sentiments expressed by Senator Burns. They are pretty much the way I look at it, and also Gordon Smith, having not yet made a decision on this as we are trying to keep track of who is for and who is against it.

I think we all agree that the rollout of greater access to broadband is absolutely essential for our country, for people, for communications, for education, for medical services and in making sure there is no digital divide based upon where people live.

Looking though at the current landscape of broadband, the number of subscribers continues to increase at a relatively healthy rate. However, the number remains small in comparison to the number of subscribers who have access to broadband service.

It previously was mentioned that the FCC in particular found that high-speed services were available in each of the 50 states. Approximately 78 percent of the ZIP codes in the U.S. have access to high speed services.

However, only about 10 percent of households or approximately 10 million people subscribe to broadband service. Now, this would suggest a significant lack of consumer demand, to some extent corporate demand, but mostly consumer demand that I think needs to be addressed to further advance broadband deployment.

This is clearly an economics issue. There is a major investment necessary to deploy broadband, especially if you are digging a lot of dirt, as Senator Burns says, with fiber optics and you want to get a rate of return on it. If people do not see a value in paying higher prices for monthly broadband service than their current Internet service, that is simply a consumer demand matter.

The point is that this is not a simple question of, if you will, if you build it they will come. Because that is obviously not happening.

Now, we are all eager to find ways to promote the build-out of broadband capabilities. There are a host of other complex issues be-

yond Tauzin-Dingell that have to be addressed such as the availability of compelling content. Spectrum allocation reform is clearly a part of it. And we had a hearing on intellectual property protection that hopefully would be handled by the private sector but nevertheless if we eventually get more compelling content, then people will see a value in purchasing broadband because it will be more valuable to them.

I also understand part of this bill is beyond the supply side concerns. And it does have to do with competition. Most people who have access to broadband currently—two-thirds I believe receive it from cable sources, as Senator Boxer of California talked about their situation in that state. I understand that the incumbent local exchange carriers are looking to change this by amending both the Communications Act of 1934 and the Telecom Act of 1996.

I have not yet determined that by simply amending both these communications acts, and providing the so-called ILECs with deregulatory incentives will miraculously cure us of the broadband deployment problem. I do think we need to take reasonable action from a business economics perspective as well as a rural community empowerment perspective.

And I think that, personally, Senator Rockefeller's bill is a good approach with incentives to handle that.

But the point is that there are major stakeholders in this. They all need to be considered. And I am not sure which we will come out for. That is what we take votes for, to find what is the best and most preferred route.

I thank you for having this hearing. And I look forward to hearing comments in this hearing and many other hearings on how we all can effectuate the goal we agree upon. We may disagree on some of the methods of doing it. But thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Kerry.

**STATEMENT BY HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator KERRY. Mr. Chairman, thank you very much both for the hearing as well as for your long-term leadership on this. I will not be too long but let me say a couple things, if I may.

I know that you, Senator McCain and others have said very clearly how you feel about the road traveled with respect to the Bells and their obligations and promises. I think everybody here would agree that the expectations of 1996 have fallen short in many regards. I support your observations with respect to that, Mr. Chairman.

But I do think we have to also recognize, I mean, I remember that 1996 debate as other members here do. And I think the truth is that the world we were talking about then, and despite some of the language have come back and reviewed it that seems to embrace a broader understanding of the marketplace.

The truth is we were mostly focused on telephony. We really did not have the full vision in front of us of the world we are operating in today.

And so we have some very powerful entities that are fighting over the access to market share and ultimately the distribution of

revenue that will come from that. And we have really got a couple of different worlds competing here and now.

I mean, it has changed. I do not support Tauzin-Dingell as it is now, nor do you, Mr. Chairman, or other members here. But I think that our friends in the House have frankly done us all a significant service by bringing to the table a critical debate for all of us about what the architecture is going to be like now and what steps we are going to take to create a true advanced network architecture.

You have got the Bells versus the competing carriers struggling with telephony. And most of the focus, Mr. Chairman, and so to your disappointment is in the field of telephony. But then you have the Bells versus cable, satellite, wireless, et cetera, in data.

And data, as we all know, is the battleground today. To some degree I think it is honest to say that telephony is perhaps even just an ancillary. There is still revenue there but it is not what this battle is about.

And so for all of us here on this Committee, I would like to see us think about this in a larger sense, if we could. There are roughly 10 million homes that presently subscribe to some form of high-speed Internet service. And that marketplace is dominated by two industries: The cable industry with its cable modem service and then the phone companies with DSL.

The cable companies have approximately 70 percent of market share and they offer service to about 80 percent of American homes. The phone companies have about 30 percent of market share and they offer service to about 50 percent of American homes.

Both of them provide offerings to consumers with bit speeds of about 500 kilobytes per second which is OK. It is good for speedy web browsing, but frankly it is limiting otherwise.

Now, the way I think we ought to sit through this is sort of think of this a little in larger terms. And I agreed with Senator Brownback. There has to be a way for us to find a way through the pricing mechanisms and the regulations scheme currently of the FCC.

A recent study by the OECD found that the U.S. is now fourth in the world behind Korea, Canada and Sweden in per capita broadband subscribership. In Japan, NTT, Tokyo Electric Power and other companies are competing to roll out fiber to the homes.

The Korean Government has an official policy to provide 20 megabytes per second to 85 percent of Korean homes by the Year 2005. Our situation is embarrassing by comparison.

As opposed to Korea which has a goal of the 20 megabytes per second system, we seem to be satisfied with competing systems that are less than 3 as valuable.

In contrast to Japan where companies are rolling fiber to the home, we are still debating how to get fiber anywhere outside the central office. And at the end of 2001, there were only 16,000 fiber to the home residences in the United States.

Now, aside from the benefits of movies, high-definition television and home entertainment, advanced speeds would provide tremendous advances for our country in terms of telemedicine, distance learning, worker training and a myriad of other applications.

Some people say there is no market for that. I do not believe that. And I do not think most people here do.

Another problem that is ancillary to that that we have not yet dealt with is the question of the protection of what is on broadband. One of the reasons some people who have the capacity are not putting more interesting things on broadband is they cannot protect it.

So this Committee has a very important obligation in front of them, Mr. Chairman, which is to try to find the midstream in a sense, that sort of fairness in how you impact and do not choose winners and losers but in fact create a structure that provides adequate incentive.

Pat Moynahan, Jay Rockefeller and I sat down to write an incentive for the deployment of those systems. We came through the tax credit group but there are other ways to do it. And I hope, Mr. Chairman, these hearings, while this bill is not going to pass in its current form, my hope is this Committee working with you and under your leadership can find a way to satisfy the remaining telephony needs but not shortchange the longer-term broadband needs of the nation. And I thank you.

The CHAIRMAN. Thank you. Senator Ensign.

**STATEMENT OF HON. JOHN ENSIGN,
U.S. SENATOR FROM NEVADA**

Senator ENSIGN. Thank you, Mr. Chairman. I think that holding this hearing today is very valuable. One of the most, I think it was mentioned before, one of the most complex issues that I have certainly come across simply because you have one side telling you a set of facts and looking at it one way and the other side saying virtually the same facts, sometimes maybe with a little different spin on it, and the exact opposite consequences as a result of those facts.

Our job, I believe, as policymakers is to determine what is going to be the best policy for America citizens, American business and as Senator Kerry was just talking about, for keeping America competitive in the global marketplace.

You know it is—the term has been said build it, we use this in Las Vegas, build it and they will come. I think if we look at the deployment of broadband, it is deploy it and they will invent it. There are so many technologies and applications that we cannot even foresee today that if we have broadband deployed in a much greater degree today than it is, that we will have technologies we cannot even fathom today.

But also one of our jobs when we do this legislation is to prevent that dangerous law, the most dangerous law of all it seems up here, and that is the law of unintended consequences.

Sometimes we do things up here without knowing what the adverse consequences of what our actions are going to have and so we have to be very careful when we are messing with such a huge part of the marketplace.

So I think that some of the stated goals here I would agree with. Affordability for the consumer and having a lot more competition in the marketplace. Those goals are laudable goals and that is what we should be looking at doing.

And I think it is going to be important for all of us, whichever position anybody stakes out is to be willing to work together and look for the benefit of Americans when we come with final legislation. And I will submit my official statement for the record without objection.*

The CHAIRMAN. Senator Fitzgerald and Senator Lott, I have got a note from Senator—as you have heard, Chairman Dingell has to leave here momentarily. If you all would make it short, I would appreciate it. Senator Fitzgerald.

Senator LOTT. Let me just say, Mr. Chairman, I would like to yield my time actually because I would like to hear the witnesses.

The CHAIRMAN. That's fine. Good. How about Senator Fitzgerald?

**STATEMENT OF HON. PETER G. FITZGERALD,
U.S. SENATOR FROM ILLINOIS**

Senator FITZGERALD. Yes. I just want to welcome you to the Committee. The one thing I will be looking at is I am simply concerned about the idea of kind of moving the goal post on people who have already invested a lot of money, created companies, done public offerings to create competitive local exchange carriers, and I am concerned about the perception that we are changing the rules in the middle of the game.

So I would appreciate your addressing that issue. And I want to compliment you on the hearings you did on Enron over in the House. I thought you both did a great job. Thank you.

The CHAIRMAN. Thank you. Chairman Tauzin and Mr. Dingell? Chairman Tauzin, you ordinarily would go first if you want to yield to—

Mr. TAUZIN. I have suggested to my colleague—

The CHAIRMAN. We have a note there that you have to leave.

Mr. DINGELL. I will wait my turn.

The CHAIRMAN. The Committee welcomes you both. There are no two finer Congressmen, no two finer leaders in the Congress. I have said time and again the only thing I like about H.R. 1542 are the authors.

[Laughter.]

The CHAIRMAN. Mr. Dingell, we welcome you and would be delighted to hear from you at this time.

Mr. TAUZIN. I think John asked that I go first.

The CHAIRMAN. OK.

**STATEMENT OF HON. W.J. "BILLY" TAUZIN,
U.S. REPRESENTATIVE FROM LOUISIANA**

Mr. TAUZIN. Mr. Chairman, first let me express to you our mutual respect and admiration of you and this Committee. Mr. Dingell and I come as Mr. Brownback said, to a hearing that you didn't have to call. And I want to thank you for calling this hearing, giving us a chance to come and begin this debate. Because it is a critical one for our country.

I also want to make it clear that we didn't come to blow steam. We didn't come to do anything but agree with you that our goals are mutual. We want competition both in the local market and we

*The information referred to was not available at the time this hearing went to press.

certainly want to build a competitive frame upon which broadband services can be built, delivered, and in fact new services and contacts may be developed for the benefit of our country.

And third, to my Cajun friend from Louisiana, Mr. Breaux, we certainly don't expect the Tyson-Lewis fight here. Your ears are safe, and so are ours, I hope.

[Laughter.]

Mr. TAUZIN. We have struggled too hard to come here, Mr. Chairman, and leave for a vote on the Journal, I assure you. And we deeply appreciate the chance to visit with you.

Let me say, first of all, I know that he's left, but I think Senator Kerry did a masterful job of laying it out. There was a time, Senator Dorgan, when the Chairman of the Commerce Committee preceded me, he said very clearly, that the Tauzin-Dingell bill will never pass the House. And he was right.

The Tauzin bill in that form did not pass the House. The House like the Senate takes suggestions, suggested legislation from each one of us and works their will, Committee process, change the bill mightily, the floor changed it again.

It is a different product than the Tauzin-Dingell bill that the Chairman who preceded me promised would never pass the House. It didn't. I don't expect the Tauzin-Dingell bill as it came from the House to pass the Senate either.

I fully expect the wisdom of the Senate and the wisdom of this Committee will be employed to find your own way of achieving what we have all described today as mutual goals, which is incentivizing competition and growth and development content, all these new systems at the same time, making sure the Bells do in fact open up their local markets in full and vibrant telephone competition.

We gave our members on the House side a chance to speak and 271 of our colleagues joined my good friend John Dingell and I in passing this bill to you for your consideration. And the debate in the House was focused, was extremely focused on a simple question. What's the best way to foster the rapid ubiquitous deployment of broadband networks and services and ensure that we have a vibrant, competitive marketplace where the winners and losers would be picked by the consumers of America, not by you and I; exactly as Senator Kerry said.

It required members to make a single determination, whether they define competitive marketplace based upon facility-based competitors, competing against each other using their own infrastructure and their own different systems, and technologies. Or was competition to be defined as multiple competitors piggybacking on the Bells' network and the facilities at below cost rates.

And I am going to quote an interesting gentleman to define the terms of that debate. Senator Breaux, you put your finger on it very accurately.

The Chairman, I'm going to quote the Chairman of AT&T, Chairman Michael Armstrong. He said, this is a quote, "No company will invest billions of dollars to become a facility-based broadband services provider if competitors who have not invested a penny of capital nor taken an ounce of risk can come along and get a free ride on the investments and the risk of others."

That, Mr. Chairman and Members, is what the House debate was all about. And the House made it clear, if you are willing to take the risk and spend the capital necessary to make broadband services available to consumers in America, you should not have to let your competitors get a free ride on your investment at below cost rates as you said, Mr. Breaux.

That's the crux of H.R. 1542. It is to give everybody the opportunity to take the risk, invest in broadband. And everybody has that opportunity to then reap the rewards of doing so as they build new content and new services for the American public, again as broadly defined as Senator Kerry did, not just voice and video and pictures and pretty HDTV signals and movies, but long distance medicine, learning, and all the massive amounts of new forms of competitive advantage our country's companies can have in the world if we build these efficient broadband networks for the companies and employees to continue the growth of the American economy.

We are told if our bill passed, by one study at one point, two million new jobs flows from it. As we begin to expand rapidly the growth of these new inventions and the new products that would come, if in fact we do this.

Let me add that H.R. 1542 has a stick as well as a carrot. And Mr. Chairman, I hope you give this real thought as you consider what you might do in the Senate side. H.R. 1542 requires that the Bell companies provide broadband to all their subscribers within 5 years, a build-out to 100 percent of the country in 5 years.

No other company or group of companies has had such an unprecedented obligation imposed upon them. But this bill imposes it.

We have all heard and seen on TV what the opponents say about the bill. They say that if they can't use the Bells' broadband facility under current regulatory framework, they'll go out of business and the Bells will have a monopoly on broadband. That, Mr. Chairman, is simply not true.

I cannot say it stronger. It is not true. The cable industry controls today about 70 percent of the broadband market. If we risk any group of companies gaining a monopoly from broadband, it's the cable companies.

They are unregulated. And they have currently got the dominant position in the marketplace. If we do not deregulate the telephone companies and give them a chance to compete against the cable companies, we risk having to come back here one day, in a couple of years, and to reregulate broadband services offered by the cable companies.

You and I don't want to have to do that. There is nothing in the law or in this bill, Ms. Boxer, that prevents the cable companies from reaching out to that 45 percent of California and offering competition to the DSL service. It could be provided by the Bells in even greater measure if this bill passes.

This is about having wire competition as well as hopefully nonwire and satellite and other forms of competition.

Second, H.R. 1542 does not prevent the Bells' competitors from using the legacy parts of the Bells' network. I think it was Senator Inouye who talked about the concern that, Fitzgerald rather, talked about that nothing in our bill should put some new goal post up,

take away the rights of the CLECs who are currently using the legacy systems.

Nothing in our bill does that. The bill continues the ability of the CLECs to completely use the legacy systems under rules and regulations covered and set by the Commission.

Furthermore, we added a Buyer-Towns Amendment to the bill on the floor after tricky polymetric attempts to keep us from offering it. That provision imposes upon the Bells the obligation to allow its new broadband facilities, its new wires, its new remote term lists, its new de-slams, allow all those facilities to be used by the competitor CLECs at rates, terms and conditions set by the Commission, not by the Bells.

So it not only preserves the CLEC's current rights to use the Bells' wired legacy system, it gives them the rights under terms, conditions set by the Commission and prices set by the Commission to use the new facilities built by the Bells.

Don't let anybody tell you we moved the goal post back. It just isn't true.

Competitors have also argued that they will go out of business because after the deregulation provided in H.R. 1542, there are no rules left to enforce. Well, there are plenty of rules left to enforce. H.R. 1542 does not change any of the rules for basic telephone service. None. Furthermore, in an amendment offered by Mr. Upton, Mr. Chairman, it's a big important amendment. It provides the hammer that the Commission asked us here in Congress to give them.

It increases the penalties on nonperformance of the Bells in offering competitors rights to use the systems in Montana, Senator, by 10 times. It doubles those penalties if they are repeat offenders to 20 times. And it gives the Commission something it doesn't have today, cease and desist enforcement authority to force the Bells in your community to treat the CLECs right and open up the local markets. That is all new in this bill added to the House floor.

Well, we finally heard that because only 10 percent or 11 percent of Americans subscribe to broadband, we really just face a demand question. That's a question, Senator Allen, I think you talked about.

Remember Pet Milk, Senator, in Louisiana? I know John has heard of it. Louisiana people thought Pet Milk was the name of canned milk, because it was the only form of canned milk offered in the stores in my state in the country or where I grew up along the bayous.

We didn't learn until much later there were other forms of canned milk. And the reason we didn't know there were other forms of canned milk, because when you have got one store in town, they sell one product. You don't get that enriched content. You don't get the other forms of products and services when there is only one store in town.

You know what you get when you've got one store in town. You get bad prices, bad terms, bad products, bad attitudes. When you get more stores in town, you know what you get? You get different forms of canned milk.

And you learn that Carnation makes a canned milk, not just Pet. And you learn those. You learn about new products. More importantly, you get a variety of new content in those stores.

And companies begin competing for shelf space and they treat you better and prices go down. Look at the wireless telephone marketplace. When we deregulated it, we compete and created competition, competitive services, the rates plummeted, giving phones away just so you use their service today. The same thing can happen in broadband if we are smart enough to deploy more, not less of the pipes that are needed to create that rich content, Senator Allen, you and I want to see happen in this country.

Finally, let me say, Mr. Chairman, we have two options. We gave the House two options. We can either as Senator Breaux said create a level playing field for these new participants in these broadband services. We can do it one of two ways.

We can either say to the telephone companies, we are going to deregulate you and let you compete against cable companies so all of America has a chance to get service and products in more than one store on the ground, or we are going to have to come back here and regulate the cable companies, so that the cable and telephone companies are similarly treated in this country.

Now, I choose the former. And the House chose the former by overwhelming number. It is better to have a competitive marketplace where consumers regulate that market by picking the winners and losers and choosing the best services and forcing them to compete. That is the choice the House made.

Now, look, you guys are bright. You ladies are bright here, just like the House members are bright. We don't have a human monopoly on the wisdom of these two bodies.

If we haven't done it the way you want to do it, find a different way. Find a better way. But in the end, let's create that level playing field, John. Let's make sure that all Americans have more than one store to shop in for these vital services.

And let's make them fight so hard for our business that they create all that rich content, all those new forms of Pet Milk, and they give us all kinds of varieties and quality of services that this country deserves, not just in pretty pictures but all those things Senator Kerry described.

That is what this fight is about. Mr. Dingell and I are tenacious indeed. Because we really believe, as I know all you do, that these kinds of services are critical to America. They have been bottled up too long.

It's time for us to open up that bottle and let the genie out. And that is what our bill tries to do. If you have got a better way to do it, sir, I am anxious to hear it and anxious to work on it.

[The prepared statement of Mr. Tauzin follows:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN,
U.S. REPRESENTATIVE FROM LOUISIANA

Chairman Hollings, Senator McCain, and other distinguished Members of this Committee, thank you for the opportunity to appear before you today to discuss with you H.R. 1542, the Internet Freedom and Broadband Deployment Act. I appreciate your willingness to permit my good friend John Dingell and I to explain this very important bill to you, and to inform you of the key changes made to the bill on the House floor.

Three weeks ago today, 271 of our colleagues joined John Dingell and I in voting to pass H.R. 1542. It was a hard-fought, well-advertised battle to determine the future of our national broadband policy framework.

Two hundred and seventy-three Members of Congress voted to keep the Internet free from onerous, burdensome regulations. Two hundred and seventy-three Members voted to keep the Internet out of the hands of meddling state bureaucrats. Two hundred and seventy-three Members voted to change how broadband services are regulated, and against the status quo. Two hundred and seventy-three Members voted against applying legacy telephone rules to broadband infrastructure.

The debate in the House was focused on a fundamental question: What is the best way to foster the rapid and ubiquitous deployment of broadband networks and services, and ensure that we have a vibrant, competitive broadband market?

The debate in the House required Members to determine how they define a competitive broadband market. Was it to be defined as facilities-based companies competing against each other using their own infrastructure and often different technologies? Or was competition to be defined as multiple companies piggy-backing on the Bells' network and facilities at below-cost rates?

Well, Mr. Chairman, the House decisively stated that real broadband competition is facilities-based broadband competition. The House declared that every company, not just newcomers, not just companies using certain technologies, should be given the same incentive to invest in broadband infrastructure. That incentive was summed up best by AT&T—yes AT&T—Chairman Michael Armstrong. He said that “no company will invest billions of dollars to become a facilities-based broadband services provider if competitors who have not invested a penny of capital, nor taken an ounce of risk, can come along and get a free ride on the investments and risks of others.”

That, Mr. Chairman, is what the House debate was about. And the House made it clear: “If you are willing to take the risk and spend the capital necessary to make broadband services available to consumers, you should not have to let your competitors get a free ride on your investment.” That is the crux of H.R. 1542—everyone has the opportunity to take the risk necessary to invest in broadband and everyone has the opportunity to reap the rewards. And that is why this bill will lead to widespread broadband investment and innovation.

Let me add that H.R. 1542 has a stick as well as a carrot. H.R. 1542 requires the Bell companies to provide broadband to all of their subscribers within 5 years—a buildout to 100 percent of the country. No other company or group of companies has had such an unprecedented obligation imposed upon them.

We have all heard, or seen on TV, what opponents say about H.R. 1542: They say if they can't use the Bells' broadband facilities under the current regulatory framework, they will go out of business and the Bells will have a monopoly on broadband customers.” That, Mr. Chairman is simply not true.

First, the cable industry controls 70 percent of the broadband market today. If we risk any group of companies gaining a monopoly over broadband, it is the cable companies, not the Bells. If we do not deregulate the telephone companies, we risk having to come back here in a couple of years to re-regulate the broadband services offered by the cable companies.

Second, H.R. 1542 does not prevent the Bells' competitors from using the legacy parts of the Bells' networks to offer broadband services. Nothing in the bill prevents this. And the legacy parts of the Bells' networks provide the platform upon which competitors can build their facilities and provide broadband services.

In addition, with the passage of the Buyer-Towns Amendment on the House floor, H.R. 1542 now goes even further in providing competitors with access to the Bells' facilities than John Dingell and I had originally envisioned. The Buyer-Towns Amendment ensures that competitors get access to the “last-mile” fiber facilities deployed by the Bell companies at FCC-regulated rates, terms, and conditions for the provision of broadband services. So, under the Buyer-Towns Amendment, the competitors don't have to build any “last-mile” facilities, even fiber, and the FCC still decides what the appropriate cost of using the Bells' facilities will be.

Competitors have also argued that they will go out of business because, after the deregulation provided in H.R. 1542, there will be no rules left to enforce. Well, there are plenty of rules left to enforce because H.R. 1542 does not change any rules for basic telephone services and any rules for using the legacy parts of the Bells' networks to provide broadband services. Furthermore, an amendment offered by Fred Upton will actually increase the FCC's ability to enforce those rules. The amendment increases the FCC's enforcement authority by tenfold, giving Michael Powell the ability to punish violators of the Communications Act.

We have also heard the assertion that, because only 10 percent of Americans subscribe to broadband, we are really just faced with a demand problem, not a supply

problem. We have heard that cable companies offering broadband pass 70 percent of the nation's homes, and that the only reason that more people are not subscribing is because there are no "killer apps." Well, there are no "killer apps" because, among other reasons, content providers are not going to bother to spend the money to create "killer apps" until there are enough broadband pipes in the United States to carry bandwidth-heavy content. When content providers look at the United States, they see, at best, ONE broadband provider in most communities. That's not the vibrant, competitive broadband market that will spur content providers to invest in broadband content—or that will spur consumer demand.

Content is critical, and we need to do everything possible to ensure that high-bandwidth content is developed. But high-bandwidth content will not be developed if there is not an adequate supply of pipes to deliver it.

And having the opportunity to obtain broadband service from one company is not going to be attractive to most people. Everybody knows that, when you have one grocery store in town, you get higher prices, poorer service, and fewer choices of products. But when you have two, three, or more stores in town, you get lower prices, better service, and more choices. Broadband is still not being offered at a price at which most consumers can afford the service. It is not until we have facilities-based broadband competition that prices will be lowered significantly.

Mr. Chairman, we have two options. We can deregulate *all* broadband services and maximize *all* carriers' incentives to deploy broadband networks as rapidly and ubiquitously as possible. This will give the cable companies the competition they need to keep their dominance of the U.S. broadband market in check. Only when cable companies face real, unshackled competitors will they seek to serve all Americans at the lowest possible price. All Americans will benefit from the race to speed broadband deployment at affordable rates.

The other option is to re-regulate the cable companies.

H.R. 1542 chooses the first option. The legislation will stimulate real, vibrant competition. Americans will have a choice among broadband providers and have access to the many exciting applications that can only be available through widespread high-speed Internet connections.

Mr. Chairman, we can keep the Internet free from unnecessary and burdensome regulations and let it thrive, or we can stifle the growth of broadband by keeping it saddled with rules designed for telephone services. The House has chosen to keep the Internet free, and I hope that the Senate will recognize the efficacy of that decision.

Mr. Chairman, thank you again for providing me with the opportunity to appear before your panel today on what is a vital matter for the future of our digital economy. I would be happy to answer any questions that Members of the Committee may have.

The CHAIRMAN. Mr. Dingell.

**STATEMENT BY HON. JOHN D. DINGELL,
U.S. REPRESENTATIVE FROM MICHIGAN**

Mr. DINGELL. Mr. Chairman, thank you. Members of the Committee, thank you. Mr. Tauzin and I are delighted to appear here this morning to testify about H.R. 1542, The Internet Freedom and Broadband Deployment Act.

I want to endorse what my friend and Chairman Tauzin has had to say to you this morning, and say I agree with him thoroughly and I make to you the same offer. I would ask unanimous consent that my full statement be inserted in the record and be permitted to make just a few comments on these matters.

The CHAIRMAN. It will be included and so will Mr. Tauzin's.

Senator DINGELL. Mr. Chairman, we are here to talk not about a vast squabble in the industry. We are here to try and see how we best serve the interests of the country and the interests of the American consumer public. That is what this is all about.

As Mr. Tauzin has mentioned, you have your choice of two ways of doing it. One, regulate everybody or, two, to allow everybody to compete.

And I've heard a lot of discussion about H.R. 1542 this morning, some of it, and it reminds me of an event that I participated in way back when I was a young lawyer and as a law clerk of a federal judge.

There was a collision in the Detroit River which occurred between three lake vessels, freighters, if you please, all of them with radar going, all of them going in the fog. And when the judge heard—had heard the testimony and rendered his decision, he said he couldn't understand how this accident could have happened. Because in fact according to the testimony, none of the vessels was within three-quarters of a mile of point of impact.

What I've listened to and heard the debate on this legislation is that I think it would do a lot of the people who are talking about it good to look to see what the House has done.

Now, I want to endorse very clearly the statement of Mr. Tauzin. We, if you can do better than we did, we challenge you to do it. We urge you to do it and we hope that you succeed.

I will tell you also that if you attempt that and you succeed, we want to sit down and talk to you about seeing whether we can both work together to come up with something better than that which we have done today. Because obviously in human entities like this Committee and our Committee, there is room for working together and for trying to come up with something that is going to be better from the standpoint of all.

There really are just two areas where we go in and we deregulate. We deregulate the last mile and we deregulate the backbone. In the area of the backbone, that is the area where there is substantial problem in terms of getting the speed up.

In the last mile, you will find that there really are only about two people who can—or two entities that can reliably get in there to provide service.

One is the long line people who are exempt from regulation and can enter this without any hinderance. The other are of course the cable people. Now, all of you will remember we had to pass legislation to deregulate cable because of high-handed and arrogant behavior.

I am hopeful that that will not be an exercise that I will engage in at any time in the future. But I would point out that if you want to get service to the people, H.R. 1542 will get it there for broadband. And it will do it by allowing everybody to fairly compete.

You are going to hear a lot of complaints from the CLECs who are going to say, Oh, isn't this terrible. And you are going to hear that all of the CLECs are opposed.

In point of fact, not all of the CLECs are opposed. Some of them strongly support the legislation. And some of them support it very strongly because they recognize that there are significant other benefits to them in so doing.

I would note one thing that is of importance. The CLECs who are opposed are those who are now getting service from the Bells at reduced costs.

Interestingly enough, the question before us here is are we going to see to it that everybody has a chance to compete. And as Mr. Tauzin mentioned, the Chairman of AT&T came out and made this

point: "No country is going to invest billions of dollars to become a facilities-based broadband service provider if competitors who have not invested a penny of capital, nor taken one ounce of risk, can come along and get a free ride on the investments and the risks of others."

What we are suggesting here then is that we have protected the rights of the CLECs. Those who are getting a free ride today will continue to get a free ride on the things on which they are getting a free ride. That is not changed. And we will give them other special preferences. We will enable them to get services from the Bells at regulated prices regulated by the FCC. Fair price.

We have done something more. We were aware of the concerns of everybody about the many regions of this country today that don't have broadband service. My question to you is do you want to let the people who have not provided broadband services to those areas and who have not provided competition in other areas to continue to enjoy the wonderful situation which they now enjoy or do you want to do something about it.

First of all, our bill mandates that under substantially, as mentioned, substantially increased penalties that the Bells, if they get into this and if this legislation passes, to provide service to every part of the country within 5 years.

You don't do something like that, Members of the Committee, you are not going to see any services going to the rural areas that you and Senator Burns were talking about. It is just not going to buildup. You can sit back and say, well, we should have done it in 5 years. But that service is not going to be there.

We want to see that you get your constituent service. I've got rural constituents who won't get service under this and I want to see them have it. I also want to see them have an option to have service provided by many so that we get competition, so we get faster service, better service, service at fair, competitive prices.

This Committee and our Committee in times past made the judgment we were going to move from the kind of regulated service to a new kind of unregulated service to afford better considerations.

Now, you are going to hear a lot of complaints about, well, the Bells are not going to open their local nets. The simple fact of the matter is the Bells are going to remain under the same kind of strictures on which they now suffer, in the future.

We do not change that with regard to voice. What we change is we open it with regard to broadband. We force competition into two areas, backbone and the last mile.

And in so doing, we afford opportunities for everybody who is not there, and we do so in addition by requiring that the Bells proceed to provide service to every part of this country by the end of 5 years. And we put sanctions and penalties and painful provisions for them into the legislation if they do not do so.

Now, I just want to conclude by repeating this. We challenge you to do better than we did. We challenge you to have a proceeding here.

Here are the people who are involved. I would ask, however, that you read the bill. You look to see what it is we have done.

There are a lot of high-priced lobbyists in this town that make a fine living running around lying about what the House bill does

and what we did. And I do not have any objection to them making a fine living, but I do think, gentlemen, that you have the capacity to gather the truth by looking at the legislation and by conducting a fair and an open hearing of the kind that you have begun.

And I want to commend you for that, Mr. Chairman. And I want to suggest that proceeding down this course and meeting us in an honest conference to discuss the real differences will result in a better piece of legislation than we have done and an opportunity for us to all serve the public interest. Mr. Tauzin and I have been working on this business in telecommunications for a long time. I introduced the first legislation, and it got pounded and changed beyond any recognition by me.

And the following year we found it changed even a little bit more, not a lot but a little. And it is better legislation because of the process.

And the Senate and the House sat down in this room, as many of you will remember, to discuss the differences between the two bills and to come up with something which has the capacity to serve the country better.

I would note that there is a lot of complaint about monopoly. Well, if you want to look at monopolies, take a hard look at the cable folks. They've got about 70 percent. If you want to take another look at monopolies, take a hard look at the local Bells. But also take a look at the long line folks, their monopolies.

And the whining I've heard from them is very interesting. Because all they are telling me is we just want to continue suffering along with a fair advantage over all of our competitors. And I don't—somehow or other I think that is inconsistent with the purposes of my friends on this Committee.

In any event, Mr. Chairman, and Members of the Committee, we have a chance to write a good bill. I hope we can. I am satisfied from my knowledge of all of you up there that is what you want.

I would say one thing to my old friend, Mr. Dorgan. I don't remember ever hearing any member of the House talk about how we are going to give a lesson to the Senate. I would say in all honesty, that is beyond my capacity.

But I would observe to you that we would be very happy to sit down and discuss with you a meaningful piece of legislation and one that we can all be proud of instead of listening to a lot of high-paid, fat cat lobbyists who are pushing a situation that does not benefit the United States.

Let's let the passengers get out of there and do a little bit of honest competition and see if we are not all a little better for it. Thank you, Mr. Chairman.

[The prepared statement of Mr. Dingell follows:]

PREPARED STATEMENT OF HON. JOHN D. DINGELL,
U.S. REPRESENTATIVE FROM MICHIGAN

Good morning, Chairman Hollings, Senator McCain, and Members of the Committee. Thank you for inviting us to testify about H.R. 1542, the "Internet Freedom and Broadband Deployment Act." As you know, the bill recently passed the House with both a majority of Democrats and Republicans voting for it.

When my friend, Chairman Tauzin and I first introduced this bill back in 1999, the notion of "broadband" was little known and even less understood. Much has changed since then. High speed Internet connections are now believed to be crucial

in getting high technology companies back on their feet, creating over a million new high paying jobs for American workers, and paving the way for more robust content to make its way to the Information Superhighway.

The debate is no longer whether broadband connections are needed, but how best to get it done. This is a huge step forward. And we even have new terms that have recently entered the lexicon of this debate. Some argue that the so-called “supply-push” approach is the best way to spur broadband deployment; others say that the “demand-pull” approach is the better solution.

The supply-push proponents say that more facilities need to be constructed, and that will happen only with greater investment incentives and less regulation of the broadband industry. These concepts are, of course, at the core of the Tauzin-Dingell bill.

The demand-pull advocates argue that the way to stimulate broadband is to give greater intellectual property protections to content owners so that more high value content will be available on the Web. When that happens, they say, more people will subscribe to high speed Internet service, and the resulting demand stimulus will spur deployment.

In my judgment, both groups are right; they are two sides of the same coin. I would observe that this is not a chicken or the egg question where one thing will necessarily drive the other; the two approaches are inextricably linked.

Focusing solely on content protections won’t do the job because the current state of technology will not allow the richest applications to traverse the net. The pipes simply aren’t fat enough. And, if left only to the cable companies, they may never be. Head-to-head competition between facilities providers, both cable and telephone, is critical. We must foster an environment where innovation and investment will constantly drive Internet speeds faster and faster. And without effective competition, cable companies not only will have little incentive to innovate, but they actually have a *disincentive* to do so. Because as Internet speeds increase, cable broadband service will begin to steal revenues from their traditional cable television business.

That is why H.R. 1542 must be a critical component of any national broadband policy. The bill will create regulatory parity between cable and telephone companies so that each will have similar incentives to innovate and invest. The Rush-Sawyer amendment will require telephone companies to build-out broadband service to 100 percent of their serving areas within 5 years. That provision alone is the most important step Congress has taken to close the digital divide since the inception of the Internet. And it will mandate that telephone companies provide “open access” to unaffiliated Internet Service Providers, or “ISPs”, like AOL, Mindspring or Earthlink. That will give consumers the freedom to choose their favorite ISP, something they currently do not enjoy when they subscribe to broadband service from most cable companies.

The current regulatory scheme for broadband Internet service is in disarray. The FCC is partly to blame, but so are we. When Congress wrote the 1996 Act, we established a panoply of rules designed to open the Bell companies’ monopoly local phone networks to competition. And that was the right thing to do. What we didn’t contemplate was that at some point in the future these same rules would be applied to brand new, advanced services for which no monopoly exists.

Similarly, in the 1996 Act, Congress deregulated cable companies. Not just for the cable television services that constituted their main business at the time, but for anything and everything they might offer in the future. In my view, this approach to regulation was a mistake: Congress imposed a regulatory scheme based not on the type of service provided, but on the type of company providing it.

Now we find ourselves in the awkward situation of having telephone and cable companies offering virtually identical services—high speed Internet—but under very different sets of rules. It is simply bad telecommunications policy—it results in significant economic distortions and, just as important, it deprives the public of the enormous benefits that normally come from fair and fierce competition between firms offering similar services to consumers.

Mr. Chairman, I congratulate you for holding this hearing today. It is a first step toward creating a fair and rational broadband policy, which is so important for the health of the economy and the public good. I hope and believe we can strike the right balance quickly and with minimal discord if we work together toward this common goal.

I look forward to answering any questions the Committee may have.

The CHAIRMAN. Thank you. They both commented about a balanced approach. Let the record show that that is what this hearing

intended in the original instance. We had, as you know, Mr. Marquis, so we would have a balanced approach.

But Mr. Tauzin said he'd rather prepare just without him. And then when we had the local public service commissions comment, because we had a panel after you two, again Mr. Tauzin said that they would be sandbagging and ambushing him, and even the title, I've got a letter to make that part of the record that we were trying to ambush—you are all uptight.

Chairman Tauzin, you remind me a lot of Michael Armstrong. You both have been quoting him. And I do not know when he made that statement, but of course, and a lie, that is a bunch of baloney in the sense that we heard that when you two voted and supported the 1996 Act.

We had quite a debate. And we said, you know, Judge Green was pretty smart. He opened up the long distance market for access where they would pay not only the cost but a reasonable profit.

If you both look at page 97 of the 1996 Act, you will see that is exactly what we did with respect to our deregulation. We said in Section 252 on Page 97, sell at cost plus a reasonable profit.

Now we noticed and we had the experience of long distance. And boy, they have had a viable competition. And not only—not an advantage or unfair advantage or whatever else that the gentlemen refers to; on the contrary, they are on the ropes financially.

You talk about taking a risk. There is no risk to the crowd I refer to, namely the Bell companies. There is a risk, yes, the cable companies are private investors, not government-instituted monopoly, but on the contrary, there are 1,080 cable companies.

And let me go right on into the services that they have to provide and what have you, their regulations, but more particularly to what they have, Chairman Tauzin. You and I agree, let us see if we can make 2 apples and 2 apples equal 4 apples. There are 85 percent that now have access to broadband. You disagree.

Mr. TAUZIN. Absolutely.

The CHAIRMAN. Why do you disagree?

Mr. TAUZIN. Because what the cable companies are saying is that they pass 85 percent of American homes. You have got to understand that if you are going to deliver broadband service—

The CHAIRMAN. I am talking about cable companies and, you know, the telephone companies and the Bell companies. The Bell companies are in there like gangbusters right now.

Mr. TAUZIN. No. I disagree with that and we have got the numbers to show it. The marketplace right now is about 89 percent vacant of the services. Let me ask you a question.

The CHAIRMAN. Yes, I'd like you to answer that question. Where do you find less than 85 percent?

Mr. TAUZIN. The problem is that the numbers you hear cited do not take into account that for the cable companies to provide true broadband services, high-speed broadband services, they have to go in on those systems and add an extensive amount of investment. It's called nodes.

As more and more people sign up to a broadband cable—I am on broadband cable in Northern Virginia—as more of my neighbors sign up, the cable company has to come in and make substantially

new investments because the speed goes down as more cable subscribers sign on.

And unless the cable companies come in and put new nodes in to build the speed back up, those systems are incapable of serving the 85 percent of the people that are passed by these wires.

The Bell companies likewise have to make significant investments in new remote terminals, new fiber systems in order to make their lines accessible for really high-speed services, as Mr. Kerry described them.

So, you know, their lies and statistics, I am afraid we are dealing with some interesting statistics here. The truth is——

The CHAIRMAN. Well, what statistic do you have? It passes 85 percent of the homes.

Mr. TAUZIN. These are the facts.

The CHAIRMAN. I cannot read that stuff. My eyes are not that good.

[Laughter.]

The CHAIRMAN. But do not worry about that. I mean, you can make these pretty little charts. We can play that game over here too. You deny that 85 percent broadband passes homes right now.

Mr. TAUZIN. Yes, I deny that.

The CHAIRMAN. Well, what percent do you say, excuse me, what percent—do not give me all of that——

Mr. TAUZIN. I don't know. But it's a lot less than 85 percent.

The CHAIRMAN. Well, what is your percent, Mr. Dingell?

Mr. DINGELL. Well, I do not have any percent. All I'll tell you is you are right. It goes by——

The CHAIRMAN. That is right. Now, I knew I would get some help from John.

Mr. DINGELL. The problem——

The CHAIRMAN. That's right. It goes by. And you are right, Mr. Dingell and it only goes to the home——

Mr. DINGELL. The problem is they go right by. They don't stop.

The CHAIRMAN. That is right. And they do not stop on account of demand. And they do not stop because they cannot dig up the streets.

Mr. DINGELL. No, they don't stop——

The CHAIRMAN. Wait a minute——

Mr. DINGELL. They don't stop because the investment has not been made.

The CHAIRMAN. That is right. You and I agree. The investment has not been made because they cannot dig up and go to those businesses.

So the cable we are talking about is predominantly just residential. It does not even go to the business. You and I are right. They cannot make the investment.

But let us see who can make the investment now. We have got 85 percent and only 10 percent have it. I am just quoting you, you just used that figure. So that is 10 percent of the 85 percent and restricted to residential. So 90 percent of the market is out there still for competition.

I mean, you act like the cable has taken it all. They have 10 percent of—they only passed 70 percent, 10 percent of 70 percent of residences alone and not businesses.

Mr. TAUZIN. Senator, let me, if I can, let me first address your opening comments. You are the only person I know in this town who has ever called me tight. And I want to tell you, I am as loose a guy as you ever found here. John Breaux and I come from a loose kind of culture. So I don't buy that argument.

[Laughter.]

Mr. TAUZIN. Second, we come here as open and as willing to work with you in any kind of new proposals and ideas you have. What I suggested to you in organizing this hearing when you called me to come, was that I had been invited to lunch many times but I didn't intend to come to be the meal. I wanted a fair chance to tell you what we did, and if you want to have those other folks around in 20,000 hearings, I invite you to do that. But, so I just want to put that on the record.

The CHAIRMAN. That's right. You had those five hearings and six mark-ups, and I guess we will have to do that again. Do not come around here in September and claim I am delaying this.

Mr. TAUZIN. OK.

The CHAIRMAN. Thank you.

Mr. TAUZIN. The point is, we will come back if you need us again. Let me try to say it again as clearly as I can. The numbers that the Commission and cable companies put out to us about homes passed do not take into account that even if the cable is broadband adequate today, that it cannot serve this vast amount of Americans they passed without substantial new investments.

They will tell you that. They have to go build all kinds of new investments if in fact demand increases on the systems. Because every new customer lowers the speed until new nodes are put in.

Second, what we did, Senator, in this bill was simply say that these old lotto lines, these old lines that prevented the Bell companies from doing what the cable companies can do today to reach out across these lines the judge drew on the map long before the 1996 Act, that they can reach out and extend their broadband systems across those lines.

And as John said, make the investments in that last mile. And we've added the provision that even when they do that, Senator, they have to make those facilities available at rates set by the Commission for the competitors.

That's a fair way of doing it. Again, if you have got a fairer way, please tell us what it is.

The CHAIRMAN. Well, a better way is told by just people that you represent ought to take it over, those that do not have a risk. Let me just state exactly what they are doing.

Verizon spent nearly 18 billion last year and they increased the number of DSL customers by 666,000 to 1.2 million. SBC invested billions in heavily promoted Project Pronto. They got 146,000 more.

And Bell South has put in 33 billion—I have got way more but I am cutting it short because my time is limited—33 billion during the 1990s. And they are going like gangbusters.

And let me quote Duane Ackerman right there in my own backyard and I want Ms. English to listen to this. "Some companies have suggested that before DSL can be deployed, substantial investments need to be made in the network. I think the good news is for Bell South a large part of that investment has in fact already

been made. You will see Bell South continue to drive investment into DSL on a per customer basis. And the reason is simple. DSL is growing and DSL is profitable.”

You have got 85 percent already passing the homes. We will all agree on that. And they are fighting over the 15 percent, and then DSL has gotten all the business. And they will put the CLECs out and take the market power and take over the poor little cable that is trying to give competition we did not have.

I described the Bell companies for 3 years after they said they were going to go into long distance in a year's time. For 3 years they kept us in coats. They did absolutely nothing. They are still only in 40 states in long distance, four-fifths of the country.

If you worry about broadband, four-fifths of the country does not have that kind of competition. That is the big problem before this Committee right now.

My time is limited. Let me yield to Senator McCain, or Senator Burns.

Mr. DINGELL. Before you do, would you permit me to make an observation?

The CHAIRMAN. Please do.

Mr. DINGELL. I applaud your remarks. I thank you. The simple fact of the matter is we are all agreed on one thing. We want to get service to the people.

These things may seem to be easy. And you may be looking at broadband and the lines that provide broadband as being something which can absorb any load. And the simple fact of the matter is that they aren't.

As Mr. Tauzin mentioned, the more traffic you put in, the slower they move. It is also so that you have to have significant investment to get that 85 percent from the point where the line passes the house to the home of—or the business. And all of them, and these lines pass both homes and businesses, so that you can get the service into the home or the business.

This is going to take an investment. And the question is how are you going to get the investment. And who are you going to get to make the investment. Now, Senator, you are an intelligent man. You are not going to sit there and tell me that a CLEC that has no investment in equipment is going to have either the capital or the resources to go in and to provide the service to that home.

You've got to find somebody that has got the means to provide the necessary investment. And all I am going to do is quote Mr. Anderson, a well-known proponent of this legislation, or Mr. Armstrong rather, in saying nobody's going to make that investment if they don't have a chance of getting some return on it.

So what we are suggesting is let the people in who can and will invest. Let everybody invest. CLECs can go in if they want.

And the ones who are getting a free ride on everybody else's back can still get it. They are going to get the same rights they have with existing services. Those are not being taken away.

And on any new investment, they are going to get the right to go in and to get those services provided by the Bells on the basis of fair prices under regulations issued by the FCC.

And I repeat, if you can come up with a better way of speeding this process up, I am for it. But do remember that you only have

a small percentage of the people in this country actually receiving the service. Our debate this morning should be about how we are going to get service to the American people and how we are going to catch up on the Japanese and Koreans and others.

Now, let me just mention this to you. The homes that you say are having these wires passed, are having the wires pass them. But the thing you've got to know is we want to have—we want to have more than one who will go into that home.

We want to see that we make it a wise and intelligent business judgment by the people who are making the investment that they ought to go in so we have competition, not that the American consumer is saddled with a situation where there is only one person.

He is not benefited by that situation. He just remains a victim if that kind of situation is obtained.

The CHAIRMAN. And that, as you and I both agree, there is no broadband problem. It passes 85 percent of the homes right now. And I have just pointed out how the Bell Companies are in there like gangbusters because—

Mr. DINGELL. Senator, you are absolutely wrong.

The CHAIRMAN. Wait a minute. Can I please make a statement too, that by gosh, as Mr. Duane Ackerman says, DSL is profitable. So they are getting out there like gangbusters.

Now, on services the big problem this Committee has is just a concern expressed by our fearless leader Chairman Tauzin who says consumers must have the benefits of competition and not the penalties of monopoly unregulated service. And that's what H.R. 1542 gives is monopoly unregulated service.

Mr. TAUZIN. Let me assure you, Senator, that comment is made about the cable companies who are unregulated and have monopoly of provision of services today.

The Bell Companies are in fact deeply regulated in their provision of services. We have added new requirements on them and new hammers by the FCC. Again, if you have got a better way of making sure they open their markets, come tell us. We'll work with you.

The CHAIRMAN. Nearest thing to immortality on earth is a Bell Company. The poor little cable companies have got a 5-year contract down where I live and a 15-year contract here with Comcast in Washington. And Comcast is trying to get just a 10-year contract.

I can tell you right now they are struggling. Mr. Armstrong, that you quoted, said I cannot make it and I am ready to sell it in order to by gosh get some kind of job done. Senator Conrad Burns.

Senator BURNS. I am not real sure I want to jump in on this.

[Laughter.]

Senator BURNS. I do not think I want the football. No, I am very interested in making this thing work. That is Number 1. That is the way I am going to approach it. OK.

But tell me, in today's world of ones and zeroes, and we talk about inter-LATA relief, how do we tell that it is voice or data?

Mr. DINGELL. The answer is you can't. The bits that carry one or the other are going to carry either, and you can't tell by looking at the bit if you can do that. What I want to do is just see to it

that we regulate the service. You can still regulate the service which is what we do under H.R. 1542.

Mr. TAUZIN. Voice service is still regulated.

Mr. DINGELL. We don't change the regulation of voice. That remains as it is. Data is deregulated and I think very frankly it should be. And everybody who has studied the question of the Internet says let them be deregulated.

Senator BURNS. But if we cannot distinguish the difference between voice and data, how do we enforce it?

Mr. DINGELL. You regulate the service. You regulate the provider of that service.

Mr. TAUZIN. And the bill does that.

Mr. DINGELL. Where he provides voice, you regulate him. And you do it by looking at his books. And you require him to keep proper books.

You do not regulate the data transmission and you—and that is good. But you can identify the difference between the service. You do not look at the bit and say this bit is a voice bit and this bit is a data bit.

You regulate the service. And you go in and you look at the guy's books and you say you are doing this and we are here to regulate. You are doing this. This is not subject to—

Mr. TAUZIN. Let me try quickly, Senator Burns, the bill provides that the Bell companies under this Act cannot sell, market, nor collect any dollars for voice services.

Second, the bill does not take away the FCC's authority to examine under performance measures the operations of the Bell companies. And it keeps in the local PUCs and at the FCC the authority to regulate those voice services.

So the agencies have the power under performance standards examination to see that the Bells in fact are enforced on the provision that says you can't sell nor market nor collect a dime for voice services except under the provisions of the 1996 Act.

Senator BURNS. Now another little question here before my time runs out. Would IP telephony be a data service, not subject to competitive checklist, or a voice service that is?

Mr. DINGELL. It depends on how it is denominated by the regulatory agency and by the provider. It would be regulated as a service as opposed to being regulated as a particular stream of bits going across a wire.

Senator BURNS. Well, these are the areas I have concerns about, and also the areas in Section 4 and I think in Section 6 just going through this thing. And I am sure that we can work these things out. I mean, I do not—maybe we cannot but I think that I am just going to highlight those areas of which I have great concerns and maybe on some other provisions of this mark.

But I think Section 4 and Section 6 really concerns us a lot. And I've forgotten what—

Mr. TAUZIN. Senator, can I?

Senator BURNS. Yes, go ahead.

Mr. TAUZIN. Can I make a comment too. I know of your concern in Montana.

Senator BURNS. Yeah, but we are really whizzing right along there that DSL, you know, one city here and one user.

[Laughter.]

Mr. TAUZIN. Let me go through some of the problems, one user at a time. What we have seen is that your Bell Company out there has in fact sold a lot of its rural areas off.

Under the provisions of universal service laws and rules and regulations that are currently existing, when a company owns both a dense urban area that helps subsidize a rural area and also owns a rural area that is getting subsidy, the subsidies flow inside the company.

When a company can sell off a rural area and another company can simply buy a rural area, the subsidies come from another company to them. And they tend to be able then to go ahead and with those resources improve those networks and deploy DSL, whereas the ILEC, which was subsidizing itself, had a more difficult time doing it. That is a fact out west.

Second, all the universal service laws and regulations are kept intact. We don't change them one iota. I know that was one of your concerns. Those are still intact.

The companies that buy off a region or area, a rural area from an ILEC out there end up getting the benefits of that universal service provision. And because they don't have to subsidize themselves, they tend to be in a better position to actually deliver the services. That is what's happening out west.

Senator BURNS. Well, I will visit with you on this and we will work it out. But do not fiddle with my RUS either. Understand we are—I got my pistol cocked on that. OK?

Mr. DINGELL. This is the room we have to work with. We will be very happy to work with you on this.

Senator BURNS. OK. But those are the areas of our most concern on this. And I would just like to say we are not going to close our mind on this thing because I think we want to get to the same place. There is no doubt about it. And how best we do it.

The experience that we are having in Montana is not a very positive experience which makes us wonder about the deployment, even if they were given inter-LATA relief, we do not see a great rush to deploy DSL or VDSL.

Mr. TAUZIN. They won't have a choice under our bill, Senator. They don't have a choice. We mandate deployment in areas where they are currently not going.

Senator BURNS. Well, we thought that would happen in another section of the 1986 bill too, or the 1996 bill. But that did not happen, and so—

Mr. DINGELL. We are offering you a better mechanism today. If you can improve on it, we are willing to listen. Because I want to see this mandated. I've got some rural areas of my own.

Senator BURNS. Well, we are going to sit down in a different venue and environment and try to work this out. We guarantee you that.

The CHAIRMAN. Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman. Again, thank you for holding the hearing. You did not have to do this and I appreciate you doing it.

If I could, what I hear people talking about, and I think you both have done an excellent job in putting forward the case, and the

Chairman has put forward his case well, is that we have—and I think Senator Kerry outlined it pretty well with this too, is how we balance our commitment to the Telecommunications Act, competition and telephony, and yet open up competition in this other area when we have got two different spheres of competing influence.

You have got phone companies competing over here, and you have got a phone company and cable and others competing over here.

Mr. Chairman, if I might submit, I wonder if there would be a way for us in crafting a piece of legislation that would strengthen the telephony competition section, which I believe that you believe you have done in your bill anyway. You think you have given real teeth now in a telephony competition section in your bill, so you are open to doing that.

Mr. TAUZIN. Yes.

Senator BROWNBACK. No problem with strengthening that, which has been a lot of the difficulty that you, Mr. Chairman, have had with this bill, that Senator McCain, Senator Burns, Senator Dorgan, a lot of people around have had with this, whether we could not craft this for you, really strengthen and put teeth and try to correct the inequities that have taken place there and the actual operation of it.

At the same time, opening up in the competition field in this, in the other area where you have got competition taking place between other groups, whether it is with cable, or wireless, or satellite. So you do not limit our ability to create facilities-based competitors, particularly from the phone companies in that last mile, and the backbone, but particularly that last mile of getting high-fiber, high-speed, high-quality.

We ought to be going where the Koreans are with this; to be able to get the access to the really fast high-quality delivery of services. And I think if we do that, you are going to see a flourishing of services that would be available with that.

I do not know what—I would take it you would be open to that sort of negotiation and discussion with it? I believe you have created one just that way.

Mr. TAUZIN. Let me comment, Senator. That is exactly correct. What we added wasn't just a tenfold increase in penalties or even a twentyfold for repeat bad behavior. What we have given the Commission under our bill is cease and desist authority which is to say for the first time instead of the Commission having to wait for a Bell Company to come in and say I'd like to get in long distance, and here's what I've done to open up my market, it gives the Commission to chance to examine whether they have opened the market and whether they are trying to do something with it just or not, and to say you are not treating the competitors, the CLECs, correctly. You are not opening up your markets. You are not exchanging customers the way you should be exchanging customers.

You are not treating the CLEC's customers the same way you are treating your own customers, and we order you to cease and desist or we'll take you to court with an injunction if you don't.

You can't do that on the current law. Our bill would give them that new authority. If there are other ways to improve on that sanction, Senators, to make sure that the Bells, whether they want

to get long distance or not, fairly treat competitors in the local system, we are very open to work with you to strengthen it, improve it, build a different mousetrap if you want.

Mr. DINGELL. I would like to echo that. I would like to say, Senator, you put your finger on a very important point and I want to thank you for it. I would like to make this observation in addition to what Mr. Tauzin said.

The powers we have given the FCC are exactly the powers that the chairman of the FCC said he and the Commission have to have to open up the local service net of the Bells to assure that the problems that concern the Chairman, Mr. Hollings, finds so oppressive.

And I would also note one thing, that until the Bells have addressed the problems that the FCC has, they are not going to get into long distance voice communications. It's just not going to happen.

And I would note that they are compelled to submit and have been to the Commission as many as 270,000 pages of exhibits alongside which the Commission has rested most tranquilly and given no decision on, after enormous expenditures by people who are applying for relief from their government, and on which they receive no advice from the Commission as to what it is that's wrong. They say if you want to get some relief, submit us another 270,000 pages. Seems to me not to be a wise way to run the company.

Mr. TAUZIN. If I can add one more thing that I think we ought to have on the table, that is when it comes to local competition, one of the problems is that in the residential market as opposed to the commercial market where there is a good profit margin, that incentivizing a competitor to come in and compete in a low margin marketplace where price is already subsidized through universal service is a difficult task.

The competitor, you may say my market is open to that competitor. He may choose not to compete. In fact in many of the CLECs don't even try to offer telephone service, residential telephone service. All they are trying to do is get into broadband services.

And so they use the high frequency part of the copper wire to deliver broadband services and they don't offer telephone service at all. Check the record. That's a fact.

And the reason they don't is because in residential areas there is not a lot of money to be made. It's a high-cost, low-margin area that we end up subsidizing in order to make sure people in sparsely populated areas in America get that service.

But when it comes to broadband service, let me make this point. It's important. Distance becomes irrelevant. Everything about the old regulations on the telephone systems of America were about distance, how far we lived from one another, how far was a call going.

On the Internet, it doesn't matter whether you live in Tokyo or whether you live in South Carolina or Michigan or Louisiana. You can speak commonly to anyone on that system without regard to distance.

It's a distance irrelevant system. It makes no sense for us to continue distance relevant regulation on a distance irrelevance system.

Senator BROWNBACK. If I could in my remaining time, Mr. Chairman. I think we have had a chance for a two-fer here, actually to create competition in that local market sector, where there has been a lot of difficulty here, and in crafting this such that it gives some real teeth to the FCC. And you really give a chance to people to get at a problem that was not, frankly, as people thought it was, addressed in the Telecom Act.

At the same time, we can then create a quality of broadband deployment and competition that we need to have. Because right now we just do not have it out there. We have got some cable companies that are pretty much dominating the field. They need to have more competitive pressure.

There is competitive pressure we can get there. We can get that fiber, the last mile, which is going to be expensive, very expensive to do. It is a low-margin area when you go in residential, that last mile with fiber or in my state to be able to get a build-out into rural areas which your legislation requires it would have to be done over a period of 5 years. That is a real expensive matter to string that out to my parents that are a few miles away from town. And that would require them to do that.

So I look at this and see we have got a chance, really, to do something that is going to spur the economy on substantially, and to correct an inequity in a prior act. We could take advantage of both of those. I hope—I would like to go to work with the Chairman to do just that. Thank you.

The CHAIRMAN. Senator Dorgan.

Senator DORGAN. Thank you. Let me ask a question about the issue of the Ag Conference. Because I mentioned in my opening comments that there is a report in *Congress Daily A.M.* this morning that the provision that was put in the Ag Conference dealing with incentivizing the build-out of broadband is a provision that is under some assault. And my understanding is the two of you have actually become conferees to the farm bill. Congratulation.

Mr. DINGELL. We will make it better.

Senator DORGAN. Long recognized experts on wool and commodities programs.

[Laughter.]

Mr. TAUZIN. I grew up on a farm, Senator Dorgan.

Senator DORGAN. But I understand you are there because you are concerned about the RUS provision. And let me—let me ask this question. You indicated that this is a marketplace of ideas.

You have won. You have passed it through the House. If we have other ideas, you are interested in hearing them and embracing them.

One of those ideas in the farm bill that comes from the Senate to conference is to provide some low-interest loans under certain circumstances to help accelerate the build-out of broadband.

My understanding is that, Congressman Tauzin, your staff is making some impassioned pleas in opposition to that provision in the farm bill and conference. Is that accurate?

Mr. TAUZIN. We have two problems with the provision drafted in the formula, one is in the formula. It is extraordinary that we have to be on that conference. We shouldn't have to be. It's a tele-

communications matter which hopefully will be decided in the telecommunications conference.

Second, we have problems with the whole idea of giving some of the competitors low-interest loans and not others. And that is what the provision does. It provides low-interest loans for some in this marketplace but not for all.

And I know you disagree with that. We believe that that is what it does. And so we have to have that cleared up as well.

Let me also say, Senator Dorgan, the quotes you have made though about us sending you a signal, telling the Senate you won't get anything without accepting Tauzin-Dingell, that is a quote by one of our opponents. I hope you recognize that. I'd like the record to reflect that.

Senator DORGAN. The first quote is a Tauzin spokesman. We are sending a message that we are the Committee of jurisdiction.

Mr. TAUZIN. Yes.

Senator DORGAN. That's a Tauzin spokesman.

Mr. TAUZIN. That is accurate.

Senator DORGAN. That is not an opponent of yours.

Mr. TAUZIN. That is accurate. We have a jurisdictional problem with the form, legislators of the Congress writing telecommunications policy. We have had that problem in past years. We have it today.

We are not saying that the policy may be wrong in the end. But when it came time for us to provide low-interest loans, for example local into local, for rural communities, it came through our telecommunications Committee, not through the form agricultural Committee.

Senator DORGAN. But we have had a real telephone co-op program for 50 years in the Agriculture Bill. Do you not agree?

Mr. TAUZIN. Which is a part again of the telecommunications policy of the country. And as I said, when it came time for us to put together low-interest loans for rural parts of America to get local into local satellite service, that properly came through the jurisdictional committees of the telecom.

And that's our argument here. We stand by that. We would not like the Agricultural Committee deciding broadband policy. It's that simple.

Senator DORGAN. My only point here is that if you come to us and say, look, if there are other ideas out there, let's hear them. I've introduced a broadband REA program which is low-interest loans for the deployment of broadband.

The telephone program in RUS has been there since 1949. This is not some new thing. And I guess when you say to us let's hear new ideas, we have got one in an Ag conference. And you are the one that's sending a spokesperson down there, I guess not that you do not go down there, and say I oppose it.

If you really want to build-out a broadband, why not embrace a range of ideas including the tax credit, Rockefeller proposals, the broadband REA program, the provision at RUS. Why would you oppose any of them?

Mr. TAUZIN. The answer is we don't oppose the ideas.

Senator DORGAN. But you are trying to kill it.

Mr. TAUZIN. We oppose it on jurisdictional grounds.

Senator DORGAN. But you are trying to kill the provision; are you not?

Mr. TAUZIN. No, sir. We are not saying that the provision properly addressed in a telecommunications broadband bill is not a good provision.

Senator DORGAN. You are trying to kill the provision—

Mr. TAUZIN. We are trying to say that it doesn't belong in the Farm Bills.

Senator DORGAN. But you are trying to kill the provision in the Ag conference; are you not?

Mr. TAUZIN. We are trying to say get it out of the Farm Bill. Yes.

Senator DORGAN. That is all I am asking.

Mr. TAUZIN. We are also trying to say that if you are going to write a provision like that, it needs to be written in a way as we did the satellite low-interest loan program, local and local, it has to be written in a way that all the participants in that business have a chance—

Senator DORGAN. Well, that is exactly the way this is written. This is technologically neutral. But my point is this: Do not say to us we want to embrace a lot of other ideas and then be over in that conference trying to kill that provision. But I guess that is a subject for another day.

Mr. TAUZIN. It is not the idea, it is where the idea is located. We suggest that—

Senator DORGAN. If it is not your idea, it is not worthy?

Mr. TAUZIN. No. We are saying that it ought to be addressed as part of broadband policy, not foreign policy.

Senator DORGAN. But people who do not get access to broadband because this provision gets killed are going to have a hard time understanding, well, the issue really was just jurisdiction between Congressman Tauzin and Senator Hollings.

The fact is we are interested in doing a lot of things that work. And this is one. And I would hope very much in conference the two of you will not deign to—

Mr. TAUZIN. We will visit with you. But you came from the House, Senator Dorgan. And you know there is a difference in the way we operate. We have rules, jurisdictional lines that our committees and subject matters come under.

We understand that it's different here. We understand that. But when it comes to the way we proceed and we write broadband policy, we are simply saying that this ought to be part of broader broadband policy, not simply something done for one segment under an Agricultural Bill.

Senator DORGAN. Congressman Tauzin, that—these kinds of provisions dealing with telephone and especially the build-out in rural areas have been in the Agriculture Bill since 1949. There has never been a default in the rural telephone co-op program.

But I just, I urge you take a new look at that. Do not be in there trying to kill that. If you want to work with us, work with us on a wide range of issues, including that.

Mr. DINGELL. Let me make a comment because I've not had anything to say about this matter, and my staff has not had anything to say about it. I just would make a couple of observations I think are useful.

First of all, I think as a Member of this Committee, you want to see to it that something in this country is done, it is done right. Second of all, as a Member of this Committee I think you want to see that if anything is done that it relates intelligently to the rest of our telecommunications policy.

I do not think there is anything wrong with either one of those positions. Those make eminent sense. We enforce those kinds of situations in the House by seeing to it that we protect our jurisdictional concerns of the committees. Because the committees usually know better what they are doing on their particular subject matter than do other committees.

Now, having said that, it is very clear to me that the Senate wants to discuss this. Mr. Tauzin and I are prepared to discuss this with the Senate as conferees on behalf of the House. And we are prepared to try and work with you on these matters.

But we do want to make it very clear and very sure that I think you and we want to see to it that this is done in a way which doesn't conflict with other policies. If that is done, I don't have any objection at all to making loans to assist this. This makes good sense.

But I would just note one thing for the benefit of everybody in the room, and that is if you look carefully, you'll find that all of this comes out from somebody who is opposed to Tauzin-Dingell. And I would say that talking to Tauzin and Dingell might give you a better way of getting an appreciation of both what Mr. Tauzin and Dingell think but also it would give us a better chance of having an intelligent discussion in which the matter could be properly dealt with.

Senator DORGAN. And the paragraph says, "We are sending a message that we are the Committee of jurisdiction when it comes to telecommunications issues," says a Tauzin spokesman, talking about the issue of the conference Committee.

Mr. DINGELL. It comes out of the lips of an opponent.

Senator DORGAN. No. No. You are wrong about—

Mr. DINGELL. Said that the devil may talk—

Senator DORGAN. You are talking about a different paragraph, my friend. You are wrong about that.

So I've just read the paragraph, we are sending a message that we are the Committee of jurisdiction, said a Tauzin spokesman. But I understand the paragraph you are reading, but understand the one I am reading as well.

Let me ask a question, if I might, about how deregulation would do anything to change the status quo in a state like North Dakota. Because obviously I have a parochial interest here and this is national policy, but I have an interest in North Dakota.

Let me describe to you what has happened in North Dakota. We have had DSL being offered now by 157 of the 231 rural exchanges in North Dakota. The end of next month another 13 will be bringing that total to 170 out of 230.

These are the rural telephone co-ops in most cases, and independent phones. And with respect to Qwest that has sold off many of its exchanges in our state, they offer DSL in 4 of the 24 exchanges it has.

Now, can I get your opinion, why would Qwest, a big old company that has done a lot of business in North Dakota over many years prior to selling some 60 or so exchanges, 76 exchanges, why would it offer DSL do you think in only 4 of 24 exchanges.

Mr. DINGELL. First of all, I am not an officer, employee or shareholder of Qwest.

[Laughter.]

Mr. DINGELL. So I haven't the vaguest damned idea why Qwest does things. And I don't think anyone else in this room unless they work for Qwest does.

I would only tell you that if you want to get service and you want to propel them to offer this service, there is a good way to do it. And it is in H.R. 1542.

First of all, Tauzin-Dingell requires them to provide that service. Second of all, it eliminates obstacles to investment by Qwest in that. So we give you two things. One, we give you the carrot; and two, we give you the stick.

Senator DORGAN. And what is the obstacle that exists with respect to Qwest providing DSL service beyond four exchanges?

Mr. DINGELL. I'll quote a well-known authority, Michael Armstrong, November 2, 1998. "No company will invest billions of dollars and become a facilities-based broadband services provider if competitors who have not invested a penny of capital nor taken one ounce of risk can come along and get a free ride on the investment and risks of others." And that does not apply to rural exchanges why, Mr. Tauzin?

Mr. TAUZIN. That statement applies everywhere.

Mr. DINGELL. It applies everywhere.

Senator DORGAN. No. I am talking about the lack of incentive that apparently exists with the Qwest company does not apply to the local exchanges in North Dakota, the rural telephone co-ops in the rural exchanges.

Mr. TAUZIN. No, it applies to them. The only difference is that when—

Senator DORGAN. They are building out.

Mr. TAUZIN. Yes. When they buy one of these areas, because they are basically buying a rural area only and they don't have an urban area as well in the service area, they are actually getting subsidies under the universal service fund from another company, not themselves, which then allows them to make some of the upgrades and services that they in all likelihood may not be deemed to be profitable at the time.

So the idea that they sell these off the company that can because of universal service rules actually pick up—universal service funds to help them do it, is probably a good thing in your area.

Mr. DINGELL. We have got two situations. First of all, let me remind you that your small local service companies are not compelled to meet the same tests that the Bells are compelled to meet. So this does affect them.

Senator DORGAN. Well, we don't have a traffic jam with competition in these areas.

Mr. DINGELL. The only situation you confront here is the local service companies, the little independents, they are not compelled to provide these services. The Bells are.

But the interesting thing is that the question you should really be asking is why can't and don't these small local companies then offer the service. I can explain why the Bells don't. You have got to ask the question.

Senator DORGAN. My point is they are offering the service. That is exactly what I said to you today.

Mr. TAUZIN. Senator Dorgan, there is an exemption.

Senator DORGAN. There is an exemption in 251F that also can be taken away when the companies receive the bonafide request for interconnection services and network elements in the future. So——

Mr. TAUZIN. It is up to BUC to make that decision.

Senator DORGAN. But that is in your bill. And my point is the same disincentive would apply to a rural telephone exchange that's going ahead and making the investment for broadband deployment. The same disincentive would apply with 251F because at some point they might say, you know, somebody is going to come in and make a request, and I have got to share here.

And you are saying that is why the Bells are not building out because of that disincentive. My point is rural telephone companies are. The Bells are not.

Mr. TAUZIN. The answer is they are exempt to that and they are not covered.

Senator DORGAN. They are exempt under 251F which—but they have jeopardy under that if someone later after they build the system wants to use it. And my point is——

Mr. DINGELL. They are not now covered.

Senator DORGAN. But my point is in your legislation in 251F, it describes conditions under which they could be covered if someone wants to come in and require the sharing of that system. Now, you are getting a lot of advice here on this question——

Mr. TAUZIN. But the question, Senator, is how many times has a CLEC gone to BUC and asked that the exemption been waived? Zero.

Senator DORGAN. My only point is this——

Mr. TAUZIN. There is no jeopardy right now.

Senator DORGAN. My time is about up. But in North Dakota, Qwest has been serving North Dakota. It moved off 74 exchanges, sold them. You are saying it did that in order to avoid the responsibility of universal service so it could come out of a different fund.

Mr. TAUZIN. No. No. No. I did not say that. What I said was that for Qwest to upgrade those systems, it has to use moneys that are subsidized within its own system from urban consumers.

When they sell off one of those areas and the company owns just the rural area, then the subsidies come from Qwest, from some other company. So that company can then use those subsidies not generated in its own company to actually make those improvements.

They tend to have a better economic position to make those improvements. Second, they enjoy an exemption. So they are more likely to do it.

Senator DORGAN. I guess I wanted to ask a series of questions about universal service which I think is the most important issue

for me and I think will be an area that is a very serious problem with respect to your bill.

I unfortunately have another hearing I have to attend, but I—let me, Mr. Chairman, just make one final comment. I have taken more time than perhaps I am owed.

My experience in North Dakota is that the Qwest company, it has very little interest in building out DSL, just very little interest. Now, I think we have got a lot of great companies around this company, including the old baby Bells, and the new CLECs and others. They are all great companies.

Every company must do what is in its self interest. That is the way life works. That is the way it is with those companies.

Mr. DINGELL. We agree.

Senator DORGAN. And so what happens is Qwest decides in North Dakota we are not going to build-out DSL. What we are going to do is we are going to create a circumstance where we can get somebody to come to Congress and get rid of 271, and get rid of other provisions of the 1996 Act.

And they say, if we can just get these folks to do that, guess what happens. We get out from under something that they required in 1996 by which at some point we are going to have local competition that is aggressive.

Mr. DINGELL. We are not letting them out from under 271. Under 271 they remain under the constraints of 271 for all voice services.

Senator DORGAN. But that is the mixed message here.

Mr. DINGELL. And they also remain under 271 which is substantially identical.

Senator DORGAN. But that is interestingly enough the mixed message here. You want regulation, in fact I think you might have said even more regulation for voice transmission, but you are in here with a bill that talks about deregulation.

Mr. DINGELL. We are not addressing voice.

Senator DORGAN. Is the value of one not the value of the other? I do not understand the message I guess.

Mr. TAUZIN. To answer, we have not increased regulations on voice transmission. We increased the authority of the Commission to enforce the current regulations.

Senator DORGAN. Which means nothing of course.

Mr. TAUZIN. Second, if you really want Qwest to deploy, vote for this bill. Under our bill they are mandated to deploy over a 5-year period to every community in South Dakota.

Mr. DINGELL. If you want everybody in South Dakota covered, vote for our bill. If you do not, vote against it. Very simple.

Senator DORGAN. I guess your bill is what Qwest has been angling for. That is the reason for their not deploying, I suppose.

Mr. TAUZIN. Qwest backed off of the coalition in support of the bill for the most part because of the mandate. Because they don't think they can afford it. The fact is the mandate in the bill will force Qwest or any provider in the country among the Bells to actually deploy over 5 years. Qwest doesn't particularly like that provision.

Senator DORGAN. I will tell you what I want. I want aggressive, robust competition in local exchanges, Number 1. Number 2—

Mr. DINGELL. Then vote for H.R. 1542.

Senator DORGAN. I want—well, you know, I had said when I started, I have heard that every morning while I was shaving, vote for Dingell-Tauzin, Tauzin-Dingell whichever it is. But I want robust, aggressive competition in local exchanges.

Mr. TAUZIN. So do we.

Senator DORGAN. We are only going to get that if we keep pressing on this issue on the 1996 Act. And second, I want ubiquitous broadband deployment everywhere in the country, just as we did with electricity.

And I again will end where I started. I regret that at least one idea by which we might enhance the lives of some with respect to the RUS provision in the Ag bill, I hope very much that I will not have to regret your trying to kill that.

Go into that conference Committee, you two people on the—

Mr. TAUZIN. You read a lot of the quotes. Did you read the one that says we are not trying to kill the provision per se. Read the quotes.

Senator DORGAN. Yes, well, read the quotes of your staffer that is in the conference, in the staff conference saying—

Mr. TAUZIN. It says we want to protect our jurisdiction. No.

Senator DORGAN. Well, I'm sorry.

Mr. TAUZIN. It says we want to protect our jurisdiction. We are going to do that.

Senator DORGAN. All right. First of all, thank you for coming.

Mr. TAUZIN. Thank you, sir.

Senator DORGAN. It was really good to have you here.

[Laughter.]

Mr. TAUZIN. It was good to be had.

[Laughter.]

The CHAIRMAN. My list shows Breaux, Allen, Nelson and then Hutchison.

Mr. DINGELL. Mr. Chairman, I apologize, but I do have other business. Thank you very much for having us here.

The CHAIRMAN. We appreciate very, very much your appearance. Senator Breaux.

Senator BREAUX. What round are we in, Mr. Chairman, about our 14th, 15th round here? I will, again my line of questions to my good friend and colleague, Congressman Tauzin, starting where I left off, and where I left off was I think one thing we can all agree on, that everybody wants a level playing field and for people to compete. And we all want competition.

And then everybody departs about what we think will bring about fair competition in these areas of broadband services and others. I happen to think that, it seems to me, and I want to ask my friend, I have got a list, I guess we got it from the local carriers and the DSL providers, but what they did, and I would like to ask you now is consent to make this chart a part of the record, because I know you have the intentions made—

The CHAIRMAN. Admitted.

[Information referred to follows.]

**Regulatory Treatment of Broadband from
Cable Companies, CLECs and Incumbent Telephone Companies**

ISSUE	Under Current CABLE Regulations	Under Current CLEC Regulations	Under Current TELCO DSL Regulations
Must permit any competitor to use all or parts of their networks to offer competing service?	NO	NO	YES
Regulators set rates allowing competitors to use of all or parts of their networks below actual cost?	NO	NO	YES
Must give any competitor deeply discounted "resale" rates for broadband service?	NO	NO	YES
Must provide line-sharing to enable competitors to offer broadband without voice service?	NO	NO	YES
Must provide open access to its broadband facilities to non-affiliated Internet Service Providers?	NO	YES	YES
Can recover investment in new facilities without providing them to competitors at below-cost rates?	YES (At self-set rates)	YES (At self-set rates)	NO
Can efficiently provide end-to-end Internet Protocol (IP) networks and Internet backbone?	YES	YES	NO

Senator BREAUx.—and I want to—I want to ask Congressman Tauzin some of the questions. As I understand, I mean, I have got one cable that provides all my cable service. I cannot find anybody else to provide cable service. It is one cable, it is a monopoly.

And they provide video and movies. And they provide telephonic communications. They provide broadband service. And there is no competition for them.

The same thing if you have a satellite, it provides movies and also broadband. There is no real competition for them or for a fixed wireless service. And the chart I have is almost unbelievable to me with regard to the regulatory requirements is what applies to the local phone companies trying to operate in this competitive mode

as applies to what regulations applied to cable, satellite and fixed wireless.

I take it, Congressman Tauzin, that the regulatory requirement of the common carrier duty to provide service at just and reasonable prices for high-speed Internet service does not apply to cable and does not apply to satellites and it does not apply to wireless but it applies to the local phone companies.

Mr. TAUZIN. That's essentially correct. There is a proposal, there is still an open area about whether the Commission might at some time in the future require the cable companies to carry another Internet service provider. For example, they have not made that decision.

As we sit here today, they have decided just last week that broadband services are essentially not telecommunications services, but data services, information services.

Senator BREAUX. Is there a common carrier duty prohibiting discriminatory treatment that applies to the local phone companies but not to satellites and not to cable?

Mr. TAUZIN. That is correct.

Senator BREAUX. Is there a duty to provide network to Internet service providers that applies to the local phone companies but not to cable nor satellites?

Mr. TAUZIN. That's correct.

Senator BREAUX. Is there a duty to file tariffs for the local phone companies but not to cable and not to satellite?

Mr. TAUZIN. That is correct. In fact, one of the members, Mr. Chairman, came to tell me yesterday on the floor that his local cable provider doubled their broadband rates the day our bill passed, just a monopoly taking advantage of their monopoly situation as long as they can.

Senator BREAUX. Here is what I really—what I really want you to elaborate on. Is there a duty to interconnect with competitors at below-cost prices that would apply to local companies but not to—

Mr. TAUZIN. It applies to telephone but not to cable.

Senator BREAUX. As I understand it, even under new broadband equipment that would be added to the system, henceforth forward, that the price that you would—that local companies would have to sell to their competitors would not be the just and reasonable standard but it could potentially and in some cases is a requirement to sell below their actual cost of installing new equipment?

Mr. TAUZIN. It's true on the old legacy system, on the old copper system. In our bill we would say insofar as—

Senator BREAUX. But without your bill?

Mr. TAUZIN. Without our bill, they could theoretically be obliged to share their new investments at below cost, which is kind of nutty.

Senator BREAUX. We all talk about the level playing field and we all agree with it. And I think what I would like, I want competition. I do not want one phone company. I do not want one cable company, which we have.

I do not want one satellite service, which, you know, I want the competition and I think it has to be balanced competition. I do not want to vote for a bill that only helps one phone system.

But I think that what we have here is one that I am very concerned that the current system does not provide the balance that even competition, that is our goal for all of us.

Would the bill still require the local phone companies to provide access to the new equipment under a just and reasonable standard?

Mr. TAUZIN. Yes. Our bill would say that as to all the new investments and fiber to the homes, the last mile, the remote terminals, all the equipment by which the CLEC which is currently using the legacy systems at below cost would need if they didn't want to make their own investments in that right away that they could use the Bell Company systems at rates, terms and conditions set by the Commission.

That is important, not just the price but the terms and conditions. In other words, they could define the speed requirements for the competitor as well as the conditions of service and connection. All of that is still required under our bill at rates, terms, conditions set by the Commission.

Senator BREAUX. And is that where the just and reasonable standard comes into play?

Mr. TAUZIN. Yes, sir.

Senator BREAUX. Without the bill, I mean, I heard the companies say, Look, we are not going to go out and build all this stuff if we have to give access to our competitors at below the cost of building. We are just not going to do it.

Without the bill is that where the problem is, one of the problems?

Mr. TAUZIN. There are two problems, that problem and the cost of the LATA lines, the inability to cross those LATA lines.

It would be a little bit, Senator Breaux, like you and I lived on the same street. It's like all our neighbors coming to you and saying, Look, Mr. Breaux, we'd like you to buy a new car that the neighborhood would like to use, but understand you won't be able to use it except to get up and down the driveway.

But we can take it anywhere we want and we can use it at below your cost. But you can't use it except to go up and down your driveway. Would you buy that car? The answer is no.

No company would make those kind of investments without being able to use it, Number 1, and equally as anyone else. Number 2, they certainly wouldn't make it so that they have to give it away at below cost. It's that simple.

Senator BREAUX. So the legislation then would I guess if—my last question—if the companies, the local exchanges build new broadband equipment, they would still be required to give access to that new system to their local competitors but at a just and reasonable standard as opposed to what the—

Mr. TAUZIN. That is correct. In fact, we give the competitors an additional option. If they want to build their own system inside of that right-of-way, the Bells have to allow them to do it. They can either use the Bells' systems, all these investments they make, at just and reasonable rates set by the Commission, or they can build their own facilities in those right-of-ways provided by the Bells' companies.

Senator BREAUX. And the charges would still be, for the access would still be FCC determined?

Mr. TAUZIN. FCC would determine it, not the Bell Company.

Senator BREAU. All right. Thank you.

Mr. TAUZIN. Thank you.

The CHAIRMAN. Senator Allen.

Senator ALLEN. Thank you, Mr. Chairman. Let me followup on a variety of issues that have been raised, since you are the sole one here, Congressman Tauzin.

Again, I think you are seeing out of this Committee unanimous views that obviously we are looking at the best way to make broadband available in all communities. It is mostly in rural communities. The key is for businesses, Number 1.

If those businesses are going to survive, they need to have access to broadband. To a secondary extent but still important, syndication, medical. And then consumers simply aren't going to it as much as people would expect.

What I am trying to figure out in all of this is listening to all the different perspectives and one of the things that is just a basic disagreement seems to be an understanding of the factual basis we are starting from. Now, granted, that may be, say, broadband penetration is only 10 percent, true. But on the other hand, there is a disagreement with the Chairman and also apparently with the FCC's views that 78 percent of all the zip codes have access to broadband, but you still have the 10 percent accessing it.

Then we have gotten into not only that difference, a perspective of what the situation is right now, but then arguing over Committee processes and so forth and merits of ideas seem to be ignored in the midst of this. I am one who doesn't care about process or politics, I like the merits of ideas.

And I have, as Chairman of the High-tech Task Force in the Senate for the Republicans, we have made, Senator Ensign is on our task force, made broadband a top priority.

Mr. TAUZIN. I saw that.

Senator ALLEN. We have worked for the broadband tax credit on Senator Rockefeller's bill. That is a bipartisan effort. And that bill, just for your information, one of the things I wanted before I signed onto it, wanted to make sure was that it was technology neutral.

Now, let me widen this discussion and get your views on this. And you mentioned, and I very much appreciate it, the concept of new ideas. If you do not like what we are doing, come up with something better or maybe add on, or draft it, or make some changes. And understand that in my Commonwealth of Virginia there is a lot of CLECs that have relied on the laws and those concerns are I think understandable and legitimate.

Now, as far as broadband, they can be delivered by cable. They can be delivered by DSL where there are CLECs or the Bells. What are missing in a lot of this discussion are satellites and wireless.

One thing that I would be interested in hearing your opinion on is the issue of spectrum management reform, specifically reallocating or freeing up more spectrum for the use of wireless technologies as an alternative means of delivering broadband capabilities.

The very same reason why there is not cable in all areas, mountainous areas of West Virginia or Southwest Virginia or elsewhere

is because there is too much dirt to dig. And so there are satellites for it.

But the same sort of concept or paradigm seems to me to be out and hopefully applicable to try and deliver broadband, maybe not by fiber, but by wireless or satellite capabilities. What are your views on spectrum management reform?

Mr. TAUZIN. Well, you actually touched on a number of topics including that one that need to get addressed if we are going to get content, rich content in these systems. One the Chairman is vitally interested in is content protection, which I share very much the Chairman's views on pushing the industry as rapidly as possible to settle those content issues with the recognition of fair use for consumers being considered, that is the right for us to make copies in our homes on our home video systems, et cetera.

We have got to work that out quickly. And, Senator, we are having meetings every week with the industry trying to push them as you have, you were talking about legislation to push them as well. So content protection and recognition of consumer rights are key issue spectrum, key issue.

Just recently the Commission issued an order on ultra broadband wireless technology. I think it was much too narrowly placed. I think it has much more potential than the Commission has yet to authorize but they are up against the Defense Department. They are up against the Transportation Department and others who have resisted this new technology because they obviously are concerned about spectrum invasion, spectrum interference.

We've got to settle those issues. This ultra broadband wireless technology could be one of the ways in which we settle that last mile concern and get the last mile connections from cable heads or telephone or de-slam systems into homes.

It is a key ingredient. So working the problems out with the Defense Department and others who have an awful lot of spectrum, we'd love to work with them to get more out in the public so we can have new wireless systems, particularly these ultra broadband wireless technologies available is something I am keenly interested in, and our Committee on the House side is aggressively pursuing.

Second, we are trying to get the digital transition completed. Part of what the Chairman of your Committee is doing with his potential legislation and what we are doing at hearings is to push the technology side of the equation hard so that the broadcast side can meet their mandate deadlines.

If we can get the digital transition done, if we do that, then we can have the kind of rich, hot, sexy content provided to broadband that Americans are going to want to sign up for. It is that simple.

If we have the protections built in, if we have the industry in the digital age speaking computer language, we'd have spectrum available for new technologies to come in, we are well on our way with a combination of a bill that deregulates and opens up more competition.

I want to make one other point to you because I know of you and Senator Ensign's work on your committees. I've got two letters that I want to leave with you. One is from the TIA and one is from the ITI, the two high-tech industry associations in this town rep-

resenting the great bulk of all the high-tech industries who depend upon these new technologies for their existence.

Both of them came out against the attempt in the House to give the CLECs below-cost access to these new systems the Bells would deploy. Both of them urged the House not to adopt the Cannon Amendment, in fact to oppose them rigorously. And I share these amendments with you.

They are basically saying they agree that the broadband deployment is critical, along with these other issues you have raised. And they are basically saying for heaven's sakes, don't disincentivize the Bell companies for building these systems by forcing them to sell them at below-cost rates.

Senator ALLEN. These are important letters and I leave them with you for your consideration. Thank you.

The CHAIRMAN. This is—I think it is Senator Ensign.

Senator ENSIGN. Thank you, Mr. Chairman. This is, and I think we are seeing it today, and I mentioned in my opening statement, about the complexity of the issue. When we talk to some of the IXCs, they complain about the jurisdiction we had taken out of the local authorities and put into the FCC—and we know how efficient the FCC is in getting back to things. Given this rapidity or lack thereof with the FCC, do you think this is an appropriate place for adjudicating issues dealing with the IXCs?

Mr. TAUZIN. Well, first of all, the only exemption we've given the local regulations is in Internet area. And that is a question I hope you think about in your conference, is that whether or not we ought to make a policy in broadband that says that local regulators can regulate the Internet.

I would hope we decide as we do in this bill that, no, that ought not be the function of local regulators. The Internet is not only international, interstate, it is international is my point.

It is not something that ought to be the subject of rate terms and conditions set by a local BUC. Second, the FCC is the most appropriate agency to make sure that Bell carries out its provisions requiring the open access to CLECs and other competitors under these new systems again. Because they have literally been the enforcers of the rights and responsibilities for the Bells when it comes to the CLECs enjoying their rights on the current legacy systems. We think that's appropriate.

Again, we are talking about—we are not talking about local phone services between two towns in Louisiana and Nevada. We are talking about Internet service.

Broadband is essentially rich content Internet. I've been asked to explain it to people back in the hunting camps, fishing camps back home; what is all this broadband talk.

And I try to give them a simple example. It's like going to the refrigerator under the current Internet world and finding your refrigerator off. You open it up and your beer is hot.

And you have got to turn it on and wait for the beer to get cold. And you are sitting there waiting, waiting. Finally, you dial it up and it gets cold and you enjoy your beer.

But broadband is like going to a refrigerator that is always on, is always cold. And when you open the door, it is like beer city.

[Laughter.]

Mr. TAUZIN. You have got every variety of beer you could possibly want, all of the wonderful rich content that you deserve when you are at a good fishing camp in Louisiana.

The bottom line is that that's what we are talking about. We are talking about Internet services essentially, data information services, not the old world local telephone. And you have got to separate that when you think about regulations and freedom.

We have entitled our bill the Internet Freedom and Broadband Deployment Act because it does both. It keeps the Internet free of the hands of all these regulators who would love to tax it, regulate it, set terms and conditions, what you have got to carry and what you don't have to carry, who gets on and who doesn't get on.

It keeps it out of the hands of all these regulators. And second, it fosters, it incentivizes much more deployment of the systems by which all this content, hopefully will get protected, get enhanced and get deployed in a digital television world.

Senator ENSIGN. Mr. Chairman, we don't have the Nevada analogies to be able to compete with cajun analogies, so hopefully we'll have some South Carolina analogies that—

Mr. TAUZIN. Well, I think, you know, this is a gamble.

[Laughter.]

Senator ENSIGN. Yeah, maybe we can pick up all the casino analogies. OK.

Mr. TAUZIN. Roll your dice.

Senator ENSIGN. I just hope we do not get a seven out.

The CHAIRMAN. I was wondering how Billy passed that bill in the House. That house crowd is hungry for entertainment.

[Laughter.]

Mr. TAUZIN. Senator, that is why we enjoined your visit to that Committee. You entertained us for about I think an hour and a half under our 15-minute rule, which we really appreciate.

Senator ENSIGN. Anyway, I have another question. We have heard from some of our CLECs, especially the small CLECs in our state, under the Buyer-Towns Amendment. Do you think that—they do not think that they will be able to compete with your bill. And they think that they are going to actually go out of business. How do you address that?

Mr. TAUZIN. Well, I can only take you back to the National Academy of Sciences study. They said if you really want competition, you have to have facility-based competition.

The idea of someone coming into your store and trying to sell your products at below your cost is a weird business proposition. You want to look at why so many have failed already, it's because they are building their business on a model that doesn't work.

If they are coming into a store in that case, if the product's already subsidized below cost, the residential phone market, and trying to sell those products in your store. The National Academy of Sciences, there have been a number of excellent studies done.

Kato just did a beautiful study on the idea of poverty rights tapings. Why would we in Congress approve a law that says companies can go out and build brand new systems, that's their property, that's their shareholders' property, and then have to give it away below cost.

They won't build them. What shareholder would support a president of the board that did that. We'd have some more Enron hearings, I suspect.

So the bottom line is if you really want competition in this marketplace, encourage facility-based. That's what the bill does. It says you are encouraged to build your facilities inside the Bell right-of-ways.

Now, if you want to use their investment, you can do that too but so long as you pay a just and reasonable rate for doing that. Now, what is wrong with that? What is wrong with that in America to say that while somebody can come and use your property, that they at least pay you a just and reasonable rate when they use it.

And again, all of the IT companies, all of them said for heaven's sakes, don't force an investor to give away his property at below-cost rates. He just won't make the investment. And we'll all lose out.

Senator ENSIGN. Mr. Chairman, I'll just close with this, and that is, and it gets to the heart of the difficulty on the politics, you know, both sides accuse the other side of having a monopoly. And obviously, but yet both sides say that they want competition.

And I think that our challenge is going to be truly getting to that competition because everybody wants to have competition in the other guy's marketplace but they would like to have a monopoly in their own marketplace. And the key to us is to make sure that the legislation, whatever the final piece of legislation that we have, truly opens up everything.

Because everybody benefits, including the companies, when there is true competition. They get better.

Mr. TAUZIN. Do you remember when all of us got together and passed the Satellite Viewers Rights Act, beside the Cable Act? Was that in 1992? We passed over—

Senator ENSIGN. We weren't there.

Mr. TAUZIN. Anyway, but we had to do it over the Presidential veto. It was essentially the same issue. Did you want the cable company to be the only provider of television services to so many homes in America or did you want to give them another choice, an option in the sky. We had to fight, to duke that thing out. And the same interests were raised. I was told when I went to Florida, that amendment in the House, forget it.

Just like Senator Dorgan said. You are never going to pass this. You cannot pass this bill. There are too many big companies arguing against you.

Well, the House voted for it. And the Senate voted for it. I think Senator Al Gore was in charge here in the Senate. And we overrode a Presidential veto to make a law.

And today, now 16–19 million Americans now enjoy a different choice of television programming than the cable company. I want to make sure they have the same choices in broadband, that they have a second store in town, Senator, a chance to go find some different content, something brand new.

That is the least we can do for American consumers. We can't—we can't create a job for everybody with this legislation, but we'll create 1.2 million jobs according to one study.

We'll get this economy going. And we'll give Americans control of this marketplace again, instead of all these big companies that are running Tauzin-Dingell ads and interrupting our shaving hour in the morning.

Senator ENSIGN. Well, Mr. Chairman, I think we all have the same goals. It's just a question of how we get there that will be the fascinating thing to watch. And I appreciate you holding these hearings here today.

The CHAIRMAN. Yes, sir. Thank you. Senator Nelson.

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Thank you, Mr. Chairman. Mr. Tauzin, having just been to New Orleans just before Mardi Gras, I now understand why you use imagery of beer-filled refrigerators.

Mr. TAUZIN. You know, I was asked why the travel to New Orleans only dropped 3 percent after 9/11 when it dropped so dramatically around the country. And the only answer I had was that when people come to New Orleans, they expect to die.

[Laughter.]

Mr. TAUZIN. I mean, it's a great place.

Senator NELSON. Well, I will tell you when I was jogging down on Bourbon Street at first light of day around six o'clock, they did not look very dead down there.

I have got a number of questions for the record and I will not be long, Mr. Chairman. Because I know the time is moving on here. A GAO report of February 2001 found that most people did not want to pay a lot for broadband services.

Mr. TAUZIN. Correct.

Senator NELSON. And most households with access to the Internet were not—not planning on subscribing to broadband services at the current price range of around 45 to 50 bucks per month.

Mr. TAUZIN. Fifty bucks, yes.

Senator NELSON. Tell us about if your bill will lead to more demand and lower prices?

Mr. TAUZIN. You could have made the same survey when it came to cellular phones when they were initially deployed in America. When there was only one cellular phone company or two perhaps because we made the good judgment to make sure there was a wired and a non-wired line distributor, the same arguments pertained.

But then there were three, then there were four, then there were five eventual companies. The price war erupted. And the same thing can happen in broadband.

If you want to bring prices down, get another store in town. It's as simple as that. It is no more complex—they say this is such a complex issue. It is not, when you really get down to it.

It's a simple question of whether or not consumers are better off when there is only one store in town and that store sets all the prices, or whether they are better off when there is a second and third and fourth store coming to town and all of a sudden those folks are fighting for your business.

And the prices come down in the price wars. And the services improve and the content improves as they keep bringing in new prod-

ucts to attract you to their store. It's a simple proposition, Senator. You create more stores, you help consumers.

Senator NELSON. All right. Let me ask you about that chart. That chart seems to be the opposite of our experience in Florida. The Public Service Commission Chairman has written and says that Florida ranks well above the national averages in broadband deployment.

And as I understand that chart, you are saying that there is no broadband in about 89 percent of the consumers. It says, According to FCC data, 87 percent of Florida zip codes are served by at least one broadband provider, 69 percent are served by one to three providers.

And it says these percentages are above the national averages of 59 percent and 49 percent respectively. Is there a disconnect there with your chart because they are talking about zip codes here and you are talking about something else there?

Mr. TAUZIN. Absolutely. I think if America was one zip code, 100 percent of America would be served by broadband. Does that make sense? The fact is you could have one customer——

Senator NELSON. What is that? That is on all customers?

Mr. TAUZIN. That is the percentage of customers in America on broadband. If there's one customer, generally a business customer in a zip code, that zip code is countered as being broadband served under those statistics. You have just got to watch how you read them.

Senator NELSON. Is it of your knowledge that Florida is served, more consumers are served in Florida as compared to other states?

Mr. TAUZIN. As compared to some other states you are. I think Florida is as advanced in deployment as the best of the states. But I don't think it's necessarily better than the rest of the country. I think the other parts of the country do compare with Florida.

Senator NELSON. All right. Mr. Chairman, I would like to proffer a series of questions, if we could get just short answers. These are questions that have been proffered from the Chairman of our Public Service Commission and I would like to get your answers on the record.

Mr. TAUZIN. That is fine.

Senator NELSON. Does the bill undermine the incentives for Bell operating companies to open their local markets to competition?

Mr. TAUZIN. We don't think so. I mean, they have made that argument. What we have done is not only kept the carrot of long distance service under 271 in order to encourage them to open up their local market, we have added a stick.

So today we are operating just under a carrot and it's not working very well. We've only got a few states that have been through the process. What we are saying is maybe we need a stick too. We have added a stick.

Senator NELSON. All right. Number 2, would the regional Bell operating companies lose their incentives to open up their markets if the data traffic were allowed across LATA boundaries?

Mr. TAUZIN. The long distance market is about a \$100 billion market, nothing to sneeze at. That's pretty good incentive. Second, whether they have an incentive to or not, we have added power to the FCC to force them to open up their markets.

Senator NELSON. Number 3, does the bill harm rather than help competition in broadband deployment? That is what we were talking about.

Mr. TAUZIN. There is no question in our mind it enhances dramatically competition. If you don't—if you like the current situation where you have got a 70 percent dominant player and the Bell companies are really reluctant to deploy because they would have to sell their new investments at below cost, then this is what you get. I think we deserve better than this.

Senator NELSON. Next question, while the Florida Public Service Commission does not regulate the Internet, would the preemptive language in the bill keep the PUC from overseeing the nondiscriminatory application of terms and conditions in tariffs for high-speed data services?

Mr. TAUZIN. Yes. It eliminates any regulation by the PUC of terms and conditions of service on the Internet. That's correct. It frees the Internet from local regulation and it, however, it continues the power to examine the performance standards of the Bells.

Senator NELSON. Last question, does in your opinion the bill, how does it affect the regulatory leverage to spur the Bell companies to open up their markets?

Mr. TAUZIN. It increases regulatory leverage. The Commission, Mr. Powell came before us and asked for exactly what he gets in our bill, which is a ten-fold increase in fines, twenty-fold increase for repeat bad behavior and the power to go to court under cease and desist authority to force the Bells to behave when they misbehave.

Senator NELSON. OK. Thank you, Mr. Chairman.

The CHAIRMAN. Chairman Tauzin, the hour is late. The disconnect, Senator Nelson, is from the truth. It is just exactly the opposite of that. Eighty-five percent, it passes the homes all over America. It is the lack of demand.

Yes, there is a monopoly. Cable has got a temporary monopoly. The Bell Company has a permanent one. The cable one is by way of a franchise fee for 5 to 10 years. The Bell companies do not pay a franchise fee.

The cable company has got to provide governmental services, schools and everything else. And they have got to have a good reasonable price or they are going to lose the contract. In fact, there is some price overview and changes in the city's contracts on everything else of that kind. And they know they will lose the contract. There never is going to be the end of a Bell Company.

Mr. TAUZIN. Excuse me, Senator, there is no cable franchise fee on the broadband service.

The CHAIRMAN. Let me tell you this, going right down there, I will yield to you in just a second because I have a hard time keeping up.

The 271 you just gave the excuse about your competition of long distance. 271, Senator Conrad Burns asked a question about the difference between data and voice. None. Both of you all said absolutely none.

On Page 18, Section 6, line 13, you repeal 271 for data, and thereby since it is no different with voice, you repealed 271 for

both. You go right down to comply. Verizon, Bell South, they are already into the third year and that is no 5-year requirement because they are pell-mell trying their best, as Duane Ackerman of Bell South says, going as fast as we can. It is profitable.

And even if they did not comply, the penalties are a joke. They have paid 2 billion in penalties—

Mr. TAUZIN. Senator, I've got 2 minutes.

The CHAIRMAN. I will yield in just a second.

Mr. TAUZIN. No. No. Listen—

The CHAIRMAN. All I ask you to do is, I will give you—

Mr. TAUZIN. I've got to vote.

The CHAIRMAN. All right. You have got to vote. And then, well, you have got the authority to the FCC, just and reasonable and everything else. But that power is not given to the FCC except on appeal. And you give the authority to—we had, Billy, a contest for an insurance company down in South Carolina. And the winning slogan was, "Capital Life will save the day if the small print on the back don't take it away." And that is exactly this bill. I had the staff study it. I have looked at it. And every time I have said if Chairman Tauzin told me now he has got some amendments and it will be acceptable and everything else like that, you have got to fill it out with your lawyers drawing this darned thing.

It is still the worst thing I have ever seen because it really does turn it over to a total monopoly.

Mr. TAUZIN. We disagree on that.

The CHAIRMAN. And I mean, the little bit of competition that the cables have given hasn't gone up at all.

Mr. TAUZIN. We disagree on that, sir. That's a valid disagreement. I can only tell you that when we presented our bill to the delegation of South Carolina in the House, all but one of the members voted for it. So there is even disagreement within your state.

The CHAIRMAN. You are right. And in fact I have got way more Bell friends in South Carolina. I cannot tell who the AT&T fellow is down there. You keep saying I am shilling for AT&T. I do not know who represents them in South Carolina. I know all of them in Bell South. They are far more influential.

Mr. TAUZIN. Trust me, Senator, I never said you shill for anyone. No one would ever claim that. What I do know is that when we presented these amendments, these changes in the bill to the delegation from South Carolina, we were very successful in getting the support of the vast majority of the members. Only one voted against it. I'm saying that's a legitimate difference of opinion. Let us leave it there and let's continue to talk and work. I think I've heard a lot of expression today that—of agreement on the general things we want to accomplish.

And I will reiterate again, Senator, that Mr. Dingell and I are absolutely dedicated to working with you and all your members, if there are better ideas, better ways to achieve the goals I think we have all mutually expressed.

The CHAIRMAN. Very good. Thank you very much for your appearance. It has been very helpful for us today.

Senator NELSON. Mr. Chairman, I want to clarify, and as we get into the discussion on this, because the suggestion of that chart, I am looking at the Federal Communications Commission, third re-

port. And they make a statement on Page 49, "Analysts estimate that high-speed Internet access is available in about 75 to 80 percent of U.S. households via DSL and cable modem service." And so there is a disconnect between statements like that and that chart that over the course of your hearings I would like to figure it out.

The CHAIRMAN. Very good, Chairman. The Committee will be in recess. Thank you.

[Whereupon, at 12:15 p.m., the Committee was adjourned.]

