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FEDERAL TELECOMMUNICATIONS LAW:

A LEGISLATIVE HISTORY OF

THE TELECOMMUNICATIONS ACT OF 1996

PUB. L. NO. 104-104, 110 STAT. 56 (1996)

INCLUDING

THE COMMUNICATIONS DECENCY ACT

Volume 19
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INTRODUCTION

AN OVERVIEW OF THE TELECOMMUNICATIONS ACT OF 1996

The "Telecommunications Act of 1996," signed into law on February 8, 1996, opens up competition between local telephone companies, long-distance providers, and cable companies; expands the reach of advanced telecommunications services to schools, libraries, and hospitals; and requires the use of the new V-chip technology to enable families to exercise greater control over the television programming that comes into their homes. This Act lays the foundation for the investment and development that will ultimately create a national information superhighway to serve both the private sector and the public interest.

President Clinton noted that the Act will continue the efforts of his administration in ensuring that the American public has access to many different sources of news and information in their communities. The Act increases, from 25 to 35 percent, the cap on the national audience that television stations owned by one person or entity can reach. This cap will prevent a single broadcast group owner from dominating the national media market.

Rates for cable programming services and equipment used solely to receive such services will, in general, be deregulated in about three years. Cable rates will be deregulated more quickly in communities where a phone company offers programming to a comparable number of households, providing effective competition to the cable operator. In such circumstances, consumers will be protected from price hikes because the cable system faces real competition.

This Act also makes it possible for the regional Bell companies to offer long-distance service, provided that, in the judgment of the Federal Communications Commission (FCC), they have opened up their local networks to competitors such as long-distance companies, cable operators, and others. In order to protect the public, the FCC must evaluate any application for entry into the long-distance business in light of its public interest test, which gives the FCC discretion to consider a broad range of issues, such as the adequacy of interconnection arrangements to permit vigorous competition. Furthermore, in deciding whether to grant the application of a regional Bell company to offer long-distance service, the FCC must accord "substantial

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weight" to the views of the Attorney General. This special legal standard ensures that the FCC and the courts will accord full weight to the special competition expertise of the Justice Department's Antitrust Division--especially its expertise in making predictive judgments about the effect that entry by a bell company into long-distance may have on competition in local and long-distance markets.

Title V of the Act is entitled the "Communications Decency Act of 1996." This section is specifically aimed at curtailing the communication of violent and indecent material. The Act requires new televisions to be outfitted with the V-chip, a measure which President Clinton said, "will empower families to choose the kind of programming suitable for their children." The V-chip provision relies on the broadcast networks to produce a rating system and to implement the system in a manner compatible with V-chip technology. By relying on the television industry to establish and implement the ratings, the Act serves the interest of the families without infringing upon the First Amendment rights of the television programmers and producers.

President Clinton signed this Act into law in an effort to strengthen the economy, society, families, and democracy. It promotes competition as the key to opening new markets and new opportunities. This Act will enable us to ride safely into the twenty-first century on the information superhighway.

We wish to acknowledge the contribution of Loris Zeppieri, a third year law student, who helped in gathering these materials.

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April 1997

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NATIONAL COMMUNICATIONS INFRASTRUCTURE
(Part 3)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
TELECOMMUNICATIONS AND FINANCE

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

FEBRUARY 8, 9, and 10, 1994

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NATIONAL COMMUNICATIONS INFRASTRUCTURE

TUESDAY, FEBRUARY 8, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:42 a.m., in room 2322, Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Mr. MARKEY. Good morning and welcome to the third week of hearings on the important telecommunications legislation pending before the subcommittee.

Today's hearing is on H.R. 3626, the "Antitrust Reform Act of 1993", introduced by John Dingell, the chairman of the Energy and Commerce Committee, and Jack Brooks, the chairman of the Judiciary Committee.

This comprehensive bill tackles a number of tough issues by setting up a framework, a process, to resolve these issues that represent a sensible compromise between two committees as well as a useful policy approach to this complex set of issues.

In particular, today we will focus on the provisions affecting Bell Company entry into the manufacturing business and Bell Company participation in the information services business.

The Bell companies were permitted to enter the information services business after Judge Greene's decision, albeit a reluctant one, in July, 1991, to lift the restriction. As many members will remember, this subcommittee spent considerable time last Congress exploring what safeguards would be appropriate to regulate regional Bell operating company participation in information services. I circulated a package of safeguards and Congressmen Cooper, Bryant, Hall, Synar, Schaefer and others proposed similar safeguards.

I think all members involved in that debate last Congress should take some comfort from the fact that the legislation before the subcommittee with respect to electronic publishing safeguards tracks quite closely those proposals we were discussing last Congress.

In addition, we will take testimony on the provisions regulating Bell Company entry into the manufacturing business. Congressman Slattery has been a long proponent of Bell Company entry into this line of business and his contribution is evident in this bill.

As I have said for a number of years, I think we should not look at MFJ issues in isolation, but we should review them comprehensively. The Dingell-Brooks bill takes a comprehensive approach to

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these complex issues and I believe that distinguishes this bill from past proposals. I believe the bill before the subcommittee helps us resolve the many thorny issues this subcommittee has wrestled with for several years. I hope that today's hearing will advance us towards the goal of moving forward with this legislation.

That completes the opening statement of the Chair. We'll recognize now the ranking Minority member, the gentleman from Texas, Mr. Fields.

Mr. FIELDS. Mr. Chairman, I would like my statement placed in the record. I'm just making a few brief remarks.

This legislation represents the culmination of nearly a year of hard work by Chairman Dingell and Chairman Brooks. Chairman Dingell in his usual style worked hard to accommodate as many competing interests as he could in crafting this particular piece of legislation.

I want to point out that last week I joined seven of my Republican colleagues on the subcommittee in sending a letter to Chairman Dingell requesting that the United States Trade Representative testify regarding the domestic content requirements of this particular legislation. As we all know, the Justice Department recently testified that mandates on the Bell operating companies establishing U.S.-based manufacturing facilities would violate NAFTA and trade agreements and that is one issue I plan to explore.

It's certainly one that I have interest in along with several of my colleagues and I want to thank you for this hearing and every hearing that we have had. I have found these hearings to be extremely enlightening and I think it helps us as we move this legislative process forward.

With that, I would like to place my statement in the record.

Mr. MARKEY. Without objection, so ordered.

[The prepared statement of Mr. Fields follows:]

STATEMENT OF HON. JACK FIELDS

Thank you, Mr. Chairman. Today we will begin hearings on H.R. 3626, the Antitrust Reform Act of 1993.

H.R. 3626 represents the culmination of nearly a year of hard work by Chairmen Brooks and Dingell to develop a forward-looking communications policy. Chairman Dingell, in his usual style, worked to accommodate competing interests in crafting this legislation.

This morning's hearing will focus on the Title II provisions which include the regulation of the Regional Bell Operating Companies' (RBOC's) manufacturing, alarm services and electronic publishing operations. Last week, I joined seven of my Republican colleagues on the subcommittee in sending a letter to Chairman Dingell requesting that the United States trade representative testify regarding the domestic content requirements of H.R. 3626. As you know, Mr. Chairman, the Justice Department recently testified that mandates on the RBOC's establishing U.S.-based manufacturing facilities would violate the NAFTA and GATT trade agreements.

As years of spirited debate have proven, this is a topic that draws strong feelings from all of the players, including many members of this subcommittee—as well it should, since how we proceed will determine America's future ability to compete in the international telecommunications marketplace.

Mr. Chairman, my objective in this debate is to do what best serves consumers. If we can enact a policy that improves the quality and diversity of telecommunications products and services available to American consumers, we should do so. Clearly, there will be some costs in lifting the prohibitions of the modified final judgment. What I will continue to weigh in my review of H.R. 3626 is whether the benefits to consumers exceed the costs.

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Mr. Chairman, I want to commend you for holding this hearing today and for continuing to move this process forward in a bipartisan and expeditious manner. I want to welcome the distinguished panel of witnesses, and I look forward to hearing their testimony.

Mr. MARKEY. I'll recognize the gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. I have no opening statement.

Mr. MARKEY. OK, Mr. Cooper.

Mr. COOPER. Thank you, Mr. Chairman. I appreciate your holding this hearing. I just wanted to introduce to my colleagues on the committee a good friend and constituent of mine, R. Jack Fishman, who is going to be one of the panelists on the first panel.

To those of my colleagues who like my health care bill, I would urge you to listen to what he has to say. I know this isn't a health care panel, but those of you who dislike my health care bill, you can forget that he is a constituent and friend of mine.

Mr. COOPER. I think the entire subcommittee will benefit greatly from hearing all of the witnesses and I appreciate your calling the hearing, thank you.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Illinois, Mr. Hastert.

Mr. HASTERT. Thank you, Mr. Chairman. I, too, am pleased that we are discussing Title II of H.R. 3626 today, the manufacturing MFJ relief that is contained in this legislation are consistent with those that I have long supported. I also am very pleased that for once we are looking at these issues in a legislative situation and mode instead of accepting what some court has laid upon this country to direct their manufacturing effort over the years.

America's domestic telecommunications manufacturing industry has been on a downward slide while this 10-year restriction has been in effect.

In fact, more than 60,000 U.S. telecommunications manufacturing jobs have disappeared. Today almost all telephone sets and ⅓ of all telephone processing equipment produced by U.S. firms are manufactured overseas, and I have seen it especially in my district where thousands of telephone manufacturing jobs have gone overseas.

In addition, more than $3 billion in U.S. telecommunications assets have been transferred to foreign ownership over the last 10 years. Accordingly, I believe that we should lift the manufacturing restriction as soon as practical.

Additionally, I comment the two full committee chairmen for including in Title II the compromises agreed to by the RBOC's and the newspaper publishers and the alarm companies. As we are all aware these days, these were hard fought negotiations; however, the results are not only far-reaching but also essential for growth on the information superhighway.

I look forward to our witnesses' testimony. Thank you, Mr. Chairman.

Mr. MARKEY. Great. The gentleman's time has expired. The Chair recognizes the gentleman from California, the ranking Minority member on the full committee, Mr. Moorhead.

Mr. MOORHEAD. Well, thank you, Mr. Chairman. I want to welcome the outstanding panel that we have here this morning on

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what is going to be one of the major issues of this particular Congress.

We have been listening to a proliferation of suggestions on changes in the original consent decree that was handed down a few years ago restricting the Bell operating companies in the activities that they could engage in. This hearing will focus in part on the proposal to change the process by which the Regional Bell Operating Companies can enter into new lines of business that they are restricted from entering, pursuant to the 1992 consent degree.

In addition, the hearing will examine the impact the Bell Company entry would have on the U.S. economic competitiveness, consumers, and the over-all impact on the national communications information infrastructure.

I think it is clear to everyone that there is an awful lot on the table with this legislation. This bill is far better than the bill that Mr. Brooks had introduced last year, I believe it was or the year before, and I think it will go a long ways towards correcting a problem that is present but there's still a number of specific arguments that will be made along the line.

I know that many people are concerned about the intrastate activities of RBOC that might take special advantage over, say, the long-distance carriers, but it is obvious to me that there is going to be far more competitiveness in this whole industry than there has been before, both within the region and for long-distance, and if we have that kind of competitiveness, the consumer is the one that's bound to benefit in the long run.

I'll be very interested in the debate today and the testimony that's given and certainly will follow this issue very closely as we go down the next few weeks because this is going to come up very, very rapidly and I think we'll be voting on this issue before we realize it. Thank you.

Mr. MARKEY. The time of the gentleman has expired. The Chair now recognizes the gentleman from Ohio, Mr. Oxley.

Mr. Oxley. Thank you. I'll just ask unanimous to consent that my statement be made part of the record and yield back the balance of my time.

[The prepared statement of Mr. Oxley follows:]

STATEMENT OF HON. MICHAEL G. OXLEY

Mr. Chairman, as we build the information highway, we have to be careful not to leave any potholes.

We've always had a bumpy ride whenever we've discussed allowing the RBOC's into information services and manufacturing. This legislation smooths the road.

One of the information highway's greatest uses is bringing information services to the home and office. From both a competitive and a financial standpoint, the RBOC's can't be locked out. The courts have already paved the way here. Bit by bit, this legislation codifies the terms of entry, and ensures fair competition.

The bill also allows the RBOC's into manufacturing. We should no longer be tying the hands of American companies that could be world-wide players in a lucrative industry. Competition is here, it's happening, and the Baby Bells should no longer be benched.

I am concerned about the domestic content clause of H.R. 3626. It may run counter to GATT and our other efforts to tear down protectionism in international trade. Especially in telecommunications, where we can be dominant world-wide, we don't want to do anything that invites retaliation and closes markets. I look forward to hearing the views of the U.S. Trade Representative's office on this important issue.

Thank you. I yield back my time.

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Mr. MARKEY. Without objection.

So we will turn then to our first panel. We have two today, the first on information services, and the second on manufacturing.

Our first witness is Mr. Frank Bennack who is the president and CEO of the Hearst Corporation. He is here today representing the Newspaper Association of America, the larger newspapers of our country. He has played an extremely instrumental role in shaping the safeguards that are included in this legislation we hear today in his work with the subcommittee and full committee over the last 3 years in bringing us to this. We very much appreciate all of your work on this subject. Whenever you are ready, Mr. Bennack, please begin, and move the microphone over a little bit.

STATEMENT OF FRANK A. BENNACK, JR., ON BEHALF OF THE NEWSPAPER ASSOCIATION OF AMERICA; JAMES G. CULLEN, PRESIDENT, BELL ATLANTIC CORPORATION; R. JACK FISHMAN, ON BEHALF OF THE NATIONAL NEWSPAPER ASSOCIATION; GEORGE M. PERRY, SENIOR VICE PRESIDENT, PRODIGY SERVICES CO.; AND STAN MARTIN, EXECUTIVE DIRECTOR, NATIONAL BURGLAR AND FIRE ALARM ASSOCIATION

Mr. BENNACK. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, as the chairman has said, I am Frank A. Bennack, Jr., and I am president and chief executive officer of the Hearst Corporation, and I am immediate past chairman of the Newspaper Association of America. I appreciate this opportunity to testify on behalf of NAA's members, who number 1,225 newspapers, the majority of which are daily newspapers, and they account for approximately 85 percent of the daily circulation in the United States.

I want to thank this subcommittee and its staff for the effort extending over many years to develop legislation that will resolve the troubling issues that have arisen under the MFJ, especially ones that the court has been unable to address properly: the public interest in a sound regulatory framework to govern the role of the regional operating Bell Companies in electronic publishing. I extend our special appreciation to you, Mr. Chairman, and to Chairman Dingell and Judiciary Committee Chairman Brooks, whose leadership on this issue have been essential to getting us to where we are today.

I've submitted a detailed statement for the record, which I will briefly summarize.

First, HR 3626 is needed now because in recent years developments in the court and at the FCC have put the public interest in a diverse and vibrant electronic publishing industry at risk by eroding the protections that previously existed against anti-competitive conduct by the RBOC's.

Beginning in 1991, the FCC scuttled its decades-old structural separation requirements, allow the RBOC's to provide information services on an integrated basis, rather than through a separate subsidiary. Similarly, the MFJ restriction against BOC entry into information services was removed, as the chairman has said, albeit reluctantly, by Judge Greene in that same year, and the final appeal with respect to that was exhausted last fall.

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These actions eliminated any effective protection against anti-competitive behavior by the RBOC's at a time when local exchange competitive was more promise than reality. Even now, the RBOC's have not yet entered the electronic publishing field in a major way, and, therefore, Congress is free to set the rules of the road without the constraint of major RBOC business investment already in place. Thus, now is the time, in our view, to enact HR 3626 before the world of electronic publishing changes too much, and sound public policy is left behind.

Second, significant changes have begun to occur in both electronic publishing and local telecommunications. It is now possible to envision the future development of meaningful competition to the RBOC's in local distribution in the form of PCS and cellular systems, enhancements to existing cable companies, and the facilities of fiber-based metropolitan area networks.

While economic and legal barriers to the full growth of these competing means of telecommunications remain, we expect that what they can offer and their ability to offer fundamentally-equivalent services in the next 5 to 7 years is a highly likely scenario. Perhaps, sooner if public policy strongly encourages their development.

For this reason, NAA also supports the bill that you, Mr. Chairman, and Congressman Fields have introduced HR 3636, which will promote local competition and create the market conditions that will be needed for the electronic publishing industry to flourish, both in the next few years and particularly after the safeguards in HR 3626 expire.

Third, it is important to note that the RBOC's still have the ability and incentive to discriminate against competing electronic publishers and to cross-subsidize their own electronic publishing operations with telephone monopoly revenues. NAA believes that the record before Congress already clearly demonstrates that the Department of Justice, the FCC, and the state PUC's do not now have the necessary policy guidance to effectively safeguard electronic publishing markets. The Department encouraged the courts to drop the information services line of business restriction from the MFJ relying, in part, on the FCC's safeguards. However, as I've noted, the FCC has now eliminated its structural separation requirement for RBOC provision of enhanced services, which include electronic publishing.

Most state PUC's have not even been able to address the electronic publishing issues. Interestingly, the few that have, such as those in New Jersey and Pennsylvania, have found that the public interest favors separate subsidy requirements similar to those in HR 2636.

From another perspective, we also recognize that public interest and participation by the Bell Companies in electronic publishing. With a view toward achieving and optimum blend of safeguards and market participation, and in cooperation with both committees involved here, we began a dialogue last year with the Bell Companies and with Members of Congress. After prolonged and difficult discussion and negotiations, NAA believes that the majority of our concerns have been addressed in the compromise which is reflected in section 203 of HR 3626.

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In a perfect world, the bar against the Bells would not have been dropped or these safeguards would have been put in place before the dropping, but, as everyone knows, we don't live in a perfect world. Accordingly, this bill allows the RBOC's to provide electronic publishing services, but only if they do so through a fully-separated subsidy. This separation requirement will make it more difficult for the RBOC's to engage in discrimination or cross-subsidy and much easier for any violations to be detected and corrected.

Services that must be separated are those which involve the publication of information content, an activity that can efficiently be carried out without being integrated into the network operations. These requirements are similar to those that the FCC now imposes to separate the RBOC's from their cellular affiliates. In addition to requiring structural separation, the bill strengthens existing laws against discrimination and cross-subsidy by adding greater specificity and coverage.

I have described the futures of the safeguards in detail in my written statement, and will not repeat them now, and I know they are well-known to the members of the committee. However, it is important to note that these safeguards are largely self-executing. Neither the FCC nor the Department of Justice will be faced with heavy burdens, no big rulemakings or extra staff would be needed, we believe.

Fourth, and finally, Title II of HR 3626 will serve the public interest by encouraging new market entrants. We believe that entrepreneurs are still holding back for major investments in electronic publishing concerned, in part, by the possibility that the RBOC's will not treat them fairly and could easily drive them out of business.

The bill also contains very important provisions that will enable the Bell Companies and other electronic publishers to work together. The bill specifically encourages teaming arrangements and non-exclusive joint ventures between the RBOC's and electronic publishers. These ventures remain subject to an array of safeguards to prevent abuses, yet allow significant flexibility in business arrangements. It is particularly to be noted that the bill contains special provisions to make it easier for small local electronic publisher to elect to participate in joint ventures with the RBOC's.

Mr. Chairman, we urge the subcommittee and the entire Congress to expedite adoption of HR 3626, which, as you know, has the support of the administration, as I understand it. We see the bill's safeguards as an essential transitional tool on the road to full, local competition, which is the ultimate safeguard, and we are confident that passage of both HR 3626 and HR 3636 will advance the public interest by promoting diversity and competition in electronic publishing.

Additionally, we support the increased competition that the long distance and equipment manufacturing provision of 3626 contemplate.

Thank you very much for your time and attention, and I will try to answer your questions, Mr. Chairman.

[Testimony resumes on p. 19.]

[The prepared statement of Mr. Bennack follows:]

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STATEMENT OF
FRANK A. BENNACK, JR.
ON BEHALF OF
THE NEWSPAPER ASSOCIATION OF AMERICA

Mr. Chairman and Members of the Subcommittee, my name is Frank A. Bennack, Jr. and I am President and Chief Executive Officer of The Hearst Corporation and the Immediate Past Chairman of the Newspaper Association of America ("NAA"). Thank you for allowing me to appear before you on behalf of the NAA and its members.

The Newspaper Association of America is a non-profit corporation serving approximately 1,225 member newspapers in the United States and Canada. The majority of these members are daily newspapers that account for more than 85 percent of the daily circulation in the United States. In addition, nearly 200 individuals and companies allied with the newspaper industry are associate members of NAA.

I want to thank this Subcommittee and its staff for their efforts extending over a period of years to develop legislation that will resolve the many troubling issues that have arisen under the AT&T Consent Decree ("MFJ"), and especially one that the courts have not been able to address properly—namely, the public interest in a sound regulatory framework to govern the role of the Bell Operating Companies ("BOCs") in electronic publishing markets. I would like to extend our association's special appreciation to Chairman Dingell, Chairman Markey, and Judiciary Committee Chairman Brooks, whose leadership on this issue has been essential to getting where we are today.

Section 203 of H.R. 3626 represents an historic compromise between the interests of newspapers and those of the Bell companies. The bill recognizes that both of us have essential roles to play in bring exciting new

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information services to the American public. Today I can assure you that this legislation is necessary and in the public interest.

H.R. 3626 Is Needed Now

In May of 1989, David E. Easterly of Cox Newspapers, testifying on behalf of our predecessor organization—the American Newspaper Publishers Association—before this Subcommittee, stated that "it is the job of Congress to establish policy" with regard to the availability of competitive electronic publishing services. He urged the Congress to preserve the line of business distinction within the MFJ "between content and conduit"—a distinction that has served U. S. commerce so well that, today, we enjoy both the world's most efficient telephone service and also the world's best and most diverse electronic information services. Again in 1989, Robert M. Johnson of *Newsday*, testifying before the House Judiciary Committee, reiterated the position of our Association in this regard. And two years ago, NAA's President and Chief Executive Officer, Cathleen Black emphasized that "Congress must fill this policy void and, in the process, protect competition in electronic publishing services." Today, we are extremely pleased to see that you have heard our concerns and are moving forward with a bill that we support enthusiastically.

In recent years, developments in the courts and at the FCC have put the public interest in diverse and vibrant electronic publishing at risk by eroding the protections that previously existed against anticompetitive conduct by the BOCs. In 1991, the FCC scuttled its decades-old structural separation requirements, allowing the BOCs to provide information services on an integrated basis, rather than through a separate subsidiary. Similarly, the MFJ restriction against BOC entry into information services was

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removed—albeit reluctantly— by Judge Greene in that same year, and the last avenue of appeal was exhausted last fall. These actions eliminated any effective protection against anti-competitive behavior by the BOCs at a time when local exchange competition was still more promise than reality, and when the basic shape of the future electronic publishing industry was beginning to take shape.

Even now, in early 1994, the BOCs have not yet entered the electronic publishing field in a major way. Congress is still free to set the rules of the road without the constraint of major BOC business investment already in place. Thus, now is the time to enact H.R. 3626, before the world of electronic publishing changes too much and sound public policy is left behind.

Recent Market Developments

Significant changes have begun to occur in both electronic publishing and local telecommunications. The electronic publishing sector is beginning to emerge from its infancy. Although far from a mature market, electronic publishing has taken on significant momentum and can be expected to become increasingly important in the remainder of this decade.

It is now estimated that close to ten percent of American homes have computers equipped with the modems needed to receive electronically published information. More and more customers are signing up for these services, and industry is responding with ever greater and more diverse service offerings. For example, our own member newspapers now provide more than 600 electronic services, including audiotext, online services, and facsimile publishing. The rate of growth in end user/consumer services is now the fastest growing market segment. According to industry statistics, total sales in that segment rose by approximately 35 percent in 1992, and are

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forecast to continue to grow at a similar annual rate in the near future. And overall growth in electronic publishing is expected to continue at a growth rate of 15 to 20 percent annually for the remainder of this century. All of these developments benefit the public by making available a wide and diverse universe of electronic information sources.

This growing and robust electronic publishing market still depends on local telephone exchange service to connect information providers with their customers. Telephone exchange service is largely still controlled as a monopoly by the franchised local telephone operating companies, which for most of America means one of the BOCs. However, it is now possible to envision the development of significant competition to the BOCs before this century draws to a close. We do not accept the rhetoric which claims that competition for the BOCs is already here; it quite simply is not for the type of universal local exchange connections that electronic publishers need. But we do see competition coming—much faster than once anticipated—in the form of cellular and PCS radio systems, enhancements to the technology of existing cable companies, and the installation of facilities by fiber-optic based metropolitan area networks.

There are still substantial economic and legal barriers to the full growth of these competing means of communication, but we fully expect that they can offer service that is functionally equivalent to that of the BOCs within the next five to seven years, or somewhat sooner if public policy strongly encourages their development. For that reason, NAA supports H.R. 3636, which will promote local telephone competition and thus create the market conditions that will be needed for the electronic publishing industry to flourish, both in the next few years and after the safeguards outlined in H.R. 3626 expire.

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Promoting The Public Interest Through A Competitive Framework For Electronic Publishing

When the Bell system was divested, the Bell companies were prohibited by the MFJ from providing electronic publishing services. But now, Judge Greene and the appellate courts have concluded that the Bell companies cannot be excluded from electronic publishing altogether despite the risks of anticompetitive consequences that still face us. In effect, the courts have said that Congress must set policy in this area, and that other branches of government must protect the public interest in a competitive electronic publishing marketplace.

The BOCs have the ability and the incentive to discriminate against competing electronic publishers and to cross-subsidize their own electronic publishing operations with telephone monopoly revenues. NAA believes that the record before Congress already clearly demonstrates that the Department of Justice, the FCC, and the state PUCs do not now have the necessary policy guidance to effectively safeguard electronic publishing markets from BOC entry. The Department, under the former administration, actively encouraged the courts to drop the information services line of business restriction from the MFJ. In part, the Department placed reliance on the FCC's safeguards to justify abandoning the MFJ prohibition. However, as previously noted, the FCC has eliminated its structural separations requirements for BOC provision of enhanced services, which include electronic publishing, even though the FCC continues to require separate subsidiaries for telephone companies' cellular operations. Most state PUCs have not even been able to address the electronic publishing issue. A few that have, such as the commissions of New Jersey and Pennsylvania, have

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found that the public interest favors separate subsidy requirements similar to those in H.R. 3626.

From another perspective, we also recognize the public interest in participation by the Bell companies in electronic publishing–with services of their own and in ventures with other publishers–if the risk of monopoly abuse could be eliminated. With a view toward achieving an optimum blend of safeguards and market participation, NAA entered into a dialogue last year with the Bell companies and Congress. After prolonged and difficult negotiations, NAA believes that the majority of our concerns have been addressed in the compromise which is reflected in Section 203 of H.R. 3626. It should be understood that while our central concerns were met, this was a tough negotiation with some concessions along the way. In a perfect world, the bar against the Bells would not have been dropped, or these safeguards at least would have been put in place before BOC entry. But, as everyone knows, we don't live in a perfect world.

The bill requires that the Bell telephone operating companies not engage directly in electronic publishing over their monopoly facilities within their service areas. However, the BOCs' regional holding companies may provide such services if they do so through a separated affiliate. In effect, this restores and strengthens the FCC's recently abandoned structural separation requirement and reinforces the requirements that have been adopted in some states. This separation requirement will make it more difficult for the BOCs to engage in discrimination or cross subsidy and much easier for any violations to be detected and corrected. The services that must be separated are those which involve the publication of information content—an activity that can efficiently be carried out without being integrated into network operations. The bill carefully avoids imposing a separation

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requirement on telephone company network services where there may be legitimate claims of efficiency.

The separated affiliate must be a separate corporation, with separate books and separate directors, officers, and employees from the BOC. Moreover, the BOC and separated affiliate cannot share property, hiring and training of personnel, purchasing, installation, and maintenance of equipment, or research and development. These requirements are similar to those the FCC now imposes in order to separate the BOCs from their cellular affiliates.

In addition to requiring structural separation, the bill strengthens existing laws against discrimination and cross-subsidy by adding greater specificity and coverage. Thus, a BOC would not be allowed to discriminate in favor of its separated affiliate in providing facilities, services or information, including customer proprietary network information (CPNI), billing and collection, or physical collocation. Nor could it discriminate in the design, presentation, or provision of telephone company "gateway" facilities that show customers which electronic publishing services are available and provide for connections and billing to such services.

To preclude cross-subsidy, the bill requires that transactions between the BOC and separated affiliate must be at arms-length and that anything of value transferred from the BOC to the separated affiliate must be for consideration at least equal to the greater of net book cost or fair market value. These transactional safeguards will provide a much needed additional layer of protection over the accounting safeguards now in place. The FCC's current accounting rules only seek to identify overall trends of improper allocation of costs between competitive and non-competitive services. The new transactional rules will prevent abuse in each specific case—abuse that

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could be masked in aggregated accounting records that pertain to thousands or even millions of other, unrelated transactions.

The bill has several new requirements to aid in the detection of violations and in enforcement by private parties or government agencies. Both the BOCs and separated affiliates must keep auditable records and file their contracts with the FCC. The separated affiliate must prepare and make public unconsolidated SEC-type financial reports. Very importantly, the BOCs and separated affiliates must submit to an annual compliance review by an independent firm; any exceptions identified by this compliance review must be reported to the FCC and made public. In addition, private parties will be able to sue the BOC for damages or, for the first time, an injunction to stop violations.

Although the FCC will have the power to enforce the safeguards on its own motion, and will be obliged to act on any complaints, it is important to note that the safeguards are largely self-executing. Neither the FCC nor the Department of Justice will be faced with undue or heavy new burdens; no big rulemakings or extra staff will be needed.

The bill includes reasonable transition provisions. Existing Bell services and ventures will not be permanently grandfathered, but will have one year to come into compliance with the new rules. There is no provision for waivers of the safeguards, with the attendant uncertainty and cost. However, the safeguards will expire on June 30, 2000, an agreed-upon date that we believe is consistent with current estimates of the development of local telephone competition.

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Promoting Market Entry

Section 203 of H.R. 3626 will serve the public interest in more ways than merely by establishing safeguards to protect competition from BOC abuses. It will also benefit the public by encouraging new market entrants. By creating adequate statutory safeguards against BOC abuse, the bill will remove the current uncertainty about how the BOCs will behave in this market. At present, we believe that many entrepreneurs are still holding back from major investments in electronic publishing, concerned in part by the possibility that the BOCs will not treat them fairly and could easily drive them out of business.

H.R. 3626 will also prove beneficial to the public by increasing investor confidence in electronic publishing enterprises. More investment means more competition. More competition means better and less costly service to the American public. Services directed to schools, libraries, and hospitals—those who most need information but may be least able to pay for it–are more likely to develop without government intervention or costly subsidies.

Moreover, the bill promotes the public interest by permitting fair competition in electronic publishing markets by the Bell companies. Our members welcome this competition as we believe that Bell participation under appropriate safeguards has the potential to add additional dynamism to the electronic publishing industry.

Finally, the bill contains very important provisions that will enable the Bell companies and electronic publishers to elect to work together. We believe that the Bell companies' major strengths are, and will remain, in their network services and their technical expertise. The bill specifically encourages teaming arrangements between BOCs and independent electronic publishers, which will allow each to bring its special strengths to customer

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services. Additionally, the bill encourages nonexclusive joint ventures between the BOCs and electronic publishers. These joint ventures remain subject to an array of safeguards to prevent abuses, yet allow significant flexibility in business arrangements. It is particularly to be noted that the bill contains special provisions to allow small, local electronic publishers to participate in joint ventures with BOCs where the BOC can provide substantial equity under FCC supervision.

The bill also allows the BOCs to provide inbound telemarketing and referral services to separated affiliates and to other electronic publishers as long as this is done on non-discriminatory terms and subject to FCC oversight. This provision has the potential to give all electronic publishers, and particularly smaller ones, access to marketing resources that they could not muster on their own. Similarly, it allows the BOCs to take advantage of any efficiencies they may have in telemarketing through their operating companies, while at the same time assuring that those efficiencies will be shared with competing publishers.

All of this increased vigor and competitiveness in the electronic publishing industry promises greater diversity of services for the American people at lower prices, more jobs for American workers, and greater American competitiveness abroad.

Conclusion

NAA believes that H.R. 3626 is in the public interest because it allows electronic publishers and the Bell Companies to participate in the market on a fair basis. This means the public will be able to receive a wide diversity of electronic information from many freely competing information providers. In addition, the bill gives the BOCs incentives to invest in a modern

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infrastructure that will bring electronic publishing into the 21st century. In tandem with H.R. 3636, the bill will also encourage the growth of competitive alternatives to the BOCs' current monopolies, thus eventually reducing the need for special safeguards.

NAA urges Congress to expedite adoption of H.R. 3626 which has the support of the Administration. We see the electronic publishing provisions as transitional tools on the road to full local competition, -- which we believe is the ultimate safeguard -- competition that will be enhanced by adoption of H.R. 3636 as well. We are confident that passage of both bills will advance the public interest by promoting diversity and competition in electronic publishing.

Thank you for your time and attention.

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Mr. MARKEY. Thank you very much, Mr. Bennack.

Our next witness is Mr. James Cullen. He is the president of the Bell Atlantic Corporation and from the Regional Bell Operating Company perspective, played a key role in ensuring that the safeguards represented the interest that they wanted protected in this legislation as well.

Mr. Cullen, whenever you are ready, please begin.

STATEMENT OF JAMES G. CULLEN

Mr. CULLEN. Thank you, Mr. Chairman. I do appreciate the opportunity to appear here this morning. I particularly appreciate the opportunity to appear with Mr. Bennack, who, as you indicated, did provide key leadership on bringing these industries to a resolution of some of the tough issues.

As I stated last week before the House Judiciary Economic and Commercial Law Subcommittee, Bell Atlantic supports H.R. 3626, and applauds the efforts of this subcommittee to forge a consensus among these many diverse, dynamic, and competing industry players.

I would like to focus my testimony very briefly this morning on the electronic publishing provisions of H.R. 3626 because they establish safeguards for Bell Company participation in the information services market.

As you may know, and as the chairman indicated, Bell Atlantic attempted to take a leadership role in negotiating these agreements with the newspaper publishers in both New Jersey and in Pennsylvania. They will govern our future provisioning of electronic publishing.

Under these terms, if Bell Atlantic provides electronic publishing services, it must do so not through an operating telephone company, but through a corporate affiliate that will be fully separated from the operating telephone company. This facility would not share personnel, would not share facilities, and would be responsible for its own marketing and operations.

Bell Atlantic would also offer all services to publishers, including its own affiliate, on equal terms and conditions. Further evidence of our intent to partner to move the industry forward is found in our announcement last week that Bell Atlantic's Video Services and Knight-Ridder, Incorporated, have agreed to explore ways in which they can work together to deliver news, information, and advertising services to our customers.

We believe very strongly that these kinds of alliances will absolutely hasten the time when consumers, students, and workers will have the information that they want, where they want it, when they want it, and in the way that they want it.

With these working agreements in place, partnerships underway, and a U.S. Court of Appeals ruling that there is no substantial possibility that we can impede competition in the information services market, Bell Atlantic actually sees no need for the separate subsidiary requirements of H.R. 3626.

However, we do not believe that these requirements will prevent us from continuing to operate efficiently and effectively, and we do not oppose their inclusion in this bill. Again, in the spirit of com-

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promise, we also do not oppose the requirements of the alarm services section.

Finally, Bell Atlantic agrees with the administration's suggestion that would allow a Bell company to provide incidental long distance service in connection with the provisioning of information services.

The business of information services and providing it to consumers always relies on the use of expensive computer equipment. To provide these services efficiently, we need to use these computer services for more than just one local calling area. Hypothetically, for example, it might be possible to serve the entire State of Pennsylvania with just one computer server located in Pittsburgh.

Today, though, such efficient usage is actually prohibited by the AT&T consent decree. In the case of Pennsylvania, although one server would serve the entire area, the consent decree would require us to have five servers, one in each LATA.

So the relief that we seek, the incidental relief, would enable a company like Bell Atlantic to expand accessible, affordable information services quickly to rural areas, to urban areas, crossing socioeconomic boundaries, both inside and outside of its traditional area.

In summary, Mr. Chairman, let me emphasize to you, as I did to Chairman Brooks last week, that Bell Atlantic and the RBOC's support H.R. 3626, and will work vigorously for its enactment. It is not, I have to say, the bill that we would have written, but as nearly everyone has recognized and as you, yourself, acknowledged a moment ago, it is a very delicate balance.

It is a balance struck by Chairman Dingell and Chairman Brooks. It was not easily reached, I can assure you, with respect to electronic publishing, but it does provide a transition period for this mature industry that will move us forward. Importantly, it does provide a sunset provision.

Let me again thank you for the opportunity to be here and to testify this morning on this important piece of legislation.

Mr. MARKEY. Thank you, very much. We appreciate your testimony.

We note, Mr. Bennack, that your being here with Mr. Cullen is only slightly less likely than Shimon Peres and Yassir Arafat. We appreciate the concessions that have been made on all parts.

Now, we move to the distinguished State of Tennessee, the home State of the author of the Cooper/Cooper/Cooper/Cooper bill.

Each one of us, when we go home each weekend, has to answer this question, "Where do you stand on the Cooper bill?", at least a dozen times. It is an honor to have one of his fellow volunteers today.

Mr. Fishman, you are representing the smaller publishers in the country, and the National Newspaper Association as the president of Lakeway Publishers, Incorporated. We welcome you to the subcommittee. Whenever you feel comfortable, please begin.

STATEMENT OF R. JACK FISHMAN

Mr. FISHMAN. Thank you, Mr. Markey.

I don't understand why you would make fun of my Congressman. I think that you should know that not only did I have the proud ownership of the largest newspaper in his district; there are only

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20 newspapers in his district, and I own 7 of them. He and I have always gotten along very well together, sir.

Mr. MARKEY. Have you written the endorsement yet for the Senate?

Mr. FISHMAN. No, but it depends on how he votes on this bill.

Mr. MARKEY. He keeps telling me it has to be strengthened. Just so you will know, he is fighting for you.

Mr. FISHMAN. I realize that you are very busy, and I don't want to waste too much of your time.

As I have indicated, I do publish a daily newspaper and have an interest in several other non-daily newspapers in Tennessee. Our county is 55,000 in Hamblen County. We are proud of our circulation of 21,000 in that part of east Tennessee.

I speak here today on behalf of the chairman of the National Newspaper Association, Sam M. Griffin, Jr., publisher of the Post-Searchlight in Bainbridge, Georgia, who is here with me here today in the audience on behalf of our board of directors, and on behalf of more than 4,000 daily and non-daily small, community newspapers from coast- to-coast that make up the membership of the National Newspaper Association.

Second, on behalf of the National Newspaper Association, we would like to applaud the groundbreaking efforts of this committee, you, Mr. Chairman, Mr. Fields, and members of the subcommittee for your work on H.R. 3636, and of course, Chairmen Brooks and Dingell on H.R. 3626. This legislation is needed and it is needed now.

Third, I would like to associate myself with the remarks of Mr. Bennack of the Newspaper Association of America. The safeguards that are reflected in the bill will benefit all newspapers. But the thousands of small newspapers I represent will not have the opportunity to benefit from these safeguards if they cannot gain access to the information superhighway in the first place.

That is why I am here today, to ask for inclusion of our localism proposal to allow them to compete with the bigger electronic publisher. We call this proposal ARC. It stands for "Fair access, fair rates, and fair competition."

In short, we are not looking for preferential treatment or an advantage. We don't ask for anything our larger competitors don't already have.

Fourth, I would like to boast that our small community newspapers perform a unique function, that of providing information that is local—local information. Let me give you an example.

A few weeks ago when the power companies all over the East and part of the South were having trouble producing power for their customers, they were going to have selected blackouts in communities. In our town, that was the same situation. The power manager called me. I asked him what part of the town was going to be out. He said, "We are going to roll around town."

I said, "How are people going to be able to plan for this with their computers, their equipment, and this type of thing?" He said, "I don't know." He said, "The only way that I know that we can possibly get out the information is by the radio."

I said, "But there is a newer method. Have you tried our audio tech system? We can let you broadcast this information. We can

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put every hour, every 30 minutes, the updated information as it goes around the town. All anybody has to do is to dial a number and that information is available to them on a very selective basis."

We did that. And fortunately, we were set up and ready to go. Fortunately, we didn't have to use the service, as you didn't here, I don't think, in Washington. But it was a win/win situation for everybody.

This service was free to the community and the power company. We provided it as a community service because that is part of the job of providing local information.

Which brings me to the fifth point, and this one won't surprise any of you who have been in the business. Sooner or later we have to make a profit and take in some revenue for our audio tech system.

I would like to give you an illustration of a small local electronic publisher trying to get on the information highway. Our own experience with trying to put an economical audio tech system with a 511 number in existence.

I realize that audio techs—and I want to make this very clear—and that N11 numbers are only a small part of the future of the information highway. But they provide a clear, present-day example of the problems local information providers can encounter in a small market.

Now, an N11 number allows my readers the convenience of rapidly and easily dialing up for information without having keep track of a telephone number. It is convenient to him wherever there is a telephone. It is convenient for me because it is a part of the cost of the call is paid for, with the phone company doing the billing and collecting.

It is ideal for all concerned, at least it would be if it weren't for the fact that the information superhighway is not only dominated, but monopolized by large corporations. That is why little guys get stepped on. That is why we need our ARC proposal.

But I am getting ahead of my story. Let me tell you how it is easy to get stepped on. When you begin to apply before a public service commission—in this case, the State of Tennessee—and this is going on in all of the southern States, I think at this particular time—you would have to apply for a tariff.

The first tariff that the RBOC presented was a tariff that would have required, in our instance, in our small community, for me to charge about $3 for every phone call. Mr. Cooper will tell you that I don't think that many folks are going to pay $3 a phone call in Morristown, Tennessee, or in his district, to get a little bit of information. It must be more economical. It must be protected to do that.

The same rates that they propose for the Atlanta Journal and Constitution in Atlanta, Georgia in a big market allowed them to have that service for 50 cents a call, and in West Palm Beach, Florida, 35 cents a call. This is very important to a small community to be able to provide the same service economically to a small community.

Mr. Chairman, let me say in conclusion that small community newspapers want to build a side road for the information superhighway. But they can't start it if they are blocked from access. It

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is not a conspiracy. Big companies are not out to squash us. They are doing what they do and do very well. They want to make money for their stockholders.

But we must look after the public interest. What that means is that they can't take the time or trouble from time to time to look in and calculate how to best serve the smaller markets. That is why I am here, Mr. Chairman, to ask your help and that of your committee in seeing that the small community newspapers don't end up as a road kill on the information superhighway.

Let me give you, if I can, one example, Mr. Chairman, in your own State. A few months ago, I again visited a court yard in one of your famous cities. Carved on a stone wall there was a phrase, "One if by land; two if by sea."

That information signaled a young patriot to mount his steed and speed through the country with the message, "The British are coming. The British are coming." Local information that provided you and I the opportunity to be here today. Citizens in rural America and citizens in harder-to-serve environs need you to enact our ARC proposals.

Thank you for giving me the opportunity to speak on this subject. Thank you.

[Testimony resumes on p. 34.]

[The prepared statement of Mr. Fishman follows:]

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TESTIMONY OF R. JACK FISHMAN
On behalf of the
NATIONAL NEWSPAPER ASSOCIATION

Introduction

Mr. Chairman and members of the committee: My name is R. Jack Fishman. I publish one daily and six non-daily newspapers in Tennessee. My flagship newspaper, the daily Citizen-Tribune of Morristown, serves a community of about 25,000 people with a circulation of 21,000.

I speak here today on behalf of our chairman, Sam M. Griffin Jr., publisher of the Bainbridge (GA) Post-Searchlight who is in the audience with me today, our board of directors and the 4,200 daily and non-daily newspapers that compose the National Newspaper Association.

I bring two simple messages today.

First, we applaud the ground-breaking efforts of this committee and of you, Mr. Chairman and Mr. Fields in HR 3636, and of Chairmen Dingell and Brooks on HR 3626, which is the subject of today's hearing. It is time for Congress to reclaim its leadership role in telecommunications. In order for a diverse and vibrant local media market to thrive, universal service is essential and with it must come safeguards to protect those who compete with the owners of the local telephone loop.

Second, it is essential to include in HR 3626 a localism provision that mandates regulatory recognition of the importance of local news and information.

I will devote my remarks primarily to the second point and associate myself with the comments of Mr. Frank Bennack of the Newspaper Association of America on the first. I would like to note that our two associations are completely independent of one another and have been for more than 100 years. But we often find that the concerns of large and small newspapers overlap, as they do here in the need for safeguards to regulate the local loop monopoly carriers.

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Localism in Telecommunications

Let me address then, the second point, and explain why it is essential to the survival of small community newspapers that a localism provision that mandates regulatory recognition of the importance of local news and information be included in HR 3626.

Mr. Chairman, our members are community newspapers. Most of them are independently-owned and the publishers, by and large, are also their owners. Our readership is focused, in the majority, outside large urban areas. In fact, recent survey data show that 35% of our newspaper readers live outside a Standard Metropolitan Statistical Area (SMSA). If we were to add to that list the numbers of readers in suburban and rural areas, I believe we would find the majority of our readers. However, our membership also includes urban community newspapers, representing African-American, Hispanic and Asian communities, as well as communities of interest.

Contrary to the perceptions of many who predict the downfall of the newspaper business, we know that community newspapers are an enduring breed. We will serve our communities into the 21st Century because the local news and information that we provide to our readers cannot be surpassed by any other provider. In fact, as the larger media become more global, we believe the need for community newspapers to fill the niches that they leave behind will become more intense. The need will be created by the thirst for local news and information, for local political coverage, for access to local decision-makers and for networks of community organizations, without which America cannot survive. And the need will be addressed by a mix of print and electronic services.

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Mr. Chairman, a short ten days ago you spoke to several hundred New England editors and publishers and gave what has been described as an eloquent defense of the Nation's technological "have-nots." Your defense was clear. America's homes should not be dominated by a single carrier, or even a select few. You want the field open and the potential unlimited.

The message hit a nerve with your New England audience, and with our 4,200 member newspapers throughout this Nation.

It's the "have-nots" that we represent.

It's the "have-nots" who spend two bits for their local news.

It's the "have-nots" who are represented in our daily diet of consumer and local political news—the grit they need to make decisions about life in their communities.

Those are the people you are trying to protect, and those are the readers we're trying to keep.

We are not the Luddites of the media world. In fact, I will chair a seminar this spring in Nashville, where publishers in our region will explore electronic delivery options. Our small newspapers led the trend in newspaper publishing to offset printing, to desktop publishing and now to electronic and digital technologies. It is not uncommon among our membership for the printed page to be composed in one rural office and transmitted by modem to a production plant 15 miles away. No satellites, no fiber optics. just simple technology on a pair of twisted copper wires. As our readers change with the coming of the electronic information age, community newspaper publishers will provide the gateways to local electronic publishing services for those readers.

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My comments on the need for localism provisions in this bill rest upon my observations of problems our newspapers will encounter as they increasingly explore services for readers.

I speak from my own experience.

I am among the publishers exploring voice technologies. Many of us are now developing audiotex services. And NNA is now urging newspapers to explore N11 (or N-one-one) phone numbers as a viable pathway for audiotex. But we barely got our engines revved up before we ran into problems.

The first problem is also the last: the folks who build the highway don't have us in mind. They are thinking in megabucks, measuring in millions and surveying the landscape with empires in mind. While we wait for the outcome of such tantalizing dramas as the Paramount takeover and TCI/Bell Atlantic merger, we, the local publishers, could be quietly building the side roads onto this intricate map. But we have already found that we cannot easily get the telephone companies to turn their attention to us. We are too small and too localized to mount costly legal and regulatory campaigns, and we are therefore ignored.

Without the help of Congress, the on and off ramps simply won't be built because the folks busy designing the cloverleafs are thinking mostly about the roads leading to big cities and population-dense suburbs. It is unnecessary to burden the citizens outside these highly-competitive urban areas with a long wait and high barriers to new services.

All that is needed is the direction of Congress—in emphatic and forceful terms—that access. rates and competition must be designed with these local areas in mind.

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Access

First, local electronic publishers need to get direct access to the telecommunications network. Direct access for smaller players cannot be ignored while the thrust of pending bills is to provide guidelines for interaction and competition between extremely large corporations.

The partnership between Bell Atlantic and TCI is a case in point. Bell Atlantic will provide the hardware and TCI will provide the content. The proposed bills focus on the relationships between Bell Atlantic and TCI and on the relationship that partnership will have with competitors. However, it is difficult to see how a local community newspaper could hope to compete with giants of this size without a recognition in public policy that local news and information is essential.

On the other hand, if a regulatory framework can be adopted that would safeguard the opportunity of the local electronic publisher to "get on line," the technical and rate framework will follow. Such a framework is possible to construct without subsidies and without disadvantage to other travelers on the highway if the law requires common carriers to not foreclose local providers access and to track their costs with localism in mind.

Rates

Localism in rates is also an important need. Let me be specific about a problem that I encountered in East Tennessee.

In November. I applied to the Tennessee Public Service Commission for a three-digit telephone code within the N11 range. I expected a welcoming response from South Central Bell. which has repeatedly offered itself to community newspapers as a business partner. In fact, during the late 1980s, when Congress began exploring the ramifications of the 1982 Modified

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Final Judgment, South Central Bell wasted no time advising us that if it were free to compete in information services, community newspapers would be valued business partners.

I turned to the PSC with full expectation that when I sought to redeem that promise, the telephone company would begin thinking of the potential partnership with my newspaper--not to mention hundreds of other newspapers in Tennessee. I knew from my own research that the opportunities offered through use of an N11 number would provide a transitional technology to introduce my readers to a low-cost, readily accessible electronic information service. My goal was to introduce my community to this option so the citizens of Morristown would have access to the same opportunities as the citizens of the Maryland suburbs in our Nation's capital, where I understand the opportunity for an N11 number is also being explored.

I have experience with audiotex services. Last fall, I initiated a free calling service by use of a vendor called Info-Connect, which provides a server and switch of 11 telephone lines and 343 different selections of information. This service has already proven invaluable.

For example, last month during the threat of blackouts from electric utilities throughout the Middle Atlantic and Mid-South regions, the president of our local power company called to alert me that portions of Morristown might have to be switched off. I asked him how he intended to inform the homes and businesses in the target areas of the power company's rolling blackouts.

He replied that the power company would put the announcements on the radio throughout the day, including the hours when most of our citizens are at work.

"Do you keep a radio at your desk all day?" I asked.

"No," he said. "I don't even have a radio here."

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"Then how'd you expect people to know when they're about to be lose power?" I asked.

"It's the only way we have to tell them," he replied.

I responded with the following offer. I would make my audiotex service available for him to call in each hour to record the blackout schedule. The power company could announce via the newspaper as well as other media that the telephone number was available. Citizens could dial in at their own convenience to learn the schedule and plan their days accordingly. It was a win/win situation for us all. The power company could serve its customers with predictability. Businesses could shut down their computers and other operations safely before the blackout. Residents could rearrange their days to avoid the impact where possible. And the newspaper could provide a valuable service.

As it turned out, the blackout was avoided. But both the Citizen-Tribune and the power company learned a valuable lesson in the exercise, and we believe our community is the stronger for it.

This service was free to the consumer and to the power company. I provided it as a community service because that is one role I play in my community. However, I operate a small business. by the measurements of the other telecommunications companies here. In order for me to provide a service. I must have a reliable. short-term revenue stream. And it is in the N11 number that I hope to discover that revenue stream. If we can develop that service, it will be a low-cost offering to my readers. and it will provide the newspaper the basis for developing further. more sophisticated services.

But look what happened to me.

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The Tennessee Public Service Commission provided me a provisional N11 number. In my case, it was 511. It ordered the telephone company to develop a tariff for this number. When the telephone company returned with a proposed tariff, it was clear that it had no intention of providing this service. Not only was it seeking an initial $22,000 investment, but it insists upon a minimum billing from my 511 line of $10,000 each month.

Mr. Chairman, the data in the industry so far suggests that I can expect about 15% of my readers to use this line. On the Morristown scale, that means a little over 3,000 readers will dial 511 each month. For me to recover just South Central Bell's share of this service, I would have to charge each reader over $3.00 per call.

Citizens in suburban Atlanta pay only a fraction of that amount per call.

Clearly, in this scenario, the citizens of Morristown are being disadvantaged by the mere fact that they choose the quieter life of a small town.

This example is nothing but an arrow in the back of the pioneer. We recognize that it is our job to blaze this trail. And we recognize that we are out here on a side road of the glamorous and vaunted information highway. We are willing to take on that task, Mr. Chairman, but we need the power of Congress behind us.

The problem of the N11 rate can be solved without subsidies, without creating economic inefficiencies, and without disturbing the plans of the larger highway. All that needs to be done is for the state policymakers and the phone companies to turn their eyes in our direction and to strip down the costs of a smaller service so that our communities can afford to pay.

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Let me say again we are not seeking subsidies or special favors. We are just asking Congress to direct the states and the common carriers to design their systems, their cost structures and their rates with our small towns and rural areas in mind.

Competition

If a community newspaper has more than one source for its telecommunications needs, many of our concerns are significantly reduced, since competition in the marketplace is the ultimate solution to the free flow of ideas. However, we know full well that competition in the local loop is going to come to smaller communities at the end of the telecommunications revolution, if ever. Until full competition is available throughout our country, we need to assure regulatory fairness if local information is to have equal footing with national information.

Conclusion

Accordingly, we ask this committee to accept our additions to HR 3626. Our additions come in three parts:

- a finding of the importance of local news and information;
- a requirement for equal access for local information providers; and
- a direction to the rate regulators that material disparities in the unit prices charged in our more rural areas compared to large metropolitan areas must be avoided.

We have proposed specific language to address these concerns. We offer it here today as an appendix to our testimony. We urge the committee to accept our support of the larger safeguard goals of this bill with the full awareness that without our additions, local information providers will not be truly protected.

I want to thank you, Mr. Chairman, and the Subcommittee for hearing our concerns. We are delighted to work with you and your staff in addressing these very specific needs and to support your efforts in the passage of HR 3626.

Attached is a copy of our legislative proposal for localism—language that would incorporate access, rates and competition provisions for local electronic publishers into HR 3626.

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Appendix

National Newspaper Association
Proposed Amendment to HR 3626
Localism - Access, Rates and Competition

On page 57, line 1, delete the words "to the same extent as provided to such publisher;" and insert in lieu thereof the following: "to the smallest unit that is technically feasible and economically reasonable to provide;".

On page 57, line 5, delete the phrase "at prices that are . . . to regulation" and insert in lieu thereof the following: "at any technically feasible and economically reasonable point within the Bell operating company's network and at just and reasonable rates that are tariffed (so long as the prices for these services are subject to regulation) and are no higher on a per-unit basis than those charged to any separated affiliate engaged in electronic publishing for such services; the rate for any such service shall not be deemed just and reasonable if it (a) exceeds the Bell operating company's costs of providing such service; including a reasonable return, or (b) results in material per-unit disparities in non-recurring charges, flat rates, or usage rates among rural, small urbanized, and large urbanized areas."

On page 57, lines 19-22, delete the phrase "relating to . . . standards" and insert in lieu thereof the following: that (a) is necessary for the transmission and routing of information by an interconnected electronic publisher, (b) is necessary to ensure the interoperability of an electronic publisher's and Bell operating company's networks, (c) is reasonably required by electronic publishers to bill for the services they provide, and/or (d) concerns".

On page 57, line 21, delete the word "would" and insert in lieu thereof the word "may".

On page 67, line 20, insert after the word "shall" the following: "include an electronic publishing joint venture, but shall".

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Mr. MARKEY. Thank you, Mr. Fishman.

Our next witness is Mr. George Perry, who is the senior vice president and general counsel and secretary of Prodigy Services Company from White Plains, New York. He is here representing the largest on-line information service provider in the country. We need that perspective in this legislation as we move forward.

You can move your microphone a little bit closer, Mr. Perry. Whenever you are comfortable, please begin.

STATEMENT OF GEORGE PERRY

Mr. PERRY. Thank you, Mr. Chairman and members of the subcommittee. I would first like to thank you for the great privilege of appearing before you today.

My testimony, as the chairman indicated, will reflect the views of Prodigy as well as the Electronic Publishing Group, which is a coalition of electronic information content providers.

Prodigy and the EPG are united in their view that the time is now at hand for legislation that will provide a forward-looking, balanced and competitive telecommunications and information infrastructure public policy. We welcome the opportunity to offer our views on HR 3626, and to integrate those views with the provisions of HR 3636 and HR 3432.

Mr. Chairman, we particularly want to commend you and Congressman Fields for your efforts in HR 3636 to promote open platform capabilities, and we look forward to working with you and the Electronic Frontier Foundation and others to make the open platform a reality.

As one of the founding officers of Prodigy almost 10 years ago now, I feel like I've been on the super highway since it has been a little more than a foot path, but the traffic is building, and it is building rapidly. Since we launched the Prodigy Service nationally about 4 years ago, it has become the Nation's largest, most popular on-line network, as the chairman indicated. Today, we have more than 2 million Prodigy members who use hundreds of information and transaction services. Each day we handle some 700,000 individual Prodigy sessions, and about 100,000 electronic bulletin board postings. Our new gateway into the Internet is currently generating over 3,000 messages per month.

Prodigy, the electronic publishing industry, and the exploding interest in the information super highway are all about the creation of new communities that empower individuals and democratize information. Dynamic change is certainly the order of the day in the creation and electronic distribution of information. The engine of this change is vibrant competition, and the result is U.S. world leadership in electronic publishing and information-age products.

To continue that leadership, we support legislation that will achieve these five critical goals. First, the development of a feature and technology-rich, unbundled and transparent public network. Second, competition in the provision of all types of telecommunication products and services, including local exchange services. Third, statutory safeguards to promote competition and prevent discrimination by the BOC's in the provision of electronic publishing services. Fourth, privacy protection for sensitive customer propriety network information, or CPNI, and non-discriminatory ac-

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cess to less sensitive CPNI. And, fifth, the maintenance and appropriate enhancement of universal service goals.

Taken together and modified as described in our written testimony filed in this hearing, HR 3626, 3636 and 3432 will represent a substantial step toward realizing these goals.

The Nation's telephone service will, for the next several years, continue to be the only two-way electronic lane on the information super highway that is available to every home and business. As HR 3636 recognizes, the BOC's continue to enjoy significant market power in the provision of local exchange services. Therefore, until competition develops to an effective level, Congress must establish effective pro-competitive safeguards. Those safeguards must benefit all electronic publishers as long as they remain dependent upon local exchange facilities to reach their customers.

Accordingly, the final legislation should require, as does HR 3626, the BOC's who provide electronic publishing services do so only through fully separate subsidiaries. We believe that the current definition of electronic publishing in Title II of HR 3626 arguably covers all services commonly understood as electronic publishing. However, to avoid the potential for future disputes over the scope of that language, we recommend that the term "electronic publishing" be defined to include all information that is originated, authored, compiled, or edited by a BOC, or in which a BOC has a direct or indirect financial interest that is provided by a BOC over any part of its local exchange network facilities.

Effective safeguards should, at a minimum, include the following. First, reverse the current regulatory double-standard in the treatment of CPNI. Accordingly, we support Title I of HR 3432, and we submit that it is a necessary part of any pro-competitive legislative package. Second, impose structural separation requirements to segregate the BOC's competitive electronics publishing activities from their regulated operations as provided by HR 3626.

Third, require that BOC regulated carrier activities be offered on an open non-discriminatory and unbundled basis at cost-based rates.

Finally, prohibit regulated carriers from providing their separate affiliates with any facilities, services or information unless the carrier also makes them available to unaffiliated entities.

In closing, I want to again thank you on behalf of Prodigy and the Electronic Publishing Group for the opportunity to be here with you today. We commend you and Chairmen Dingell and Brooks in your efforts in grappling with these difficult issues, and look forward to working with you to see these provisions enacted into law.

[Testimony resumes on p. 47.]

[The prepared statement of Mr. Perry follows:]

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George M. Perry
Senior Vice President
Prodigy Services Company

**Testimony before the
Subcommittee on Telecommunications and Finance
Committee on Energy and Commerce
United States House of Representatives**

February 8, 1994

Mr. Chairman and Members of the Subcommittee:

My name is George Perry. I am Senior Vice President of Prodigy Services Company, the nation's most popular interactive network, which provides hundreds of informational and interactive features nationwide to consumers and smaller businesses. Today my testimony will also reflect the views of the Electronic Publishing Group ("EPG"). EPG is a coalition of electronic information content providers which includes, among others, Association of American Publishers, CCH Incorporated, Cox Enterprises, Inc., Dun & Bradstreet, McGraw-Hill, Inc., Mead Data Central, Inc., Prodigy, and West Publishing Company. EPG's members originate, edit, compile, collect, integrate and distribute information content using electronic media. Prodigy and EPG are united in their view that legislation to advance America's telecommunications infrastructure, maintain worldwide technological leadership and promote a diverse and competitive environment for both communications and electronic publishing services is necessary now.

The importance that forward looking, balanced telecommunications and information infrastructure public policy will

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have on the economic, social and cultural future of this nation cannot be over emphasized. The widespread availability of an affordable electronic infrastructure is the foundation for communications, services and applications. Procompetitive policies that address electronic infrastructure and telecommunications issues are essential building blocks for the electronic future.

We applaud you for your vision and commitment to bring these issues before the Congress. And I welcome the opportunity to offer the views of Prodigy and EPG on H.R. 3626, the "Antitrust Reform Act of 1993" as well as related National Information Infrastructure initiatives, H.R. 3636, the "National Communications Competition and Information Infrastructure Act of 1993", and H.R. 3432, the "Telephone Consumer Privacy Protection Act of 1993."

Mr. Chairman, on behalf of Prodigy and EPG I particularly want to commend you for your efforts in H.R. 3636 to promote universal availability of so-called open platform capabilities. Maximizing the implementation of digital functionality in the public switched networks will speed the delivery of new and important services to all sectors of our society. We look forward to working with you, the Electronic Frontier Foundation, the carriers, and other interested parties to make the vision of open platform a reality.

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The PRODIGY service is an example of the potential and power of the National Information Infrastructure. As early as the mid-1980s we saw the possibilities for our Nation's emerging Information Superhighway, its potential for widespread public popularity and the need to be able to reach the mass market electronically. That is why we structured our electronic delivery system on a scale that can be expanded to serve tens of millions of Americans in their homes, enabling them to communicate as an extended electronic community.

Prodigy launched the PRODIGY® service nationally in 1990. Today more than 2,000,000 Americans are PRODIGY members using hundreds of information and transaction services including news and information, money and travel databases, educational and entertainment features, and communications. Each day we handle some 700,000 PRODIGY sessions and some 100,000 electronic bulletin board postings. Prodigy's new e-mail gateway to the Internet has enjoyed unexpected popularity and is generating more than 300,000 messages a month.

Last month's earthquake in Los Angeles which disrupted long distance service and traditional information flows is a prime example of the power of this new medium. By 6:30 a.m. West Coast time on the morning of the quake, a bulletin board was established on the PRODIGY service. This not only allowed thousands of people from around the country to learn whether their relatives and friends were safe, but provided

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up to the minute, first hand reports on the quake and its aftermath. In fact, we had 813,000 sign-ons that day, the second largest number in Prodigy's history, exceeded only by election eve 1992.

Prodigy and the members of the Electronic Publishing Group support legislation that will: (a) promote the development of a feature and technology rich, unbundled and transparent public network; (b) encourage competition in the provision of all types of telecommunications products and services and particularly in the provision of local exchange services; (c) establish statutory safeguards to promote competition and prevent discrimination by the Bell Operating Companies ("BOCs") in the provision of electronic publishing services; (d) provide privacy protection of most customer proprietary network information as well as ensure the availability of CPNI on a non-discriminatory basis; and (e) urge the maintenance and appropriate enhancement of universal service goals. Taken together and modified as suggested herein, H.R. 3626, H.R. 3636 and H.R. 3432 will represent a major step toward realizing these goals.

As H.R. 3636 recognizes, certain telecommunications markets, particularly those for local exchange services, are not fully competitive. Consequently, incumbent local exchange providers continue to enjoy major market power. We therefore endorse the efforts in the pending legislation to

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open these markets to new opportunities for competition. In the interim period before competition develops to an effective level, however, Congress and the Administration should require that electronic publishing services provided by BOCs in competition with independent entities be offered subject to effective regulatory safeguards. Those safeguards must be designed to foster competition in local telecommunications services while preserving a competitive information marketplace.

The nation's telephone system has been and will continue to be for the next several years the only interactive electronic lane that is open on the Information Superhighway that goes to everyone's home and to all businesses. Until competition emerges, it is vitally important that all content-based services receive the benefit of pro-competitive safeguards. We submit that each and every electronic publishing service merits such protection, as long as the providers of those services remain dependent upon local exchange facilities to reach customers, and vice versa.

The delivery of the PRODIGY service exemplifies that "first electronic mile" bottleneck issue and the critical need for safeguards. Conventional POTS telephone lines permit PRODIGY members to connect to Prodigy's national distributed delivery network. With a PC and modem, a member typically dials a local phone number and is connected to a

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Prodigy local site. Prodigy's distributed delivery system provides more than 700 separate phone numbers for members to reach Prodigy, thereby enabling some 80 percent of U.S. households to connect to the Prodigy interactive network with a local telephone call. Prodigy local sites connect to Prodigy's national data center using state-of-the-art high speed digital telecommunications links provided by competitive long distance carriers. Today there is no widespread, affordable and available "first electronic mile" except the phone system that can connect both consumers and all businesses to the Information Superhighway.

Since its service was first on the drawing boards in the mid-1980s, Prodigy has been exploring ways to reach consumers using higher speed digital lines that can accommodate two-way, real time applications. Today, top delivery speeds of 9600 bits per second limit electronic services to the delivery of text, simple computer graphics and limited images. Prodigy has been working with phone companies to move toward digital, higher bandwidth phone services. We are also proactively exploring other technology alternatives that can provide sufficient bandwidth for real time, two-way electronic services.

Prodigy has begun testing delivery of its service over cable, with the first test starting in San Diego last November. Cable's wider bandwidth allows PCs to receive

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information substantially faster than analog phone lines and will permit delivery of video and two-way multimedia services. I want to emphasize, however, that while the San Diego test and other explorations of alternatives to telephone delivery are widely regarded as important strategic steps in the convergence of cable and computer technologies, there is still a long way to go -- in terms of technology, competition and public policy -- before any significant alternative electronic lanes will be open to either homes or all but the largest businesses. This is equally true for virtually all electronic publishers.

Accordingly, the final legislation should, as does H.R. 3626, require BOCs providing electronic publishing services to do so only through fully separate subsidiaries. But, to be truly effective, this requirement should apply to all electronic publishing provided by a BOC over any part of its local exchange bottleneck.

1. Definitional Issues

We understand that the current definition of "electronic publishing" in Title II of H.R. 3626 arguably is sufficiently broad to cover all content-based services commonly understood as electronic publishing. However, that definition may cause confusion as we go forward in developing the NII. Many electronic publishing services will be content-based, but may

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not look like a traditional print newspaper. The definition should, therefore, be clarified to encompass this reality and should not be tied to any particular subject matter or format. Such a clarification should assure that if a Bell Operating Company is going to use its local exchange facilities to conduct its own electronic publishing, it must do so in a fully separated subsidiary. Prodigy and EPG believe that this change is necessary to avoid the potential for future disputes over the scope of the current language.

Consistent with the above, two specific changes to the current text of H.R. 3626 are required. First, the separate subsidiary requirement should clearly apply with respect to delivery of electronic publishing services via any of a BOC's local exchange offerings, not arguably only basic telephone service. Thus, it would apply to services delivered over plain old telephone service, "POTS," as well as more advanced digital services that may be provided. But, if a BOC has a separate facility apart from its wireline local exchange network -- such as a wireless network -- the separate network would not be covered.

Second, the definition of electronic publishing should encompass all services that are "originated, authored, compiled, collected or edited" by a BOC or in which a BOC has a direct or indirect financial interest. While we believe this is the intent of the current bill H.R. 3626, Section

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231 (6)(A), it is nonetheless critically important to ensure that the offering of services like PRODIGY, legal or public record materials, literary, educational, and a consumer/ business or financial materials are expressly included within the definition. This change would not impact the ability of the BOCs to provide the network services identified in Section 231(6)(B) of H.R. 3626. We will be pleased to provide and discuss specific legislative suggestions regarding this wording.

2. Safeguards Required

Defining the services subject to safeguards is an important step. Equally crucial is establishing a package of pro-competitive safeguard requirements that can be effective in preventing potential marketplace dislocations. Prodigy and EPG submit that such safeguards must, at a minimum, mandate non-discriminatory treatment of competitors vis-a-vis a local exchange carrier's own electronic publishing operations. One fundamental aspect of such a policy would be reversal of the current regulatory double standard for access to Customer Proprietary Network Information ("CPNI"). The existing rules skew opportunities for the use of and access to CPNI in favor of local exchange service providers who both create much of this information and hold the keys to its first and easiest use. Because of CPNI's substantial value

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in developing and marketing information products and services, permitting disparate access to CPNI unfairly creates competitive inequities and undermines the public interest in a robust and competitive marketplace for information services.

Accordingly, we support Title I of H.R. 3432 which would redress this imbalance and submit that it is a necessary part of a procompetitive legislative package seeking to promote the National Information Infrastructure. Such CPNI legislation should recognize the privacy interests of network users by affording customers the opportunity to control the disclosure or use of CPNI that raises substantial privacy concerns. It also should ensure that to the extent that monopoly-derived data about customer usage of the network may be used for non-network purposes, BOCs should be statutorily barred from discriminating with respect to the access to, and use and disclosure of, all such CPNI. This prohibition would apply whether the data be individual or aggregate, proprietary or non-proprietary. Thus, BOC personnel or affiliates would not gain any advantage over information providers in accessing CPNI data by virtue, for example, of knowledge of what type of data exists or the form by which customer consent is obtained. We would additionally support giving the FCC a role in determining what information raises such substantial privacy concerns.

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We further support the imposition of structural separation requirements that effectively segregate the competitive electronic publishing activities I described earlier from BOCs' regulated operations. As currently provided in Title II of H.R. 3626, those requirements should largely prohibit joint activities between a local exchange carrier and its electronic publishing affiliate and ensure that the affiliate operates completely independently of the carrier. We would like to work with you to ensure maintenance of these goals.

Equally importantly, carriers should offer their exchange network services on an open, non-discriminatory, and fully unbundled basis at verifiably cost-based rates as provided in H.R. 3636. Moreover, a BOC should not be permitted to provide the separate affiliate with any facilities, services, or information, including CPNI, unless the carrier also makes such facilities, services, and information available to unaffiliated entities upon request and on reasonable terms and conditions.

* * *

Prodigy and the Electronic Publishers Group appreciate the opportunity to express our views on these critically important matters. If modified as we have suggested, the pending legislative initiatives addressing our electronic publishing issues will foster the development of a sophisticated and efficient network infrastructure and promote the delivery of diverse and exciting electronic publishing services to the public. We commend you for your efforts and promise to work with you to see these provisions enacted into law.

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Mr. MARKEY. Thank you, Mr. Perry.

Our final witness for this panel is Mr. Stan Martin, executive director of the National Burglar and Fire Alarm Association. These are companies that also have distinct interest in ensuring that there are safeguards against telephone company activities that could destroy their market opportunities as well. We welcome you, Mr. Martin, to get your perspective on the legislation that has been drafted.

STATEMENT OF STAN MARTIN

Mr. MARTIN. Thank you, Mr. Chairman and members of the subcommittee. Excuse me, I'm a bit under the weather this morning.

My name is Stan Martin. For the past 3 years I have served as executive director of the National Burglar and Fire Alarm Association. Before that, I owned and operated a small alarm company in Dallas, Texas, for 14 years. Currently, I'm the vice president of industry relations and government affairs for a company called ADI.

During my 17 years in the industry, I worked with thousands of alarm professionals. Just last week, more than 5,000 dealers joined me at the industry's annual Western Trade Show. I cannot tell you how pleased the small business people are at the prospect of HR 3626 being enacted this year. We wholeheartedly and enthusiastically endorse HR 3626. Our industry believes you are facing an historic crossroad. Key actors in Congress and the administration, and a cross-section of the telecommunication industry agree that it is time to resolve the long-standing conflicts, and to establish the rules for the future.

For more than a century and a half the world has come to us to learn how to electronically protect their homes and businesses. HR 3626 will allow this to continue. We have consistently testified that Congress, and not the courts, should establish telecommunications policy. There are more than 13,000 alarm companies in the country, more than 12,990 of which are small businesses. They employ approximately 130,000 workers and service 17 million customers, yet the average alarm company has fewer than 10 employees. The top 100 alarm companies control less than 25 percent of a $10 billion market, yet the hundredth largest alarm company grosses less than $3 million a year.

As small businesses, we've always been concerned about the need for adequate entry tests and procedural safeguards. We believe HR 3626 provides these necessary items. HR 3626 establishes a 66-month waiting period before the Bells can apply for entry into alarm monitoring services. This will establish a record as to whether the FCC can adequately administer its new responsibilities. Most small companies maintain little or no cash reserves, so if the FCC cannot properly adjudicate complaints, thousands could lose their jobs. Why risk destroying a thriving industry when a waiting period will help to establish a record as to the FCC's ability to act expeditiously.

Once the waiting period expires, the Bells would have to apply to the FCC and meet two entry tests. First, the Justice Department would have to determine if the modified final judgment 8(c) antitrust test is met. Next, the FCC would have to certify not only that

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a public interest test is met, but also that it could promptly administer any laws and regulations applicable to the alarm industry.

In addition, the FCC would have to issue regulations within 6 years of enactment, but prior to Bell entry, which would prohibit access to our customer lists. It would also require that a cease and desist order be issued within 60 days of a filing of a legitimate compliant, and a final determination be made within 120 days. These two provision address the core concerns of our industry: target marketing of our existing customers and an expedited compliant process.

A number of technical changes need to be made to HR 3626 in order for it to more accurately reflect our understanding with the Bells. These have been discussed with the Bells and agreed to, and the modifications include: (1) clarification should be made that any Bell company engaging in alarm monitoring services between now and the date of enactment would have to cease such activity; (2) in section 106, the words "transmission facilities of the Bell Telephone Companies or its affiliates," should be substituted in place of "exchange service." Our core covered all means of transmission, not just exchange services; (3) in section 106, the word "customer" should be inserted after the word "informed," since we often alert customers directly of an emergency; (4) in section 230, should be changed to require the FCC to issue an absolute prohibition of access to our customer list. Any regulation necessary should be issued within 2 months of enactment, not 6 years as currently stated in the bill. Section 230 should clarify that the FCC must assert that it can promptly administer the laws and regulations that pertain to the alarm industry. Finally, in section 230, defines an affiliate as more than 50 percent ownership. Our understand was that neither the Bells nor their affiliates could provide alarm services. Language which prohibits the bells and any of their affiliates from providing alarm monitoring services needs to be added.

On behalf of the alarm industry, I thank the subcommittee for its responsiveness to our concerns. We look forward to working with you, toward successfully enacting legislation this year, which not only addresses our concerns, but helps to ensure that America remains the world's leader in telecommunication.

Thank you.

Mr. MARKEY. Thank you very much, Mr. Martin.

Now we will turn to questions from the subcommittee members. The Chair will recognize himself.

Let me go to you first, Mr. Perry, if we could. Is the essential point that you are making in your testimony that you and the types of companies that you represent may well be protected in H.R. 3626, but that you shouldn't be forced to engage in litigation over the years unnecessarily if that is the intention of the legislation?

And also, if the words could be selected which would ensure that we could avoid years of acrimony and bitterness between your types of companies and the telephone companies resolving this issue, if the clear intent could be established, and words selected to accomplish that goal as we pursue a legislative resolution of the issues right now?

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Mr. PERRY. Yes, that is precisely the point that I was trying to make. In our view, the ambiguity, if you will, comes up in two areas, the first being the definition of electronic publishing, which we believe is intended to include the broader concept of electronic publishing, but which, because I believe just of the way it came about, was drafted in terms that looked remarkably like a newspaper in an world and in an environment in which there are a lot of things out there that we believe are included in electronic publishing which are not newspaper-like.

Mr. MARKEY. So your companies don't necessarily run a sports column; is that what you are saying?

Mr. PERRY. That is correct.

Mr. MARKEY. You want to ensure that you are protected as well.

Mr. PERRY. The second point that we think in the area of possible ambiguity is the question of whether it is information delivered over the basic telephone network as opposed to the local network.

We don't want this to be limited to—we don't want the separate subsidiary obligation to be limited to services over plain old telephone system and to have things like ISDN be excluded from those requirements.

The language of the basic telephone, although I don't think is intended to do that, I think sort of gives the connotation of existing POTS service. Those are the two areas in which we have some concern about the ambiguity.

You are absolutely right. We would love to work with the committee and others to try to work out that language.

Mr. MARKEY. Thank you.

Mr. Cullen, could you deal with Mr. Perry's concerns and tell him if he has a reason to be concerned?

Mr. CULLEN. Yes, sir, I would like to respond to that.

First, the language which I could check quickly here, is intended to cover the basic telephone network. It is not intended to cover just plain old telephone service, but all capabilities. So it is not technology-specific. I think that would address the second concern.

Mr. MARKEY. That is very helpful.

Mr. CULLEN. The first concern, we get precisely the language that was discussed so that we could reflect interest of all publishers. I would suggest Mr. Perry is a publisher in that same context. He is absolutely correct. It is intended to cover electronic publishing.

But we move from very broad vague general definitions, which few people could define with any precision, to a very precise definition that takes about a page and a half.

So, it was absolutely our intent to be very specific, avoid future conflicts, in listing specific kinds of services that all publishers—newspapers, Prodigy, people with PC's in their home—would conceivably define as electronic publishing.

So this language reflects precisely the objective that Mr. Perry outlined, to be very specific.

Mr. MARKEY. Well, let's go back to Mr. Perry, then. What do you need?

Mr. PERRY. That is very encouraging, I might say.

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Mr. MARKEY. I think we have come very close here this morning to resolving something that had been ambiguous, I think, in many people's mind. What would you need, then, Mr. Perry, in terms of additional assurances so that what Mr. Cullen is saying is the intent of the regional companies is effectuated in the language that we finally pursue here.

Mr. PERRY. Without trying to draft the language as we are sitting here, but I believe in general I think on the first point, that is to say, the basic telephone service language, it seems to me that the more traditional local exchange facilities language would make us more comfortable, that the intent is to include the higher bandwidth services.

On the point of the—we actually have no argument with the laundry list of specified things that are included in the bill, are words that say, for example, "included but not limited to," in front of that laundry list would go, I think, a long way to solving the concern that we have so that it doesn't look like the specification of the only things that are electronic publishing.

Mr. MARKEY. So you would both agree, then, that it is better for us to find language in order to forestall the likelihood of extensive legislation?

Mr. CULLEN. I would not agree, Mr. Chairman. I would suggest that while I understand the objective, I would suggest that the language contained in this bill addresses very precisely the objective. The need was crafted over a long period of time to reflect the interest of newspapers, of Prodigy-like services, of future services.

With great respect, I would suggest that it is in precisely the same spirit of compromise that the entire piece of legislation was crafted, that this definition was put together.

Mr. MARKEY. I appreciate that. I appreciate one, the hard work that was put into the definition, but I also very much respect the concerns that Mr. Perry has.

In the bill itself, the term "electronic publishing," is defined. It means the "dissemination, provision, publication, or sale to an unaffiliated entity or person using a Bell Operating Company's basic telephone service of news, business and financial reports, editorials, columns, sports reporting, features, advertising, photos and images used in publishing, archival material used in publishing, legal notices, or other like or similar information."

So, Mr. Cullen, where do you think there that Mr. Perry is protected?

Mr. CULLEN. I think he is protected by everything that you just read, sir. I think this is precisely Mr. Perry's business that we have just described—news, business, financial reports, et cetera, pictures, advertising.

Mr. MARKEY. Mr. Perry?

Mr. PERRY. The one thing that we have learned in the last 5 or 6 years in the electronic publishing business is it is a business that next year you won't recognize. So, I am uncomfortable with tying it exclusively, I should say, to words that sound like a "paper" newspaper.

For example, I don't know where the development of an electronic interactive game fits into that set. I just select that as an example.

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Mr. MARKEY. Well, let me ask Mr. Cullen. Where would that fit in, Mr. Cullen? "News, business and financial reports, editorials, columns, sports, reporting features, advertising, photos and images used in publishing, archival materials and publishing, legal notices, other like or similar information"?

Where would games fit in?

Mr. CULLEN. I do not think a game would fit in here, a game as electronic publishing. An electronic game is an interactive service that today would not be delivered over the kind of network that we are envisioning. So, I don't believe that an electronic game is covered here.

Mr. MARKEY. Mr. Perry?

Mr. PERRY. That certainly is a part of our business. To the extent that I thought we were in the electronic publishing business, it surprises me to hear that some piece of our business is not electronic publishing.

I could perhaps—maybe I ought to come up with a few more examples so we can figure out exactly what would be covered and what wouldn't be covered under this definition.

Mr. MARKEY. That would be helpful to us, Mr. Perry.

What about, for example, West Publishing? Would West Publishing be protected, Mr. Cullen, the types?

Mr. CULLEN. I would have to know more about precisely what they do publish.

Mr. MARKEY. They publish legal cases. They put them out on the electronic highway. It is a service which is provided to lawyers and law schools across the country.

Mr. CULLEN. The intention, I believe, was to cover that under archival material used in publishing.

Mr. MARKEY. OK. Thank you. I think we are going to have to explore this a little bit further. Maybe, Mr. Perry, you could provide the subcommittee with additional examples that could help us explore that a little bit further.

Mr. PERRY. We would be pleased to do that

Mr. MARKEY. Let me ask one more question and then I will recognize the gentleman from Texas.

Mr. Perry, please elaborate on where you see CPNI, Title I of the Consumer Privacy Protection Act of 1993 fitting into this debate on safeguards?

Mr. PERRY. Mr. Chairman, I think the first time we, as Prodigy, were before this committee back in 1989, we were talking about CPNI and CPNI protections. So this has been something that has been near and dear to our hearts from the beginning.

We believe, frankly, that CPNI protection is an independent protection, aside from the separate subsidiary. But we believe that the current rules on CPNI simply set up the possibility of inequitable treatment of very valuable marketing information, and that the ability of the BOC's to use that information in their business, in competition with somebody else—and forget about for a moment that maybe it is not an electronic publisher. Maybe it is not in the separate subsidiary.

But the ability for them to be able to use that information more readily than they are required to provide it to other people, I think

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is just an inequitable and double standard that we shouldn't be required to tolerate.

Mr. MARKEY. Mr. Bennack, can you give us your views on how we should handle the CPNI issue in terms of the telephone company's advantage over its competitors and its use?

Mr. BENNACK. Well, it is my view, Mr. Chairman, that as to the discriminatory aspects, the ability of the Bells to use that information without making it available on an equal basis to others covered under this bill, that this language does that job.

I think there are other issues with respect to that are not really addressed here, the privacy issue, for example. But again, in the overall context that Mr. Cullen has addressed of trying to hammer out a non-discriminatory use and availability of the information within this language, we are satisfied with that language.

Mr. MARKEY. Do you think that they should be able to use the information they gather without the permission or consent of the customer that they have gathered it from?

Mr. BENNACK. Well, as I said, that is not an issue that is contemplated, or was contemplated in this issue. I think it is important issue. It will be covered, as I understand it, in other approaches, whether that ends up as a part of this particular legislation or not.

Mr. MARKEY. Are you concerned about it?

Mr. BENNACK. Yes, I am.

Mr. MARKEY. OK. Thank you. That is helpful.

My time has expired. Let me recognize the gentleman from Texas, Mr. Fields.

Mr. FIELDS. Mr. Fishman, many of us on this panel have small newspapers throughout our Congressional districts, so certainly we are sensitive to the term "localism." I read your testimony last night and tried to understand some of the technical language you had as an appendix.

Could you walk us through what your technical changes do to this particular legislation, the changes that you envision for these technical amendments?

Mr. FISHMAN. I think so. Let me try to do that.

In our written testimony, we have submitted an appendix where we think it is very important that the bill be amended to assure those things that we think are very important, which basically is access, the gateway, the rates, the competition. Those things for small publishers are very difficult to define, Mr. Fields. Let me try it this way.

The access issue basically for a small publisher, if Congress doesn't include these amendments in the ARC proposal, become a very expensive proposition because of the way that you use part of the network of the telephone company—the access, the rate-setting structure. I have several thousand dollars already dealing with that access in Tennessee to try to gain access in the structure.

The RBOC's—and this is not disparaging—RBOC's are going to the place where the big money is, the big cities, this type of thing, where there are lots of people.

In Atlanta, if you take the same rates that they propose for Atlanta, Georgia, is 50 cents. You can make money. The Atlanta

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Journal Constitution can make money at 50 cents a call. I can't make money at 50 cents a call.

If they set the entry fee of changing the switch—one switch in my town, for example, one central office—is $1,065 on the same basis of what they changed Atlanta for. But what did the want and what did they propose is an initial entry. Originally in their first tariff, it was $22,000.

That makes it practically impossible for me, a small community publisher, to get up on the highway type of thing. We were arguing about that in Tennessee. I don't know how it has come out, or it hasn't come out yet.

But if Congress defines in this language that we have here what we think is very important, I think it will send the signal, if you will, that in this super highway, small town local information providers have to have equal access and fair rates, equal competition.

I think the competition part of the bill that Mr. Bennack and Mr. Cullen have worked out is fine for a substation and those kinds of things.

Mr. FIELDS. I would like to follow up at some point with the technicality of these amendments and how they would fit into this particular piece of legislation.

Mr. Bennack, let me ask you. I am sure you haven't had a chance to study the technical amendments, but do you agree with the basic position taken by Mr. Fishman today as your position?

Mr. BENNACK. Well, I would first, Congressman, would want to point out that NAA and I individually have a high interest in smaller newspapers. We certainly intended in this work to reflect that.

In fact, there is a provision, as you know, on the joint ventures where the FCC can approve larger than 50 percent equity ownership by an RBOC if the funding is needed to advance, causing that service to be possible.

Within my group of properties at the Hearst Corporation, we have newspapers of 10,000 in circulation and less, along with the large papers, like the Houston Chronicle and the Seattle Post Intelligence.

Having said that, I don't think I have any objection to what Mr. Fishman is talking about. I have not had a chance—this is something that I didn't see until yesterday, frankly, and I have not attempted to put it against what has been incorporated in our draft as submitted to the committee.

There may be other objections that I am unaware of. I want to make the point, because I think it is critical here, that there was a lot of give and take in this process. We don't have in this bill for large or medium-size or small newspapers everything we would have like to have had, and neither do the RBOC's.

So, I have to really say that NAA and NNA have cooperated on this. At first blush, these elements that he is talking about are of concern and of interest to me, but I don't know how they affect the political consensus and understandings that are a part of getting us to where we are.

Mr. FIELDS. Certainly you recognize how delicate a balance this piece of legislation is. Let me ask you, Mr. Cullen, if you basically have any comment on what Mr. Fishman has advanced and also

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if you would want to comment on what he talked about as a disparity from his particular situation versus the situation in Atlanta. Of course I recognize that is outside of your region.

Mr. CULLEN. I have enough trouble speaking for Bell Atlantic most days, Mr. Fields. Speaking for Bell South here would be difficult.

I do recognize the concern. I will say that we collectively will not be successful in building the highway, building the capacity and reaching homes if we are not able to deliver local news, local interest items, so I share the concern, I think, in speculating about what Mr. Fishman has found in Bell South.

I think that what we are looking at is volume-sensitive pricing that is similar to, for example, the kind of prices we would pay to xerox all the papers in front of us. If you xerox 10 sheets you will get a certain rate or if you xerox 10,000, so I suspect there is a volume-sensitivity here, but I would like to be very clear that speaking for the RBOC's and Bell Atlantic, in region and out of region, it is absolutely our intention to find ways, creative ways, to bring local publishers, local information providers, local news onto the network.

We will have the capacity to do that and we have agreed to do that, so I share the concern but we need to get down to about the third level of detail, almost State by State, to figure out ways to address that.

Mr. FIELDS. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman.

Over the last 3 weeks as I have travelled back and forth between the Judiciary Committee and here in the Telecommunications Subcommittee, I feel like Bill Murray in "Groundhog Day."

I relive this over and over, ask the same questions over and over and maybe we get different answers, you never know.

Welcome, Mr. Cullen.

Mr. CULLEN. Thank you, sir.

Mr. SYNAR. Let me talk to you for a second.

During the last 2 years the Maryland Public Service Commission found that ratepayers were paying as much as $10 to $12 per square foot above the average market rate for lease agreements that C&P had with some of its affiliates and that the total cost in excessive rents charged to ratepayers were estimated at $4 million per year.

I guess that points to one of the continuing concerns I have, which is the issue of cross-subsidization. I am not trying to pick on you. I think we have a significant history across the country that this is still occurring.

My question to you is that as policy-makers, we are applying safeguards to the electronic publishing area. Shouldn't we do that to all information services and all other lines of business like manufacturing and long distance?

Mr. CULLEN. Well, let me just, Congressman, address the Maryland issue. The only audit that I recall in Maryland was about 2 years ago. My recollection is that audit, looking at many billions

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of dollars in expenses, found very, very few problems or concerns. This is always a subject of concern, however.

On the issue of defining what it is we are talking about here, I would say the much broader issue of information services has been addressed by the courts, as part of the court process addressed by the Department of Justice. The court this past year in reviewing an appeal found very clearly in the strongest possible language, with support from DOJ, that the local exchange companies did not have a significant possibility of discriminating and found further that safeguards in place through the FCC were more than adequate to guard against it, found further that since divestiture we actually have greater opportunities to guard against discrimination because now instead of one huge company we have seven companies, so we can compare prices region to region.

Mr. SYNAR. But the point is, isn't it, that if the safeguards are good enough for this area, just for optics sake, why isn't it good enough for all the other business areas, as we try to apply public policy, given the fact that there is a pretty good history of cross-subsidization problems across the country?

Mr. CULLEN. I think you would find that between the FCC requirements for open network architecture, the FCC accounting approach——

Mr. SYNAR. But all those have been in place for some time with the enforcement mechanisms and we continue to see these cross-subsidization problems so obviously they are not being adhered to and there are still violations.

Mr. CULLEN. No, sir, I don't agree. Most of them have been in place since '90 and '91——

Mr. SYNAR. All right, but——

Mr. CULLEN. But they have not been applied to information services. The information service issue has been tested in the courts and the FCC process, which is an accounting process, was in fact changed, as Mr. Bennack suggested——

Mr. SYNAR. But you realize——

Mr. CULLEN [continuing]. —Precisely because——

Mr. SYNAR [continuing]. —There were GAO studies where Mr. Markey and I show that the FCC can only audit a telephone company once every 18 years. That is not the kind of enforcement adequate to avoid that, is it?

Mr. CULLEN. And if we were dependent only on FCC enforcement, I would say you are absolutely correct. This is a self-policing mechanism because if Bell Atlantic goes to Chicago to compete and we find that there is discrimination we will be the first to bring it to the attention of the regulatory authorities.

Mr. SYNAR. Let me talk to Mr. Fishman, Mr. Bennack, and Mr. Martin.

In 1991 Judge Greene stated, and let me quote him, "The probable consequences of such entry will be the elimination of competition from the market and the concentration of the sources of information of the American people and just a few dominant, collaborative conglomerates with captive local telephone monopolies as their base."

That is with respect to information services. At the time, your three groups not only praised that comment with very loud voices

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but you also disagreed with the decision to lift the restrictions for information services.

You have done a pretty darn good job getting yourself some safeguards in this bill. I guess the question I ask for you, what additional safeguards should we give consumers in order to ensure that they have the same kind of protections you all got?

Mr. Fishman?

Mr. FISHMAN. I think the safeguard that you want to provide the consumer in essentially small communities and when you are talking about local information or that you want to provide in hard to serve areas is the rate structure that you are talking about without the cross-subsidization that you are very clearly talking about here.

If you want to protect the consumer, in my opinion Congress must send the message that they want the local provider—not the provider but the local receiver, if you will, of that information must have access. It must be economical. It must be fair and it must be rapid. He has got to have that same access where it is hard to serve, otherwise—and that is where the issue in my opinion becomes a problem—because obviously in downtown Washington it's a lot easier to serve because you have got a lot of people and you can put a fiber optic down the street. A lot of people can get on it. You get out in a rural area of Oklahoma or you get out in a rural area of Tennessee, it's not going to be as economical to serve out there as it is going to be here, and I think that Congress must send the message that it must be cost-based for the consumer out there to receive that information because how you charge for the information is going to be whoever is providing the information, however that is going to be is going to be reflected by how you have to deliver it and whatever those costs are.

Mr. SYNAR. Mr. Martin, how do we protect the consumer more, just outside your area?

Mr. MARTIN. I guess beyond what is in the bill I don't know that I could come with any additional safeguards.

Mr. SYNAR. Should that be applied across the board to everything, as I suggested with Mr. Cullen?

Mr. MARTIN. Of course I am focused on the alarm industry but that would seem to be acceptable, yes, sir.

Mr. SYNAR. What about that, Mr. Bennack?

If they are good enough for your two industries, aren't they good enough across the board?

Mr. BENNACK. Congressman, I think there are really only two absolute protections for the consumer.

One would be a bar on many things by someone with the economic power that the RBOC's have. That is not achievable in our view from a political point of view. That goes back to your earlier statement.

We certainly agreed with Judge Greene. We did everything we could to make that a political reality and I wouldn't be sitting here if that were a political reality.

Second, fostering competition, which we think both 3626 and 3636 do, is the other effective one.

Safeguards, and you have said yourself that this is a good package of safeguards, there are provisions here including injunctive relief, private action that were hard fought aspects. I don't suggest

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that they do everything you or I would like to see done but I do believe that they are an effective package.

The concept of insulating the consumer and all competitors from the problems related to cross-subsidization or the use of monopoly power is a concept I certainly endorse in the public interest, and I don't think it is peculiar to just the subject we are talking about here today.

Mr. SYNAR. Do I take that as an answer that they should be applied across the board or not?

Mr. BENNACK. I think that's a public policy issue that is not for me to make.

Mr. SYNAR. The next time any of you in the newspaper industry criticize us for not giving a straight answer, I am going to send that answer to whoever it is—do you hear me?

Mr. BENNACK. I hear you—and I think I said that I do believe that is a good idea but I can't, I'm not sure that speaks to everything that you are addressing, Congressman.

Mr. SYNAR. It is if you want to answer it.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman. I join in that sentiment of my friend from Oklahoma.

It seems that the courts and to a large extent technology have driven you all to the table today, and indeed drove you to the table in negotiations that have gone on for quite some time.

Mr. Cullen, I am interested from your perspective as to why you would go to the table in the first place. After all the courts essentially turned you loose to provide information services, essentially with little or no restrictions based on I think solid tenets of law, so why are you in on this deal with the rest of these folks?

Mr. CULLEN. Mr. Oxley, a very straightforward, clear response to that is that we were not driven to this table by the courts nor regulators nor in fact Congress. We were driven to the table by the recognition that we have business opportunities in front of us.

We have a new market. We have an opportunity to provide these in a way that is nondiscriminatory. We have an opportunity for investment and so I can tell you that we were first driven to the table in New Jersey after the regulatory legislative process had concluded. It was over. It was done—and we were driven to that table with the publishers for the very reason that I mentioned, to bring these two groups together and move forward with the right safeguards to provide services that did not exist: new services, new investment, new jobs.

I would submit that my reason for being here today is an extension of that with a number of complications but the very same basic motivation.

Mr. OXLEY. Is the idea or the concept of certainty also a factor?

Mr. CULLEN. With the levels of investments being contemplated to provide this information superhighway, it is very clear that these are long-term investments. They are not going to pay off for quite some time and therefore having a set of reliable ground rules, having a set of reliable safeguards, indeed having a sunset provision in the electronic publishing provisions is very important to businesses contemplating multi-billion dollar investments, yes, sir.

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Mr. OXLEY. Mr. Martin, what brings you to the table? I mean it's rather interesting that—I mean you in terms of size pale in comparison to the large publishers and certainly the Bell companies and indeed maybe some other information providers that are not at the table. What is your secret here?

Mr. MARTIN. Our secret is survival, Mr. Oxley. Small dealers across this country recognize that we would not survive if we didn't get in and work for fair competition for our industry and allow for a level playing field. It's really as simple as that.

Mr. OXLEY. Do you think that public policy should be set with the idea in mind of protecting certain industries that are somehow politically capable of carving out a niche for themselves?

Mr. MARTIN. No, sir, not at all, but we do believe in some period of time that would allow the FCC to properly adjudicate complaints and properly administer the laws that Congress passes. We don't believe at this point that they can properly do that and therefore our businesses would go away and competition would disappear without these safeguards of this time period.

Mr. OXLEY. Where do you see your industry in, say, 10 years?

Mr. MARTIN. Probably like many folks, we cannot exactly see where we are going to be. We know we have had a good history of providing services. I believe technology will continue to change. There will be more opportunities, different methods or means of communication other than the Bell telephone lines in the future and I would like to see those facilities develop over the next several years.

Mr. OXLEY. Thank you. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Tennessee, Mr. Cooper.

Mr. COOPER. I thank the chairman. I think it is apparent that some groups have cut deals on this issue that they are satisfied with. Others are not included in the deal and would probably like to be.

Some seem partially satisfied—Mr. Perry seems to have parts of his business covered but not others.

In the area of localism and small newspapers, I have a particular concern, having represented, as has been pointed out, an entirely rural district. I was interested in Mr. Cullen's testimony when he said, I believe on page 2, that Bell Atlantic would also offer all publishers, including its own affiliates, the same services on equal terms. We are all in favor of equality but it's got to be equality that is in reach of smaller businesses because what is for you perhaps a rounding error could put a small firm into bankruptcy, so even the $22,000 charge that was originally proposed to be levied on Mr. Fishman is quite a heart-stopping figure for some smaller businesses.

Is there a way to work out an arrangement with small, weekly newspapers so that these services can be put within their financial reach, not to benefit them but so that their customers, the folks who are dependent on local news, can in fact have access to these news services at affordable prices?

Mr. CULLEN. Mr. Cooper, as I said, that is absolutely our intention and objective.

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I would just point out that what Mr. Fishman is dealing with today is the existing telephone network. We are not dealing with the information superhighway.

With that sort of capacity, it is much easier, more straightforward, much more beneficial for everyone to allow a flood of local providers onto the network. It is simply much easier to do, so that we do recognize this.

We have stated over and over none of these superhighways will work well, will meet customer needs, which is the only test of working well, without an element of local news, and in fact we can be even more local. We should be able to deliver news to neighborhoods.

In Toms River, New Jersey, where we are building an information superhighway once we get 214 approvals, we will be delivering local news to local neighborhoods. We will be working with local providers and local publishers, so I think the best way, Mr. Cooper, for me to answer this is for us to get on with it and demonstrate and show in a real world example that we can do this.

Mr. COOPER. Forgive me for not being up to speed on all the details of this. Does that mean that we are going to wait until the superhighway is in place before there is equality for local folks or is there an opportunity today, using today's phone network, to allow small publishers the equal access opportunity to get on the local network?

Mr. CULLEN. I am reluctant to speak to the specific issue in Tennessee that Mr. Fishman has mentioned. I am not aware, for example, in areas where I do have some knowledge, that where there is a capacity, where there is a customer requirement, and where, in fact, there is a small or large newspaper with a business opportunity, that they have been prevented from doing it. The economics of this are staggering to all of us, even to large companies.

Mr. COOPER. Have you had a chance to see the appendix from the National Newspaper Association to see whether that language might be acceptable?

Mr. CULLEN. No, sir. I do not have a copy of that.

Mr. COOPER. Have you been privy to prior negotiations on these subjects to see what language might be acceptable?

Mr. CULLEN. From the NNA?

Mr. COOPER. Or from any small publisher including those within Bell Atlantic service region. Have they complained to you in the past?

Mr. CULLEN. In connection with what we did in New Jersey, subsequently in Pennsylvania, in connection with our normal business operations, we have, in fact, talked to a great many publishers, and, in fact, we've talked to a great many cable TV companies.

We want to bring information providers onto the network particularly when we can build a capacity to delivery video signals, but I have not seen the language that we're discussing here this morning.

Mr. COOPER. Are small publishers within your service region happy?

Mr. CULLEN. Small publishers within our service region are concerned that they are going to get trampled, but if I can be candid, they are not as concerned about being trampled by operating tele-

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phone company, which in this legislation is prohibited from offering electronic publishing. As was suggested, they're afraid of being trampled by giants like IBM/Sears with Prodigy and by large newspapers.

So they are concerned, and we are hoping that with a real live example we can address that concern, and we can delivery local news.

Mr. COOPER. I thank the Chair.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentle lady from Pennsylvania, Ms. Margolies-Mezvinsky.

Ms. MARGOLIES-MEZVINSKY. Mr. Bennack, could you tell me a little bit more about your experience with information services and your big paper selling these products widely? What will I as the consumer be calling for?

Mr. BENNACK. Congresswoman, I'm not sure I fully understand that question, but let me give an effort. One of the things we've talked about at great lengths on information services, electronic services, is the tell-me-more aspect, which I'm sure you've heard discussed, where a lot of information that lies behind stories can be supplied by electronic means. We think that there will be a significant demand for that.

We also believe that there are significant electronic opportunities in advertising, and we are experimenting with some in our company, even to including a recent purchase of some yellow page printed directories, where we intend to develop a combination of electronic classifieds and printed classifieds and yellow pages.

I think that much is not known about how the consumer will respond, and what the consumer will be prepared to pay for unbundled services. The newspaper today represents an enormous value at .35 cents or .50 cents, if I may say so. Of course, free over-the-air television represents an enormous value.

When we move into the area of tell-me-more or enhanced services or expanded information, we don't get no. Audiotext, for instance, which is the use of the telephone lines today for supplying information, has been exceedingly successful where it is provided free. We do that in a number of our markets to learn exactly what this brave new world is going to be about. We get hundreds of thousands of calls. Recent experiments where a charge is made indicates that the demand goes down very significantly.

I think it is an exciting opportunity. We've talked a lot about newspapers, but we are also publishers of magazines, and I think such terms as feature and information and news, et cetera, also relate to magazines, and that there are significant opportunities there as there are for other electronic publishers and information providers.

Ms. MARGOLIES-MEZVINSKY. Are there any restrictions of these being sponsored?

Mr. BENNACK. No.

Ms. MARGOLIES-MEZVINSKY. So that you, hypothetically, could put these on a line with a bracket around them saying, "This is sponsored by"?

Mr. BENNACK. That is what is happening with Audiotext right now. Very little has been done in terms of incremental charges. Mostly the newspapers that offer these services go into the market

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place, get a typical advertiser to pay a fee, and you get a short commercial at the end of it or a general promotion within the paper as a trade-off or some other way of bringing these services without imposing incremental charges.

Ms. MARGOLIES-MEZVINSKY. Mr. Cullen, could you tell me a little about your experience in Pennsylvania with electronic publishing? Are those services expanding?

Mr. CULLEN. These services are expanding, but in Pennsylvania it was just a short time ago, Congresswoman, that we signed the agreement; I believe, less than 3 months ago in November, maybe early December.

So very little has been done, but the opportunities are there. The opportunities are expanding, and our recent announcement with Knight-Rider, as an example, is an attempt for us to create expanding—in fact, to create exploding opportunities as we make the investment in fiber and we have the capability to deliver customized information to each home.

Ms. MARGOLIES-MEZVINSKY. What is your "read" on the market for these services?

Mr. CULLEN. Our read on the market for the services is that we recognize there are concerns about the future market attractiveness to consumers, but we think that the bulk of services exist today, the market is there today. The simplest example for that, I think, would be video stores. So that if we just think about a basic service of delivery video, that market is there, and we know it is $12 billion in this country.

We know the market for education is there. We know the market for health care services is there, and we believe that the market for more interactive services with publishers and content providers will also be there so that consumers can actively select the information they want to see or hear, when they want to, in the form they want.

Ms. MARGOLIES-MEZVINSKY. So you are unclear as to the delivery?

Mr. CULLEN. We are unclear as to the timing of many of the subsequent services.

Ms. MARGOLIES-MEZVINSKY. You just mentioned Knight-Rider, where will these services be offered? What type of information will be available?

Mr. CULLEN. We have just announced that last week. What we have announced is our agreement to go forward and to begin developing these services. This will be a function of consumer requirements, their understanding of their business, our ability to produce some funding and to delivery. So we are in the earliest of stages with Knight- Rider.

And, by the way, we continue in discussions with many other information providers as well. Smaller newspapers, magazine, and information delivery services such as Prodigy, which, frankly, I think will be tremendously benefitted from the kind of legislation and investment and market that we're talking about.

Ms. MARGOLIES-MEZVINSKY. Mr. Fishman, I just have one question to ask you. You referred to your service where someone could pick up the phone and actually call when a brown-out is occurring.

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What happens when your phone goes out when your electricity goes off?

Mr. FISHMAN. We have an alternate generator that continues to operate our computer and our electric system. If you have a tornado and the power lines are down and the telephone lines are down, then you would have a problem.

Ms. MARGOLIES-MEZVINSKY. And the individual consumer, when his or her power goes out and the phone goes out too, clearly?

Mr. FISHMAN. He's got a problem.

Mr. MARGOLIES-MEZVINSKY. A real problem.

Mr. FISHMAN. That's right.

Mr. MARGOLIES-MEZVINSKY. Thank you.

Mr. CULLEN. Since I'm representing the RBOC's here, Ms. Margolies-Mezvinsky, Pacific would like me to point out that during the earthquake the phones did not go out.

Mr. MARGOLIES-MEZVINSKY. Thank you.

Mr. CULLEN. In fact, they continued to work well.

Mr. MARGOLIES-MEZVINSKY. Thank you, Mr. Chairman.

Mr. MARKEY. The Chair recognizes, once again, the gentleman from Texas, Mr. Fields.

Mr. FIELDS. Thank you, Mr. Chairman. I recognize we have an additional panel, so I will be very quick.

Mr. Bennack, the question is to you and any members of the panel can feel free to respond.

In regard to the legislation introduced by the chairman and myself, there has been a concern by many cable companies and potential telecommunication providers as to the joint marketing by the Bell Companies on inbound calls. You know, many feel that is an unfair advantage, particularly at the outset. That, perhaps, over a period of time, as competitive forces come into play, it is not an advantage, and since it was not raised to any great extent during your testimony today, I wanted to see if you have any thought.

Then again, I realize this has been a finely-tuned compromise.

Mr. BENNACK. Well, I will be very direct about that and say that we had concerns about it from the beginning in the 3626 negotiations with the Bell Companies.

Ultimately, we decided, correctly or incorrectly, it was more pluses in advancing information services than minuses, and we, therefore, ultimately decided two things in terms of how we saw it. One was that as long as those services were equally available to others that they were appropriate and permissible. Second, you will remember that in 3626 there is a provision where additional advertising promotion, et cetera, are available in the event that you have a joint venture in which the Bell Company owned 50 percent or less, so that the short answer is that it was one of the issues that troubled me from the beginning because, again, the enormous position of power.

But I believe, just as the quickness of passing this legislation is critical to advance the growth of information services, that, on balance, this is a plus, and that hopefully there will be alliances with small providers or their access to these kinds of services on an equal basis will take care of any limitations that might be there.

Mr. FIELDS. Thank you.

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Mr. MARKEY. Let me just ask one final question to you, Mr. Perry, you, Mr. Bennack and, you, Mr. Fishman. One of the issues that we are dealing with in the context of Dingell-Brooks and Markey-Fields legislation is the ability for independent producers of information to be able to avail themselves of competing wires in each community, so that they are not just tied to the telephone wire.

In that context we are trying very hard to ensure that where there now exists in 93 percent of communities a cable wire, as it upgrades and becomes more vital in this super highway world, as it is able to compete with the telephone companies, it moves into cable-related businesses.

The central protection, of course, is that there are two wires in each community, and you can play one wire off against the other, Mr. Bennack, Mr. Perry, Mr. Fishman and Mr. Martin, if the telephone company is not giving you proper access.

One of the questions that we are confronted with is whether or not the telephone company should be allowed to own both wires in this community. So, for example, as Bell Atlantic and TCI have their proposed joint merger, they own—until they divest in Pittsburgh, in Washington, DC., and other communities—both wires because TCI was the cable company inside of their region in those communities.

Should they be now forced to sell off the competing wire so that there is competition, Mr. Perry, Mr. Bennack?

Mr. PERRY. Well, Mr. Chairman, I must say that, first of all, cable—we have a few small tests going on in delivery the Prodigy Service over cable, so we are already looking at that as one alternative means of delivery.

Frankly, we believe that is some time in the future under the best of circumstances. So even two wires into the home is not something that is going to happen tomorrow.

I think our fundamental position here is that it is absolutely critical that there be a competitive environment at the home level.

Mr. MARKEY. Thank you. Mr. Bennack?

Mr. BENNACK. I concur in that. I think, as I said earlier—even though he was not pleased with my answer—to Congressman Synar, I think that competition is really the ultimate protection for the consumer and all providers, and you can't have that if you have ownership of both wires, even assuming that there are other delivery systems on the horizon, which there clearly are.

Mr. MARKEY. Do you have any problem with that, Mr. Cullen? Is a full and complete divestiture of the wires in your own region that are now owned by TCI, not a spin-off, but a full and complete divestiture, do you have any problem with that to ensure that there is competition?

Mr. CULLEN. Mr. Chairman, we agreed on October 13. We made the announcement. We continue to agree today that we will never own both wires in Pittsburgh or any other area of Bell Atlantic's territory.

We will swap them out, we will sell them, we will spin them off. Bell Atlantic will not own them.

Mr. MARKEY. There is a difference between spinning off and full divestiture. We are talking about full divestiture.

Mr. CULLEN. A spin-off is a full divestiture, sir. Excuse me.

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Mr. MARKEY. Full divestiture means that you will not have an ownership interest in the other wire?

Mr. CULLEN. Exactly right.

Mr. MARKEY. OK. Thank you. We are trying to avoid clearly here the repetition of the Liberty Media situation where while it looked separate for a long time, once the merger began they pulled it in like a yo-yo, and it once again became part of TCI. That's a situation we would like to avoid in terms of our appreciation of the terminology which is used here.

So we thank each of you. We clearly don't have unanimity of opinion here, but I think we have a philosophical agreement as to what the ultimate product should include in terms of protections for all participants, and would like to work with everyone as we are moving along.

But I think it is heartening to see how close all parties have come thus far, and the suggestions which all of the participants have made will be very seriously considered. If you are willing to work with us over the next weeks and months, I think that we could ensure that everyone leaves here as happy participants in this information super highway.

We thank each of you.

Now we will move on to the second panel, which is the manufacturing panel. So we will begin, then, with our second panel. It would be helpful if everyone could settle down a little bit so that we can give respectful attention to this group of witnesses as well.

We will begin with Mr. William Smith, who is the president of U.S. West Technologies. He is representing the Regional Dell Operating Companies, who seek to engage in manufacturing. We welcome you, Mr. Smith. Whenever you are comfortable please begin.

STATEMENT OF WILLIAM B. SMITH, SENIOR VICE PRESIDENT, U.S. WEST; JOHN MAJOR, CHAIRMAN, TELECOMMUNICATIONS INDUSTRY ASSOCIATION; JOHN V. ROACH, CHAIRMAN, TANDY CORP.; PAUL W. SCHROEDER, DIRECTOR OF GOVERNMENTAL AFFAIRS, AMERICAN COUNCIL OF THE BLIND; AND SALIM A.L. BHATIA, PRESIDENT, BROADBAND TECHNOLOGIES

Mr. SMITH. Thank you, Mr. Chairman, and members of the Telecommunication Subcommittee.

I am Will Smith, senior vice president of R&D at U.S. West. I appreciate the opportunity to appear here today to offer my views on the manufacturing restriction of the MFJ.

I am firmly convinced that the restriction is having an adverse impact on jobs, on innovation, and on the country's global competitiveness. I urge the Congress to lift the restriction as soon as possible.

By way of background, let me mention that before coming to U.S. West, I spent 26 years with AT&T Bell Laboratories working primarily on the design of operations and switching systems.

I also spent 3 years as general technical director for ITT in Europe. In that capacity, I was responsible for all of ITT's telecommunications product development and research programs in Europe. In my assignment at AT&T I was responsible for the planning and performance of the company's long distance network.

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I joined U.S. West in August of 1991. In my current position, I direct U.S. West Technologies, the research, development, and information technologies' arm of U.S. West. I hold a master's degree in electrical engineering and a doctorate in computer science.

I offer these details of my background to illustrate that I worked in two extremes of telecommunications research and development.

In the open dynamic environment, I saw innovation and growth limited only by imagination and financial realities. In the confined environment, I see creative and innovative power restrained by ambiguous court rulings, properly cautious legal opinions and protracted waiver procedures. The latter is like driving a high performance automobile with the emergency brake on.

Since joining U.S. West I am continually amazed by the manufacturing restrictions, stifling influence on the regional Bell Operating Companies. The restriction effectively prevents the roughly half a million RBOC employees from having their suggestions and idea ever become a product reality.

Many organizations suffer from the "not invented here" syndrome. We in the RBOC suffer from the "can't be invented here" syndrome. Our ideas must be translated into customer solutions in a charade-like environment where potential manufacturers must guess the design from our limited cues.

For example, say a switching technician in Wyoming goes to her supervision with an idea to offer several new services, and improved service reliability by modifying existing equipment at a minimal cost. The supervisor says, "It's a great idea, but probably a violation of the MFJ," and agrees to call the lawyers.

Perhaps the supervisor makes the call and the idea ends up in a legal morass along with other good ideas. More likely the call is never made because the supervisor realistically compared the energy required by exhaustive review process to the remote likelihood of any productive outcome.

However, sometimes an idea does get through the system and into the hands of engineers capable of making it a reality. Unfortunately, the frustration and waste increase as the engineers try to move the solution from concept to development to product.

Recently, one of our research engineers described to me what he called "design by inference" discussions he has been forced to have with potential manufacturers. These pantomime-like discussions prevent the engineer and manufacturer from dealing with specific requirements in designs and cause potential suppliers to doubt the sincerity of our interest and commitment to proceed.

Product development is not an inherently efficient process. The MFJ factor makes it even less efficient. In fact, the product could potentially exist in prototype form in detailed computer-aided-design files, refined by modeling and simulation techniques.

Instead of using these CAD information age tools to speed up the business, my engineer colleague is forced to void them in favor of stick-figure drawings of the "Popular Mechanics" variety. This is an insult to the creativity and the energy of the thousands of RBOC employees, as well as large and small manufacturers who are trying to provide customers with new products and solutions.

Last December, U.S. West received FCC approval to trial a new broad band network in Omaha, Nebraska. We intend to offer inac-

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tive multi-media services—voice, data, and video. We envision education and health care applications, as well as access to many databases and entertainment services.

The Omaha network, as well as our recently announced broad band deployments in Boise, Denver, Minneapolis-St. Paul, and Portland require set top converter boxes. I understand this Subcommittee heard testimony last week that these set-top boxes might cost between $260 to $1,300, depending on the features and functionality.

Recently, a start-up company approached U.S. West, claiming it could put all the functionality on a computer chip, dramatically reducing unit costs. The company wanted a $3 million equity infusion.

Since U.S. West cannot take a equity-position in a manufacturing enterprise, this proposal will probably end up in the dust-bin with many other good ideas.

Mr. MARKEY. How much did they say the computer chip would cost?

Mr. SMITH. Well, computer chips, in volume, generally trend down to approximately $10, independent of what is on the computer chip. That is, of course, a volume-related issue.

More likely it will find its way to a foreign entrepreneur and the cost benefits will slip through America's fingers.

The manufacturing restriction has outlived any original usefulness. Instead of protecting small manufacturers from competition, it is protecting them from opportunity. This opportunity is migrating offshore, or stagnating in the legal morass. In our offshore ventures in Europe and Asia, we are free to invest, innovate, design, and develop. In fact, we do so. Why should consumers in this country be denied the benefits of our experiences else?

In 1989, Win Wade, my predecessor at U.S. West testified before this subcommittee about potential benefits to rural customers if the manufacturing restrictions were lifted. These benefits still are not available.

H.R. 3626 largely addresses the issues I have raised in my testimony. I think the sponsors for their leadership on this important matter. I am concerned, however, about potential delays that would accompany the relief offered by the legislation.

It is not clear to me whether the bill would require an RBOC to wait one year to apply for manufacturing freedom and then another year for the Attorney General to review the application, or just one year total.

Obviously, we favor the latter, or even a shorter waiting period. From an RBOC perspective, we have already waited 10 years. Who benefits from more waiting?

I also question what purpose is achieved by requiring an RBOC to apply for manufacturing freedom on a market-by-market and product-by-product basis. Provisions of this legislation and existing FCC rules have sufficient safeguards for competitors and consumers.

Mr. Chairman, this concludes my formal statement. Thank you for the opportunity to testify.

Mr. MARKEY. Thank you, very much, Mr. Smith, for testifying.

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Our next witness is Mr. John Major, who is the senior vice president for spectrum standards and software management from Motorola.

Welcome, sir.

STATEMENT OF JOHN MAJOR

Mr. MAJOR. Thank you, Mr. Chairman, Mr. Fields, and members of the subcommittee.

My name is John Major. I am the senior vice president and director of spectrum standards and software management at Motorola. In addition, I currently serve as chairman of the board of directors of the Telecommunications Industry Association, better known as TIA, with some 570 members with over a million employees. I am here today to convey to you TIA's views.

TIA believes that removal of artificial barriers to competition and the provision of all types of local telecommunications services will benefit consumers, the industry, and our Nation's economy as a whole.

Accordingly, we view the introduction of H.R. 3636 as a welcome step toward the establishment of a policy which is designed to ensure that these potentially enormous benefits are available to American businesses and consumers as quickly as possible.

In particular, TIA supports the provisions contained in Title II of H.R. 3636, which would preempt the states from prohibiting new competitors from entering the local telephone business and which would allow telephone company provision of video programming to subscribers within their telephone service areas.

As an association actively involved in the development of standards that serve to facilitate the development and deployment of advanced telecommunication technology, TIA is concerned that excessive Government intervention in the current industry-led standards setting process could pose substantial risk to the continued growth and dynamics of the telecom manufacturing and services sectors of the U.S. economy.

Accordingly, TIA urges that new section 201(d)(2)(B) of the Communications Act proposed in H.R. 3636 be revised to include language that expresses a clear preference for industry-led standards developments.

TIA also believes the Government should not impose unwarranted restrictions on technological progress, and that infrastructure policy initiatives should be technology neutral. Accordingly, TIA support the modification of the Open Platform Service requirement established in proposed section 201(d)(3), in order to ensure consistency with these principles.

Finally, TIA believes that at least some interim period of the local telephone company should be prohibited from purchasing cable systems located in their local telephone service areas and it supports appropriate modification of the proposed section 656 to address this concern.

With regard to H.R. 3626, TIA believes a linkage between the removal of the MFJ constraints on RBOC entry into manufacturing and the removal of barriers to competition and the provision of local exchange services, as advocated in H.R. 3636 is critical.

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TIA strongly urges that these two important public policy issues be considered and acted upon in tandem. Unfortunately, this in itself will not be enough. Competition needs time to take hold. The one year waiting period must be extended to give the competitive process time to take hold.

TIA further believes that manufacturers of telecom equipment should be afforded the same rights as inter-exchange carriers with respect to RBOC requests to enter restricted lines of business and urges that section 103(b) of H.R. 3626 be revised to provide procedural parity in this critical area.

In addition, TIA is deeply concerned that if the MFJ manufacturing restriction is lifted before meaningful competition has emerged in the local exchange, the regulatory safeguards contained in Title II will not be adequate to protect competition and ratepayer interest.

TIA is particularly concerned that at present H.R. 3626 does not include any restrictions on joint RBOC manufacturing. That language contained in the proposed section 2229 as introduced appears to explicitly permit, if not encourage, such activities.

TIA previously expressed concern with regard to the RBOC's continued involvement in product testing and other manufacturing activities once the RBOC's themselves becomes manufacturers.

Establishment of an RBOC-based manufacturing joint venture, pursuant to the proposed section 229(h) would further increase this risk of anti-competitive behavior.

Finally, TIA strongly opposes the domestic content provision included in Title II of H.R. 3626. As the administration has already noted in testimony before this subcommittee, this provision may be inconsistent with NAFTA and the GATT and could lead to retaliatory action by U.S. trading partners, which would have the effect of limiting the ability of domestic manufacturers to continue to penetrate foreign markets.

TIA is anxious to work with you, Mr. Chairman, and the members of the subcommittee to see that these concerns of the manufacturing community are addressed in an appropriate manner.

Thank you for the opportunity to appear before this subcommittee. I would be happy to answer any questions that you may have.

[Testimony resumes on p. 91.]

[The prepared statement of Mr. Major follows:]

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JOHN MAJOR

CHAIRMAN

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Mr. Chairman, Mr. Fields, members of the Subcommittee. Thank you for this opportunity to appear before the Subcommittee. My name is John Major, and I am a Senior Vice President and Director of Spectrum, Standards, and Software Management at Motorola. In addition, I am currently serving as Chairman of the Board of Directors of the Telecommunications Industry Association (TIA). I am here today to convey to you TIA's views concerning H.R. 3636, the "National Communications Competition and Information Infrastructure Act of 1993" and H.R. 3626, the "Antitrust and Communications Reform Act of 1993."

The Telecommunications Industry Association (TIA) is a full-service trade association representing more than 560 companies engaged in the manufacture and supply of a broad range of telecommunications equipment and related products and services. Collectively, TIA members provide the bulk of the physical plant and associated products used to build, maintain, and improve the telecommunications infrastructure in the United States. In addition, Motorola and other TIA members are involved on an ever-increasing basis in supplying telecommunications equipment and services in other developed and developing nations around the world. While TIA's member companies include virtually all of the major domestic manufacturers and suppliers of telecom equipment, small- and mid-sized companies make up more than ninety percent of TIA's membership. In addition to its public policy activities, TIA is a cosponsor of SUPERCOMM, the premier annual trade show in the telecommunications industry. TIA is also a major contributor to the development of industry standards that serve to facilitate trade and

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commerce in telecommunications products, and in this capacity is accredited by the American National Standards Institute.

TIA and its members strongly believe that in order to ensure that our nation's telecommunications infrastructure remains second-to-none, it is essential that the United States develop and implement a national policy which promotes competition in the provision of all telecommunications services. In particular, TIA believes that competition in local telecommunications services (i.e., video, voice, data, and multimedia) will increase opportunities for all segments of the telecommunications industry, while simultaneously benefitting consumers of telecommunications services by producing lower prices, increased innovation, and a more diverse and efficient array of products, services, and service providers. In addition, the emergence of meaningful competition in local telephony markets would have the effect of reducing the potential for anticompetitive behavior by the regional Bell Operating Companies ("Bell Companies" or "BOCs") in related telecom equipment and service markets. Accordingly, TIA believes that such competition should be encouraged and has for some time indicated its support for relaxation and eventual removal of the current MFJ manufacturing restriction once an open and competitive marketplace exists in local telecommunications services.

At present, however, while some degree of competition in local telephony has begun to develop, as a result of policy initiatives by the FCC and some state regulatory bodies, legal/regulatory barriers continue to limit the ability of alternative providers to fully enter and compete on a fair and equal basis with the Bell Companies in the provision of local exchange

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and exchange access services. Until these barriers are removed and a competitive market for local services emerges, the BOCs retain both the ability and the incentive, if the manufacturing restriction is lifted, to engage in self-dealing and other forms of anticompetitive behavior. Such a result would serve to undermine the highly-competitive and dynamic telecom equipment marketplace that has evolved since the MFJ was implemented. For this reason, TIA agrees wholeheartedly with the Chairman's frequent observation that it is crucial to the establishment of a cohesive, forward-looking domestic telecommunications policy for legislative initiatives that contemplate removal of the MFJ manufacturing restriction not to be considered and acted upon in isolation, but rather as part of a comprehensive package of reforms which includes a framework for facilitating the development of a competitive marketplace in local telecommunications services. TIA further notes that the Administration also has emphasized the need for a comprehensive legislative approach which addresses these critical public policy issues in tandem.

H.R. 3636

With regard to H.R. 3636, TIA would like to commend you, Mr. Chairman, the Ranking Republican member of the Subcommittee, Mr. Fields, Mr. Oxley, and Mr. Boucher for your efforts in crafting such a comprehensive and important piece of legislation. In general, TIA believes that H.R. 3636 represents a reasonable, balanced approach for advancing the deployment of the National Information Infrastructure. As the discussion below indicates, there are several areas in which TIA believes that the legislation can and should be improved, in order to ensure that the bill does not lead to unwarranted governmental involvement in the existing,

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industry-led standard-setting process, impose inappropriate limitations on the ability of industry participants to make decisions concerning the development and deployment of advanced telecommunications equipment and services in an efficient, "technology-neutral" manner, or prevent consumers from realizing the greatest benefit possible from competition in the video services marketplace. TIA is anxious to work with you, Mr. Chairman, and other members of the Subcommittee to see that these concerns are addressed in an appropriate manner.

As an initial matter, TIA believes that infrastructure legislation like H.R. 3636 should be measured against three tests. Infrastructure initiatives must be:

- pro-competitive: Experience in other sections of the telecommunications industry has demonstrated that competitive markets provide the optimal environment for the deployment of new technology. Given the current state of local telecom distribution technology, TIA believes the time has come for the evolution of competition in the local communications market.

- technology-neutral: The rapid evolution of competing technologies is enabling providers to compete in all communications services markets. No one technology has a universal competitive advantage. A mix of technologies -- copper, coax, fiber, compression and wireless -- will evolve to provide consumers with the most efficient means to receive services. In light of these ongoing technology

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developments. TIA believes infrastructure initiatives should avoid favoring one technology over another.

- provider-neutral: With recent developments in wireline, wireless, and fiber optic technologies, multiple providers for the delivery and provision of all telecommunications services becomes increasingly probable. TIA believes that infrastructure initiatives should recognize this reality and that policymakers should avoid adopting measures that will fundamentally favor one provider over another.

As measured against the aforementioned tests, H.R. 3636 generally provides an appropriate framework for fundamentally sound infrastructure legislation, one which, with several modest amendments, TIA and its members should be able to support.

TIA further believes that any infrastructure legislation should establish rules of transition to a fully competitive local telecommunications market. These rules of transition should be build on five separate pillars. These include:

- competitive entry: TIA supports allowing telephone companies to provide video programming and preempting the states from prohibiting new competitors from entering the local telephone business.

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• interconnection and interoperability: TIA supports efforts to ensure that the contemplated "network-of-networks" evolves in an orderly fashion with telephone company facilities serving as the central point of interconnection to which all providers have non-discriminatory and equal access.

• safeguards to prevent discrimination and cross-subsidization: TIA believes that the dominant carrier in a particular market should be prevented from using its market power to preclude competitors from establishing a market position and that cross-subsidization from regulated to unregulated service should be prohibited.

• promotion of access to services: TIA supports the establishment of terms under which all subscribers regardless of income and location will continue to have access to some minimum level of service notwithstanding the cost of providing such service or the inability of low-income subscribers to pay. In addition, TIA supports efforts to establish a new system of allocating the costs of such service so that all competitors bear a fair share of costs associated with the provision of basic telecommunications services.

• pricing flexibility: TIA supports allowing incumbent providers to legitimately respond to pricing competition, while at the same time protecting competitors against predatory pricing.

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H.R. 3636 meets each of these five standards. However, TIA believes the bill should be amended in three respects. These amendments are intended to ensure (a) that the private sector's leading role in the standard-setting process is sustained, (b) that the bill's "Open Platform Service" provisions are truly technology-neutral, and (c) that Title II of the bill promotes competition in the video services marketplace to the greatest extent possible.

Standards Development

As an ANSI accredited standard-setting organization, TIA is actively involved in efforts to develop voluntary standards for the telecommunications industry in a wide range of areas. There are currently more than 1,000 individuals serving on more than 50 committees and subcommittees involved in TIA-sponsored standard-setting initiatives. Accordingly, TIA has a strong interest in ensuring the continued success of the current, industry-led standards process.

TIA believes that generally speaking this process, which emphasizes broad-based participation in an open forum in which all participants have ample opportunity to articulate their views and to contribute to the development of a consensus view as to the appropriate standard, has served our industry and our country well. Forward-looking technical standards for telecommunications can best be written by the experts who are working on a daily basis at the leading edge of that technology. In most cases, those experts reside in the private sector. As a matter of principle, we believe that unwarranted government intervention in this process would pose substantial risks to the continued growth and dynamism of the telecommunications manufacturing and services sectors in the U.S. economy.

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Certainly, government has a useful role to play in the standard-setting process. e.g., as a participant in the formulation of standards that implicate the government's interest as a major user of telecommunications equipment and services, and as an interested observer in cases involving the development of standards that may affect the FCC's performance of its statutory responsibilities under the Communications Act (e.g., with respect to the allocation and use of radio spectrum). However, before permitting the government to assume a more active role in this process, care must be taken to ensure that 1) there is in fact a "problem" that clearly cannot be addressed through the established, industry-led standards development process, and 2) that the benefits of government intervention in the standard-setting process outweigh the potential costs.

Section 102(a) of H.R. 3636 would amend the Communications Act to include a new subsection 201(d)(2)(B) which would direct the FCC to establish "procedures for the development, subject to Commission supervision of . . . standards for the interconnection and interoperability of [private and public] networks." The bill goes on to require that these procedures apply to standards to promote access for individuals with disabilities to such networks and to promote access to information services by rural subscribers.

TIA believes that this language implies, whether intended or not, that the FCC should intervene to a greater degree than it does today in the standards-making process. Accordingly, TIA would urge the bill's sponsors and other members to include language in subsection 201(d)(2)(B) that expresses a clear preference for industry-led standards development, with any

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form of direct or indirect government intervention to be considered only as a last resort in situations where the established process has clearly broken down, where there is a compelling need to establish a standard, and where it is clear that the benefits of government intervention outweigh the costs. TIA would be pleased to work with the sponsors of H.R. 3636 and other interested members to develop legislative language which addresses TIA's concerns in this area in an appropriate fashion.

Open Platform Service

Section 102(a) of H.R. 3636 also includes a provision, proposed Section 201(d)(3), which includes a requirement that LECs deploy Open Platform Service on a tariffed basis. TIA believes that, in its current form, this requirement may be technology-biased, in that it may effectively require LECs to invest in ISDN or compression technology before or in addition to investing in a more advanced infrastructure. Moreover, in order to meet the requirements of Open Platform Service and provide video programming in-region, it would appear that an LEC would have to build and maintain two separate networks, rather than one advanced network, capable of integrating voice, data, and video.

Section 101(b) of H.R. 3636 defines "Open Platform Service" as a

> switched, end-to-end digital telecommunications service, subject to title II of this Act, which (1) provides subscribers with sufficient network capability to access multimedia information services, (2) is widely available throughout each State, (3) is provided based on accepted standards, and (4) is available to all customers on a single line basis upon reasonable request.

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This definition alone does not give rise to serious concern. References to the words "switched," "digital," "end-to-end," and "multimedia," reflect the definition of a service that is technology-neutral.

The difficulty arises with the implementation provisions contained in the bill with regard to Open Platform Service. Specifically, the bill requires the FCC to identify within 7 months of enactment, rules necessary to make Open Platform Service available:

- to "all subscribers"
- at "reasonable rates"
- based on "reasonably identifiable costs"
- "utilizing existing facilities" to the maximum extent feasible.

In addition, the bill requires the FCC to issue regulations to implement its rules and authorizes the Commission to require LECs to file tariffs as soon as such service is "economically and technically feasible." These four implementation requirements may in effect force LECs to upgrade their existing copper facilities. thus the provision is technology-biased. This conclusion is based upon two considerations.

First, the requirement that "existing facilities" be utilized makes it clear that existing copper facilities should be used as the transmission medium to provide Open Platform Service. This conclusion is reinforced by a later provision in the bill that states that the FCC can delay the requirements of Open Platform Service if an LEC shows that compliance would "significantly delay the deployment of a more advanced technology."

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Second, the requirements that the service be priced at "reasonable rates," based on "reasonably identifiable costs," and available on "a single line basis," also appear effectively to require a copper upgrade. Assigning all the costs of providing such a service over a newly constructed network to one or several subscribers that buy the service would likely price it at an "unreasonable" level, thus contravening one of the requirements of the service. The only way to price a service at a reasonable level and make it available a customer at a time may be to upgrade the existing copper plant.

In short, the Open Platform Service requirements appear to bias LEC investment decisions toward the use of ISDN and perhaps compression technology, in lieu of other approaches (e.g. advanced interactive broadband technology) which an LEC may find to be better suited to meeting the present and future needs of its customers.

Moreover, the Open Platform Service requirement, coupled with other provisions in the bill, may well force LECs to invest in two separate networks: one to meet the Open Platform Service requirement using existing copper facilities and the other to meet the "video platform" requirement as a condition precedent for in-region provision of video programming. Neither of these two networks will likely be capable of transmitting interactive full motion video, as LECs deploy the least expensive technology available to meet the inefficient requirement of two networks.

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In light of these concerns, TIA believes the Open Platform Service requirement should be substantially amended to make it more technology-neutral. LECs should be allowed to meet the proposed requirements over an integrated broadband network, rather than to maintain an existing facility. In addition, the requirements should be waived if an LEC shows that meeting them will divert investment away from more advanced interactive broadband technology.

Anti-Buyout Provision

TIA generally supports Title II of H.R. 3636. TIA has for some time supported repeal of the cable television-telephone company cross-ownership restriction imposed by Section 613(b) of the 1984 Cable Act. TIA believes, however, that telephone companies should be prohibited, at least for some time period, from acquiring cable systems located in the companies' local exchange areas. In this regard, TIA believes that modification of the bill's current anti-buyout provisions, contained in proposed new Section 656 of the Communications Act, as described in Section 201 of H.R. 3636, perhaps along the lines proposed by the Administration in its recent testimony before the Subcommittee, would be appropriate. The purpose of repealing 613(b) should be to promote competition and investment in the telecommunications infrastructure: allowing LECs immediately to purchase the companies which are their most likely competitors does not serve either goal well.

H.R. 3626

With respect to the Modified Final Judgment's manufacturing restriction, TIA has advocated lifting the restriction on a phased basis as competition develops in the local exchange.

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A copy of the phased entry proposal approved by TIA's Board of Directors last year is attached hereto. See Attachment A. TIA continues to believe that its proposal represents an appropriate, well-balanced approach to resolving the issue of BOC entry into manufacturing. However, it is apparent that the proponents of H.R. 3626 have chosen to pursue a different approach, one which provides for full-scale entry by the Bell Companies into all facets of the manufacturing business at the end of a relatively brief "waiting period," whether or not significant competition has emerged in the BOCs' local telephone service markets.

Timing of BOC Entry

As the discussion above indicates, TIA believes that it is critical to maintain a linkage between the development of meaningful competition in the local loop and removal of the MFJ restriction, which arose primarily due to the absence of competition in the provision of local telecommunications services. As pre- and post-divestiture experience vividly demonstrates, even well-crafted regulatory safeguards cannot prevent the BOCs from engaging in self-dealing and other anti-competitive behavior, so long as they maintain their dominant position in the local telephone service market within their respective regions.

While today local exchange competition appears possible, even likely, it is still in its nascent form. Moreover, significant legal/regulatory barriers remain which impose substantial impediments to the emergence of vigorous competition in the local exchange. These remaining barriers to market entry can and should be removed by swift enactment of pro-competitive legislation such as H.R. 3636, the National Communications Competition and Information

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Infrastructure Act. However, even if these barriers are lifted, it remains unclear whether and how quickly robust local exchange competition will develop.

In recognition of this uncertainty, TIA strongly supports enactment of a "waiting period" which would allow some time for the local exchange to become competitive, thereby reducing the possibility for anticompetitive behavior by the BOCs when the manufacturing restriction is lifted. However, TIA acknowledges the difficulty inherent in trying to definitively predict when local competition will exist. Because no one can predict with any guarantee of certainty whether and when local exchange competition will provide a widely available alternative to existing local service providers, TIA believes that it is also essential that Congress adopt a mechanism for permitting RBOC entry that is not based solely on a fixed "waiting period," which may not accurately gauge the length of time necessary for true competition to evolve, but rather a measure which can be applied consistently over time, as the marketplace changes. In the absence of an explicit requirement that meaningful competition must exist in the local exchange prior to removal of the MFJ's manufacturing restriction, the one-year waiting period should be extended to allow the nascent competition present in some local exchange service areas to develop more fully.

Entry Procedures

TIA is also concerned that at present H.R. 3626 does not provide manufacturers with a procedural mechanism that accords them a meaningful opportunity to comment on RBOC entry proposals, once the prescribed "waiting period" has ended, and the right to seek review in the

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courts of a governmental decision to allow entry. As introduced, Section 103(b) of H.R. 3626 allows a BOC, after a one-year waiting period, to notify the Department of Justice (DOJ) that it intends to enter the manufacturing business and permits the BOC to enter the market if the DOJ does not file suit to block the BOC's entry within 12 months after receiving such notification. While the BOC's notification must include information sufficient to allow the DOJ to determine whether there is "no substantial possibility that such company or its affiliates could use monopoly power to impede competition" in the market such company seeks to enter, H.R. 3626 currently does not require that the DOJ make an explicit finding that this standard has been met. Moreover, the bill currently does not provide for public notice of the BOC's proposed entry into the manufacturing business, public comment on whether or to what extent the BOC should be permitted to manufacture, or judicial review of the DOJ's determination to allow BOC entry.

Nevertheless, while TIA is concerned that in its current form H.R. 3626 does not provide an adequate procedural framework for managing BOC entry into manufacturing, TIA believes that the basic elements of a more acceptable process for removal of the manufacturing restriction can be found elsewhere within H.R. 3626. In this regard, TIA believes that the adoption of a procedure similar to that established in Section 101 for BOC entry into the interexchange services market would provide an appropriate basis for considering BOC requests to enter the telecom manufacturing business as well. Under the terms of TIA's "procedural parity" proposal, Section 103(b) of H.R. 3626 would be revised to include language establishing a procedure which, with the exception of the applicable "waiting period," would mirror as closely as possible

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the procedure established in Section 101 for BOC interexchange and alarm services entry requests. TIA plans to make specific legislative language designed to achieve this objective available to subcommittee members and staff in the near future.

Competitive Safeguards

As the discussion above indicates, TIA continues to believe that so long as the BOCs retain their dominant position in local telephone service markets. removal or substantial modification of the MFJ manufacturing restriction places at serious risk the benefits that have accrued to U.S. consumers and the American economy as a direct result of the more open. competitive. dynamic domestic equipment market place which has emerged under the MFJ. Regulatory mechanisms such as those included in Title II of H.R. 3626 can at best merely constrain to a limited extent the ability of the BOCs to engage in anticompetitive cross-subsidization or discrimination; they do not eliminate the incentive of the BOCs. once they enter the manufacturing business. to engage in such behavior.

Virtually all of the regulatory devices included in H.R. 3626 as competitive safeguards were employed in one form or another prior to divestiture. In the equipment procurement area alone, the FCC conducted a series of proceedings spanning several decades in a vain effort to ensure that independent suppliers were given full and fair opportunity to compete for sales to the BOCs.

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The dramatic shift in BOC purchasing patterns following divestiture vividly demonstrates the inability of federal and state regulators to prevent discrimination by the BOCs in favor of an affiliated equipment supplier. Revelations regarding NYNEX's massive cross-subsidization and discrimination in favor of its procurement subsidiary, Material Enterprises, over a four-year period following divestiture, and the record of non-compliance by various Bell Companies with the MFJ non-discrimination provisions, the manufacturing prohibition, and other line of business restrictions, provide further evidence that the risk of such behavior remains both real and substantial.

Even assuming that regulatory devices could, in theory, be an effective means of controlling potential abuses, the ability of regulators to enforce whatever rules might be adopted is extremely limited, particularly given current budgetary constraints. It is clear that the FCC and state public utility commissions are already stretched to the limit in attempting to deal with their existing responsibilities. In the FCC's case, while the Commission recently received additional resources and personnel, these are already fully committed to other areas, most notably the ongoing effort to implement the FCC's new cable rate regulations and other requirements of the 1992 Cable Act.

Now more than ever, it is clear that by far the most effective and reliable "safeguard" against anticompetitive behavior once the MFJ constrains are lifted would be the emergence of meaningful competition in the BOCs local exchange markets. However, at present, there is no assurance that under the framework proposed in H.R. 3626 BOC entry will be delayed until such

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competition materializes. Accordingly, TIA is concerned that without such a linkage and particularly in the absence of the additional procedural safeguards described above, the safeguards contained in H.R. 3626 simply will not be adequate to protect competition and ratepayer interests.

In this regard, TIA notes that the safeguard provisions included in proposed Section 229 of the legislation are significantly weaker than those included in the BOC manufacturing bills considered in the 102nd Congress, which TIA opposed, and that the structural separation requirements for BOC manufacturing affiliates described in proposed Section 229(b) and (c) are considerably weaker than those established elsewhere in Title II for BOC electronic publishing activities. TIA further notes that at present H.R. 3626 does not include a prohibition on BOC joint activities in the area of manufacturing, despite the fact that such a provision was included in the bills approved by the Senate (S.173) and the House Judiciary Committee (H.R. 5096) in the last Congress.

Moreover, proposed Section 229(h) of the legislation would require each BOC manufacturing affiliate to establish a "permanent program for the manufacturing research and development of products and applications for the enhancement of the public switched network and to promote public access to advanced telecommunications services," and further provides that "a [BOC] and its affiliates may engage in such a program in conjunction with a [BOC] not so affiliated or any of its affiliates." In its testimony on prior MFJ legislative proposals, TIA has expressed concern with regard to Bellcore's continued involvement in testing, standard-

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setting, and other manufacturing-related activities, once the BOCs are themselves engaged in the manufacturing business. Clearly, establishment of a Bellcore-like manufacturing joint venture by the BOCs, pursuant to proposed Section 229(h), raises additional concerns with regard to the possible adverse impact of BOC entry on the ability of other manufacturers to engage on a fair and equal basis in the design, development, and fabrication of telecommunications products for use in or connection to the BOCs' local exchange networks.

While Title II of H.R. 3626 includes a general "antitrust savings clause," contained in proposed Section 229(m), it is at best unclear whether and to what extent joint BOC manufacturing activities undertaken pursuant to proposed Section 229(h) would be affected by this provision. TIA is currently in the process of reviewing the legal implications of these provisions, and looks forward to working with subcommittee members and staff to see that concerns in this area are adequately addressed in the legislation.

Domestic Content Provision

One final area of substantial concern to TIA members relates to the domestic content clause contained in Title II of H.R. 3626, i.e., proposed Section 229(c)(4), which (as the Administration has already observed in its testimony before the Subcommittee) may be inconsistent with both the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs & Trade (GATT). TIA, both on its own and in concert with this and previous presidential administrations, has devoted considerable resources to promote market access opportunities for American manufacturers of telecommunications equipment. These

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efforts have been tremendously successful, and since TIA was established in 1988, our nation's balance of trade in telecommunications equipment has improved from a $2.1 billion trade deficit to a trade surplus of $600 million for the first three quarters of 1993.

One of the reasons why our government has been able to open a number of foreign markets to U.S. products is that our own market has been open to foreign manufacturers' products. In an industry where the competitive arena is global in scope, domestic content clauses are a poor means for promoting market opportunities and job creation. TIA has a long-standing opposition to domestic content requirements, and accordingly believes that the domestic content provisions should be removed from H.R. 3626. Enactment of legislation which includes such a requirement would threaten the trade opportunities currently available to the 88 percent of TIA's members which do business internationally and place at risk the very real progress that has been achieved over the last six years, by inviting retaliatory behavior on the part of our trading partners.

In short, TIA continues to have serious concerns with regard to the competitive impact of allowing RBOC entry into manufacturing before meaningful competition emerges in the BOCs' local telephone service markets. However, the specific modifications described above -- i.e., linkage of the BOC entry provisions of H.R. 3626 with the local competition provisions of H.R. 3636, adoption of a uniform procedure for handling BOC requests for removal of the remaining MFJ line of business restrictions, and elimination of the bill's "domestic content"

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clause -- would significantly improve H.R. 3626 and would greatly enhance the manufacturing community's willingness to support this legislation.

Before closing, I would again like to thank you, Mr. Chairman, Representative Fields, and members of the Subcommittee for your efforts to craft legislation which secures for our nation the substantial benefits which can only be realized through the development of full and fair competition throughout all sectors of the telecommunications industry. TIA looks forward to working with you and other members of Congress as the legislative process moves forward. I appreciate the opportunity to appear before the Subcommittee and I would be pleased to answer any questions you may have.

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ATTACHMENT A

The Telecommunications Industry Association (TIA), which represents more than 500 U.S telecommunications equipment manufacturers and suppliers, has historically supported full, fair and open industry competition. TIA believes that competition in the local telecommunications services market, i.e. voice, video, and data, will increase opportunities for all segments of the telecommunications industry and will also benefit the consumer. TIA further believes that such competition should be encouraged and that the manufacturing restrictions on the RBOCs should be removed on a phased basis as that competition develops. Accordingly, TIA proposes the following phased approach for removal of the MFJ manufacturing restrictions:

Phase 1: A Regional Bell Operating Company would be permitted to interact with and to fund design and development by independent manufacturers of products and to receive an appropriate financial return, subject to safeguards and limitations designed to prevent anti-competitive cross-subsidization and discrimination.

Phase 1 would be implemented immediately upon the existence of appropriate safeguards.

Phase 2: A Regional Bell Operating Company would be permitted to engage in product design and development itself or through joint ventures with other (non - RBOC) firms, subject to appropriate safeguards and limitations, including a continued prohibition of RBOC involvement in the fabrication of telecommunications hardware and the writing of "software integral to hardware."

Phase 2 would be implemented when local exchange competition has reached a specified level.

Phase 3: A Regional Bell Operating Company would be permitted to participate in all facets of the manufacturing process, including fabrication and the writing of "software integral to hardware," subject to limitations imposed by antitrust laws in general and other applicable federal/state statutes.

Phase 3 would be implemented upon a determination that an open and competitive marketplace exists in local telecommunications services, based on some established objective standard supporting the conclusion that anti-competitive behavior is unlikely to occur.

In advancing the foregoing proposal, TIA recognizes the need to define the threshold levels of competition which will result in progressive relaxation and removal of the MFJ manufacturing restriction. TIA desires to cooperate with all interested parties in crafting this definition.

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Mr. BOUCHER [presiding]. Thank you very much, Mr. Major. We will have questions from the subcommittee, but prior to that, we will hear from other witnesses on the panel and we are pleased to recognize at this time Mr. John Roach, the chairman and chief executive officer of the Tandy Corporation.

STATEMENT OF JOHN ROACH

Mr. ROACH. Thank you, Mr. Boucher, and members of the committee. I am chairman and CEO of Tandy Corporation. We are headquartered at Fort Worth, Texas. We are the parent of Radio Shack, Computer City, the Incredible Universe, and other consumer electronic retail outlets, and in that respect come in contact with over 65 million consumers annually.

I appreciate the opportunity to present the views of electronic retailers on H.R. 3626 and its companion bill, H.R. 3636.

The important issues addressed in these bills not only apply to carriers, cable companies, manufacturers, and information service providers; they affect consumers who provide consumers with the devices to access the information superhighway, that is, the Nation's consumer electronic retailers.

Because these bills do not fully address retailers' concerns about customer premise equipment, Tandy and other leading consumer electronic retailers in the United States come together to form the Consumer Electronic Retailers Coalition. The members include Best Buy, Circuit City, Dayton Hudson, Montgomery Ward, the International Mass Retail Association, the National Association of Retail Dealers of America, and the National Retail Federation. These retailers deal with virtually all of the consumer electronic and personal computer manufacturers in the world today.

The retailing of consumer electronics is one of the most highly competitive businesses in America. You only have to look at your weekly Sunday newspaper in order to see how aggressive and competitive this industry really is and how broad the choices are of equipment for the consumer to own.

The consumer has benefitted immeasurably from this competition in general and particularly from the prices and selection of customer premise equipment offered since the breakup of AT&T. Millions of consumers both rural and urban now enjoy affordable access to the telecommunications network through the largest selection of consumer telephone equipment, personal computers, and video products in the world.

Unfortunately, there's some equipment manufacturers, carriers and cable companies who want to stifle this competition through a combination of proprietary equipment interfaces and bundled services and/or equipment offerings. They threaten to deny consumers of what we think of as the consumer's three freedoms. That is, the right to own equipment, the right to choose, and the right to access networks with compatible equipment of the customer's own choosing. These freedoms must be preserved and with your help I am sure they will be.

The equipment market is competitive today because of the historic rulings of the courts and the FCC. American consumers no longer have to rely on their own rotary telephones rented from the telephone company, their only means of access to the telephone

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network for many years, but tomorrow could be a different story. There are already indications in the market that some telephone and cable companies intend to offer information and video services only with proprietary hardware and systems and in some cases equipment designed to prohibit the use of equipment already owned by the consumer such as the service—I can't think of the name of it—offered by Bell Atlantic.

Just as digital technology is allowing the convergence of voice, data, and video services transmitted by wire, cable, and wireless telephone networks to equipment on the customer's premises, the competitive market for that equipment that Americans now take for granted is no longer assured unless Congress builds safeguards into the legislation.

Mr. Chairman, we would like to see real competition in network services and in equipment manufacturing as much as anyone. We think the legislation you are considering will not achieve those objectives if a handful of cable and telephone companies are permitted to control the customer premises equipment market through proprietary interfaces, protocols and bundled service offerings.

The public does not want to go back to the days of this black telephone available only from the telephone company, nor does it want access to our future information infrastructure limited to a cable box provided solely by the cable company and possibly other devices that the cable companies or others may choose to make a part of their service as well.

Even in today's environment, the cellular carriers have used bundling to increase their service base but the consumer has seen no reduction in rate in 10 years and service users are paying for the equipment of the new customers of cellular telephone. We have no differential in rates for those who use their own equipment in the cellular world.

Congress can ensure that this does not happen by including equipment bundling prohibitions and access requirements in this legislation. Such prohibitions would go a long way towards ensuring that the telephone and cable companies play by the same rules and consumers continue to enjoy the benefits of a highly competitive customer premises equipment market.

At the very least, Mr. Chairman, we urge the committee to address three key consumer principles, three freedoms, in the legislation:

One, consumers must be assured that they will continue to enjoy the right to own, if they so choose, their telecommunication and information equipment to access all existing and future networks;

Second, consumers should have the right to choose whether to obtain customer premises equipment and information equipment from the service provider or others who sell commercially-available, compatible equipment;

Finally, American consumers who have invested billions of dollars in telephone, personal computer, and video equipment should have the absolute right to access to the network with existing and future equipment obtained from commercial providers unaffiliated with the carrier or service providers.

Just over a year ago, the Congress wisely enacted section 17 of the Cable Act to direct the FCC to deal with equipment compatibil-

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ity issues and to promote the commercial availability of converters and remote control devises. The approach of section 17 could be expanded in H.R. 3626 or H.R. 3636 with specific directives to the FCC to cover all communication networks.

For reasons indicated in my prepared statement, Congress needs to give the FCC specific instructions to promote an open and competitive market as part of the future information highway that ensures that the user is not forced to rent subcompacts at luxury car prices.

Mr. Chairman, it won't be much of a superhighway if carriers and cable companies use closed architectured systems, bundled equipment and service offerings to push independent equipment providers out of the market and to obsolete equipment already owned.

If you can figure out a way to get the additional network connected in every community in America, I assure you that America's retailers will find a way to get affordable communications equipment there in plenty of time for every American to enjoy its benefit.

Mr. Chairman, the Consumer Electronics Retail Coalition appreciates the opportunity that you have given us to speak today and we clearly would like to be helpful to the committee in drafting legislation on the accessibility and affordability for every American.

[The prepared statement of Mr. Roach follows:]

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JOHN V. ROACH

CHAIRMAN AND CHIEF EXECUTIVE OFFICER

TANDY CORPORATION

Good morning Chairman Markey and members of the Subcommittee, my name is John Roach. I am the Chairman and Chief Executive Officer of Tandy Corporation. Tandy is the parent company of Radio Shack, Computer City, Incredible Universe and other retailing enterprises. Thank you for inviting me to testify on H.R. 3626 and its impact on consumers and the marketplace.

I am here today on behalf of both Tandy and the Coalition of Consumer Electronics Retailers. Consumer electronics retailers furnish rural and urban America with access to communications and information service networks by providing the largest selection of telephone, video, personal computer and related equipment -- at the most affordable prices -- in the world.

Our Coalition includes such leading retailers as Best Buy, Circuit City, Dayton Hudson, Montgomery Ward, and Tandy. We are joined by America's foremost associations of retailers including the International Mass Retailers Association, the National Association of Retail Dealers of America, and the National Retail Federation. (Additional information about our members is included as Exhibit A to my testimony.) Our Coalition represents the overwhelming majority of the nation's leading consumer electronics retailers -- both large and small, both public and privately owned.[1] For the

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[1] Member companies sell a wide variety of equipment used with information services including conventional, cordless and cellular telephones, telephone accessories, facsimile machines, personal computers, multimedia PC's equipped with modems, TV's, VCR's, and cable television related equipment.

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first time ever, these leading companies and associations have come together in agreement on public policy objectives for the future information infrastructure.

We commend the goals of both H.R. 3626 and H.R. 3636 to increase competition in our nations's information and communications industries. The objectives of these bills, which we believe must be considered together, will, if achieved, greatly benefit American consumers and America's global competitiveness. The Coalition fully supports safeguards to reduce the likelihood that the Bell Operating Companies will engage in cross-subsidization and other anti-competitive activities when they enter the manufacturing business.

As retailers, however, we are even more concerned with the threat to universal service and the world's most competitive equipment market posed by the efforts of local telephone and cable companies to restrict access to the Information Superhighway by mandating use of their proprietary equipment, while excluding others. As technologies converge, and voice, data and video networks join to form the infrastructure of our nation's Information Superhighway, the vital access function of retailers could be imperiled. Action must be taken now to ensure that consumers continue to have the benefit of a competitive equipment environment to achieve universal access to the Information Superhighway.

American consumers should be able to readily access the Information Superhighway with the vehicle of their choice. Neither access, nor the choice of vehicle,

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should be dictated by the toll booth operators, i.e, the local telephone or cable company. Most consumers will opt for a family sedan but others, with special needs, will select luxury vehicles; yet others will choose economy models. In each case, consumers should be able to purchase or lease the model they desire at the best price available. They must know how much they are paying for service and how much they are paying for equipment. Without this knowledge, consumers cannot rationally decide which combination of equipment and service best fits their needs, or the price they are willing to pay.

Universal access and a robust equipment market means that the Information Superhighway will not be selectively (or discriminatorily) controlled by the local telephone or cable company. To ensure unimpeded access to the highway, the Coalition urges you to incorporate three key principles in current legislation:

- The consumers' **RIGHT TO OWN** communications equipment.
- The consumers' **RIGHT TO CHOOSE** from whom they purchase equipment.
- The consumers' **RIGHT TO ACCESS** networks using the equipment of their choice.

As the nation looks forward to the benefits of more competition in the communication and information industries, it bears recalling that not long ago, one's "choice" of telephone equipment was typified by the ubiquitous black, rotary-dial phone available for rent only from the local telephone company at a price which, over time, often wildly exceeded its retail value.

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Today's consumers, by contrast, may select sophisticated equipment that meets their needs, with the functions and features they want at the price they are willing to pay. Aggressive competition among manufacturers, and among retailers, to supply consumers with more features and functions at lower prices is the hallmark of today's equipment market, and we firmly believe that it should be tomorrow.

The principles we endorse have long been recognized by the FCC, the courts, and recently by Congress in the Cable Act of 1992. The FCC's landmark Carterfone decision started the revolution leading to today's dynamic equipment markets.[2] The Commission found unlawful an AT&T tariff prohibiting the interconnection of third-party equipment with the telephone network.[3] What the Commission said then is applicable to the networks of tomorrow:

> No one entity need provide all interconnection equipment for our telephone system any more than a single source is needed to supply the parts for a space probe.[4]

There is no mistake about it, the rights of consumers recognized in Carterfone to use third-party equipment fostered the development of the most competitive and

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[2] Use of the Carterfone Device in Message Toll Telephone Service, 13 F.C.C.2d 420 (1968).

[3] That tariff provided, in part:

> No equipment, apparatus, circuit or device not furnished by the telephone company shall be attached to or connected with the facilities furnished by the telephone company . . . .

[4] 13 F.C.C.2d at 424.

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advanced telecommunications equipment market in the world. Notwithstanding Carterfone, telephone companies still found ways to inhibit consumer choice. Thus, in 1980, the FCC adopted rules to prohibit the practice of bundling service and equipment,[5] a practice which had required consumers to use the telephone company's equipment to obtain service. The bundling prohibition also has impeded telephone company efforts to cross-subsidize equipment by bundling it with service. In adopting the rule, the Commission noted its pro-competitive effects on both equipment and service markets:

> [T]he provision of terminal equipment on an unbundled and detariffed basis should enhance significantly our flexibility to assure cost-based provision of transmission services in an increasingly competitive marketplace. This step will also promote our objective of assuring a viable competitive market for terminal equipment.[6]

Although the FCC recently adopted a limited exception for cellular providers,[7] Congress (that same year, 1992) embraced the principles underlying the bundling prohibition in Section 17 of the Cable Television Consumer Protection and Competition Act of 1992. Section 17 requires the FCC to promulgate regulations:

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[5] See 47 C.F.R. § 64.702(e).

[6] Amendments of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384, 453 (1980) (subsequent history omitted).

[7] Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 F.C.C. Rcd 4028 (1992).

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> to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of convertor boxes and of remote control devices compatible with convertor boxes.[8/]

American consumers have benefitted greatly from an open and highly competitive telecommunications equipment market. If they are to realize the benefits of competition in tomorrow's equipment marketplace, Congress must ensure their ability to purchase commercially available -- and compatible -- equipment.

Some parties have suggested that the set top box -- perhaps the consumer's most important link to the Information Superhighway -- be provided as a network component. If these boxes are provided as part of the network, network interoperability could be jeopardized; telephone and cable companies would likely develop boxes that favor their own networks. The public interest would be better served by limiting the function of the box to security only (e.g., a "smart card" system), and letting consumers decide what features and functions they need in a competitive retail equipment market.

[8/] 47 U.S.C.A. § 544a(c)(2)(C). Congress also directed the Commission to promulgate regulations:

> to require a cable operator who offers subscribers the option of renting a remote control unit--
>
> (i) to notify subscribers that they may purchase commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and
>
> (ii) to specify the types of remote control units that are compatible with the convertor box supplied by the cable operator.

47 U.S.C.A. §§ 544a(c)(2)(D)(i) & (ii).

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We urge you to direct the Federal Communications Commission to prohibit the bundling of equipment and service, and to apply the approach of Section 17[2/] to all of the equipment needed to access the services of telecommunications carriers, cable companies and information services providers.

The Coalition believes that the following principles should be embodied in this year's legislation:

RIGHT TO OWN

Consumers should have the right to own equipment.

Equipment availability must not be restricted by rental or leasing schemes developed by network service providers.

Hardware not commercially available must be limited to the minimum configuration necessary to interface with the network, and must not interfere with functions of customer-owned equipment.

RIGHT TO CHOOSE

The sale of equipment should not be restricted to network service providers.

To ensure competitively available equipment, safeguards should be enacted to prevent anti-competitive subsidies.

Any equipment subsidy offered by a network provider or affiliate must be equally available to consumers purchasing equipment from an unaffiliated retailer.

[2/] Section 17 also directs the Commission to:

- Specify technical requirements for equipment to be connected to the cable network.
- Prohibit service providers from hindering the compatibility of commercially available equipment.

See 47 U.S.C.A. §§ 544a(c)(2)(A) & (E).

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RIGHT OF ACCESS

Consumers should not be denied network access because they use equipment purchased from unaffiliated retailers.

Protocols and interface devices must be designed so that consumers purchasing equipment from an unaffiliated retailer can readily access networks.

Network service providers should provide, without discrimination, the technical requirements for all equipment offered to consumers as part of network service.

The system's architecture should accommodate and promote equipment availability from multiple manufacturers.

Observance of these principles, adherence to the goals underlying Section 17 of the 1992 Cable Act, and a specific prohibition on the bundling of service and equipment, will ensure the continuation of the vigorous competition characteristic of today's customer premises equipment market.

Mr. Chairman and members of the Committee, the Consumer Electronics Retailers Coalition would be pleased to work with you and your staff to ensure that H.R. 3626 and H.R. 3636 promote a consumer equipment market that is highly competitive -- one that will make the Information Superhighway accessible to all American consumers at an affordable cost.

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EXHIBIT A

MEMBERS OF CONSUMER ELECTRONICS RETAILERS COALITION

Best Buy Co., Inc. is a leading consumer electronics and appliance retailer in the central United States. The company operates 117 retail locations with 10,000 employees and has annual revenues exceeding $1.63 billion.

Circuit City Stores, Inc. is a leading specialty retailer of branded consumer electronics and appliances. The company employs more than 20,000 people in 27 states and the District of Columbia, and operates over 260 Superstores. It has annual revenues of nearly $4.0 billion.

Dayton Hudson Corp is a leading midwestern retailer of branded consumer electronics and appliances. The company employs more than 160,000 people and has annual revenues approaching $19.0 billion.

The **International Mass Retail Association** (IMRA) represents more than 150 mass retail chains that include full-line and specialty discounters, home centers, warehouse clubs, off-price stores, dollar/variety stores, deep discount drug stores and other price-competitive retail formats. Collectively, IMRA retail members operate more than 54,000 stores in all 50 states and employ more than 1.5 million Americans.

Montgomery Ward & Co., Inc. is a leading retailer with over 350 retail locations in the United States. The Company employs over 68,000 people and has annual sales approaching $6.0 billion.

The **National Association of Retail Dealers of America** represents approximately 3,000 retail companies which sell and service consumer electronic products.

The **National Retail Federation** (NRF) is the nation's largest trade group representing the retail industry. NRF represents the entire spectrum of retailing, including the nation's leading department, chain, discount, specialty and independent stores, several dozen national retail associations and all 50 state retail associations.

Tandy Corporation, through more than 7,000 Radio Shack, Computer City, Incredible Universe, and other affiliated stores, is a leading retailer of consumer electronics and personal computers. The Company has annual retail sales exceeding $4.0 billion and employs over 37,000 people in the United States.

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Mr. MARKEY [presiding]. Thank you, Mr. Roach. Our next witness is Mr. Paul W. Schroeder, director of governmental affairs for the American Council of the Blind.

STATEMENT OF PAUL V. SCHROEDER

Mr. SCHROEDER. Good morning, Mr. Chairman, and members of the subcommittee. My name is Paul Schroeder, and I am director of governmental affairs for the American Council of the Blind, a national organization of blind men and women. I am also here on behalf of the Consortium for Citizens with Disabilities Task Force on Telecommunications and Communications accessibility. Some of the organizations signing on to this testimony are members of that task force and others certainly will likely sign on for the record.

Mr. Chairman, we have heard a great deal about choice, affordability, and freedom this morning but I will tell you, for 50 million Americans with disabilities it is often a matter of choosing to spend money, and a fair amount of money at that, on telecommunications equipment and networks and having virtually no access to what everyone else can get over those networks because they don't have a disability or choosing not to spend that money.

Mr. Chairman, that is no choice at all.

It is my hope that with the work that is going forward on H.R. 3626 and H.R. 3636 we can ensure the people with disabilities that the nearly 50 million Americans with disabilities in this country will in fact have a choice and will in fact be able to participate in the market and be part of the information superhighway.

We want to thank you for the work that you have done over the years on the Television Decoder Circuitry Act, and on Title IV of the Americans with Disabilities Act, and most recently you and your colleague, Mr. Fields, on H.R. 3636.

I want to mention some of the barriers in detail that impede access for individuals with various disabling conditions to common forms of information and to information technologies.

If standards are not imposed by Government regarding the development of the information superhighway then access for and use by people with disabilities will be precarious at best and virtually absent at worst.

Just as we are on the verge of creating immense new opportunities for individuals with disabilities for employment and education and access to better quality health care, because of the ease with which digitized information could be made accessible we are at the same time watching people with disabilities potentially fall further and further behind. After all, it may be worth remembering that it took over 100 years to ensure access to POTS for people with significant hearing and speech disabilities and that was the passage of the Americans with Disabilities Act, something virtually every other citizen had long taken for granted.

Even now with the ever-expanding use of graphic user interfaces are taking the power of computers and information networks out of the hands of people who are blind or visually impaired. The proliferation of information menus that require voice responses are shutting out millions of people with speech disabilities. Users of electronic augmentative communication devices can't get recognition on existing voice networks, and audio tech systems, something

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we have heard a great deal about this morning, are often virtually unusable by people who are deaf. Finally, heat and touch sensitive input devices, the things that we are beginning to see on automatic teller machines and these information kiosks that some people like to crow about are completely unusable for most people with visual or motor disabilities.

That is why our task force of organizations, representing people with disabilities and their families, work so hard to craft access requirements as a party of telecommunications policy reform.

We were pleased that after some initial discussions the Regional Bell Operating Companies turned out to be negotiating partners interested in working toward this as well, and we believe the access requirements, particularly those in H.R. 3626, are a first step toward universal design where telecommunications equipment and network services will be built and designed so that they are equally accessible for all individuals including people with disabilities.

Taken together, the legislative proposals in H.R. 3626 and 3636 require in the former case telecommunications equipment and customer premises equipment designed, developed and fabricated by Bell operating companies' manufacturing affiliates, and advances in network services deployed by those companies to be accessible to and usable by individuals with disabilities, with one exemption built in, if they are an undue burden or an adverse competitive impact on the company.

That language is carried over into 3636 in a slightly modified form regarding advances in network services.

In addition, both bills include language which states that whenever the undue burden or adverse competitive impact would result from the requirements the manufacturing affiliates or the network service providers shall ensure that the equipment and service deployed is compatible with the kind of adaptive equipment that people with disabilities commonly use. This provides an added safeguard, Mr. Chairman, for the instances where developing a piece of equipment or a service which would not be and could not be made accessible with individuals with a variety of disabling conditions could at least be usable by individuals with disabling conditions.

We have heard some about the networks that are available this morning. Many of those are graphic based and many of those are virtually unusable, as I said before, by people who are blind or visually impaired who can otherwise use a personal computer with great ease.

The Television Decoder Circuitry Act which I mentioned before, I think, provides an excellent example of how well access requirements really can work. The Electronic Industries Association was concerned about the cost and the feasibility and the time frames required for putting in those chips which would allow individuals to avail themselves of closed captions.

However, television manufacturers and the EIA quickly found that the costs and technical solutions and implementation dates were manageable. In addition, they learned that these television sets with their chips were usable by individuals with learning disabilities and individuals seeking to learn a second language—rather, for individuals for whom English was a second language.

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We cannot afford to forget, Mr. Chairman, that industry at that time saw the Closed Circuitry Decoder Bill to be onerous and bad for business. In all likelihood, there are some businesses who believe the minimal requirements in H.R. 3626 and H.R. 3636 will be bad for business and onerous as well.

For people with disabilities, as I have mentioned before, access to telecommunications equipment and networks have for far too long required expensive and adaptive equipment. Most of this equipment was, to be sure, developed by entrepreneurs who worked feverishly to catch up with the amazingly fast technological developments elsewhere in the field. Mr. Chair, this has led to a separate and unequal system of access to important technology and information services for people with disabilities and this separate system must end.

When we talk about what we want to see in the new telecommunications equipment and network service, it is really fairly simple. It is critical that both the networks and the equipment needed to use those networks offer the potential for multiple outputs, including audio, visual, and tactile, and the potential for multiple inputs including speech, keypads, and other activation mechanisms usable by individuals with motor impairments.

The access requirements included in both H.R. 3626 and H.R. 3636 are important and we will work with you and the FCC to preserve, enforce, and implement them. The FCC should be directed, we believe, to establish a standard-setting body for these requirements which would include both the industry and people with disabilities, the groups with the most at stake.

We also believe, Mr. Chairman, that these access requirements must be written more broadly. Access to the information highway will increasingly depend upon hybrid information home appliances. These hybrids may or may not be covered under section 229 or section 201 of H.R. 3636. At a minimum it is essential that providers regulated under Title VI and Title VII if the Congress agrees to the administration's proposal, should be required to meet the access needs of individuals with disabilities.

Currently many cable TV boxes are not fully usable by or accessible to individuals with disabilities. This situation is only likely to worsen.

In our view, expanding the coverage of access requirements to all relevant industries and providers would enhance equality for people with disabilities in the information age and establish parity within the telecommunications industry.

Mr. Chairman, we want to express our appreciation to you and particularly to Representatives Dingell and Brooks for including in H.R. 3626 in section 229, as proposed, a requirement that the Bell operating companies' manufacturing affiliates seek to promote access to advanced telecommunications services by people with disabilities. This will begin to move us toward the kind of universal service that I have been speaking about.

For people with disabilities, the information highway may be the only way to obtain access to a great quantity of information and services, while for those without disabilities it may simply be an alternative, perhaps a more lucrative and enjoyable one, but still an alternative to means which are already available.

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We hope that Congress will direct the FCC to promote universal service for people who disabilities. The power of the new information technology and service can open opportunities for employment and education as well as health care and personal assistance services.

We also hope that H.R. 3636 can be expanded so that individuals with hearing and visual disabilities can be able to benefit from both the audio and video programs of portions of televised programs. Barriers to access for these Americans are unnecessary and they can be now readily dismantled. Closed captions and video description as a requirement within H.R. 3636 would offer enormous potential for full access for individuals with disabilities.

Mr. Chairman, I simply want to note in conclusion that with the passage of the ADA people with disabilities no longer have to accept second class access to buildings and a physical community and we now look forward to ending second class access to the electronic community.

[Testimony resumes on p. 117.]

[The prepared statement of Mr. Schroeder follows:]

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TESTIMONY

of the

AMERICAN COUNCIL OF THE BLIND

supported by

American Speech-Language-Hearing Association
Association for Education and Rehabilitation
of the Blind and Visually Impaired
National Center on Law and Deafness
RESNA
Telecommunications for the Deaf
World Institute on Disability

before

UNITED STATES HOUSE OF REPRESENTATIVES
103rd CONGRESS, 2nd SESSION

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON
TELECOMMUNICATIONS AND FINANCE

The Honorable Edward J. Markey, Chairman

presented by

Paul W. Schroeder
Director of Governmental Affairs
American Council of the Blind

February 8, 1994

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Good morning Mr. Chair, members of the Subcommittee, my name is Paul Schroeder; I am the Director of Governmental Affairs for the American Council of the Blind. The American Council of the Blind is a national organization of blind men and women who seek to improve opportunities for people who are blind or visually impaired. My testimony is also submitted on behalf of the World Institute on Disability and the National Center on Law and Deafness. Many other disability-related organizations have also worked on disability access in telecommunications as the Consortium for Citizens with Disabilities (CCD) Task Force on Telecommunication/Communication Accessibility. Taken together, these organizations represent a wide-ranging coalition of individuals with disabilities and their families. We want to thank you for giving us the opportunity to include the interests of Americans with disabilities in this legislative effort. Mr. Chair, citizens with disabilities are especially grateful for your efforts in support of important legislation such as the Television Decoder Circuitry Act and Title IV of the Americans with Disabilities Act. We are also most appreciative of your efforts to ensure that the National Telecommunications and Information Administration supports the development of applications which emphasize the needs of individuals with disabilities.

In this testimony, I will focus on the critical importance of the information superhighway to the nearly fifty million Americans with disabilities and the many barriers to access and use which confront these individuals. I have been asked to pay particular attention to the need for statutory and regulatory requirements, now contained in both H.R. 3636 and H.R. 3626, which mandate that telecommunications equipment and network services be accessible to individuals with disabilities.

Importance of Telecommunications for People with Disabilities

Mr. Chair, members of the Subcommittee, improvements in communications technology and communication networks have dramatically improved opportunities for independence, productivity and integration for people with disabilities. The convergence of telecommunications technology and high speed networks could lead to enormous new opportunities for full and equal participation by citizens with disabilities in employment, commerce, education, health care, entertainment and democratic government. However, significant barriers continue to impede access by individuals with various disabling conditions to many common forms of information, as well as to each of these individual technologies. If effective, specific standards are not imposed to govern development of the information superhighway, then access for and use by people with disabilities will be precarious at best and virtually absent at worst.

Creating and enforcing those standards will not be a simple task. The needs of individuals with disabilities have not been given due consideration as new information and telecommunication technologies were designed and developed. After all, it took over one hundred years (with the passage of ADA in 1990) to ensure access to "POTS" (Plain Old Telephone Service) for individuals with significant hearing and speech disabilities, something virtually every other citizen has long taken for granted. And even now, the ever expanding use of graphical user interfaces are taking the power of computers and information networks out of the hands of people who are blind or

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visually impaired. The exploding use of information menus that require voice responses shuts out millions with speech disabilities. Similarly, users of electronic augmentative communication devices can't get recognition on existing voice networks. Audio text systems which are becoming so common are virtually unusable by people who are deaf. And, heat or touch sensitive input devices which are becoming so common in ATMs and information kiosk technology create barriers for individuals with visual or motor impairments.

That is why our Task Force of organizations representing people with disabilities worked so hard to craft access requirements as a part of telecommunications policy reform. Fortunately, we found negotiating partners representing the Regional Bell Operating Companies who were also interested in discussing access for people with disabilities to the new information frontier. These requirements are an important first step toward a concept of universal design. (The goal of universal design is to build or design a piece of equipment or an environment which is equally accessible to and usable by the vast majority of individuals including people with disabilities).

Access Requirements in H.R. 3626 & H.R. 3636

Taken together, both legislative proposals would require that "telecommunications equipment and customer premises equipment designed, developed, and fabricated" by a Bell Operating Company manufacturing affiliate (H.R. 3626), and "advances in network services deployed by Bell Operating Companies" (H.R. 3626) or "local exchange carriers" (H.R. 3636) "shall be accessible and usable by individuals with disabilities, ... unless the costs of making the equipment accessible and usable would result in an undue burden or an adverse competitive impact." In addition, the language states that whenever an undue burden or adverse competitive impact would result from these requirements the covered entity which manufactures the telecommunications equipment or provides the network service shall ensure that the equipment or service is compatible with existing peripheral devices or adaptive equipment commonly used by persons with disabilities, unless doing so would result in an undue burden or adverse competitive impact.

Why are Access Requirements so Important?

The Television Decoder Circuitry Act provides the best legislative example of how well access requirements can work. The Electronics Industry Association (EIA) expressed many concerns about the Television Decoder Circuitry Act that are similar to concerns which are likely going to be raised about these access requirements. For example, EIA raised concerns about the costs of manufacturing the decoder chip, its technical feasibility, and time frames for its implementation. However, the EIA and television manufacturers learned that the costs, technical solutions, and implementation dates were manageable. In addition, they learned the television sets would be functional for the hearing impaired, learning disabled, and people for whom English is a second language. After the Decoder Act went into effect, EIA launched an advertising campaign, called CAPTION VISION, to promote the sales of television sets with built-in decoder circuitry. One television manufacturer, the Zenith Electronics Corporation, conducted

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an aggressive selling campaign of these decoder sets, focusing on the hospitality industry, resulting in a banner sales year for Zenith. We cannot afford to forget, Mr. Chair, that the industry, at the time, saw that proposal as onerous and bad for business. It is likely that some businesses in the telecommunications industry will complain that the requirements in H.R. 3626 and H.R. 3636 will be onerous and bad for business.

For far too long, access to information for individuals with disabilities has depended largely upon the availability of expensive, adaptive equipment. Most of the adaptive equipment--such as telecommunications devices for the deaf (text telephones originally designed for deaf people) or the hardware/software interfaces necessary to allow individuals with visual, speech or motor disabilities to work a personal computer--were developed by small entrepreneurs working feverishly to catch up with developments in the technology they were trying to make accessible. Mr. Chair, this "separate and unequal" system of access to important technology and services for people with disabilities must end. That is why all of us, especially this Subcommittee, worked so hard to pass the ADA. And, that is why we are so committed to ensuring that the telecommunications industry address the access needs of individuals with disabilities when it develops, designs or fabricates telecommunications equipment or network services. It is critical that both telecommunication networks and equipment offer the potential for multiple outputs including audio, visual, and tactile and multiple inputs including speech, keypads, and other activation mechanisms usable by individuals with motor disabilities.

Given the long history of the failure of our nation's telecommunications systems to be accessible to individuals with disabilities, we urge inclusion of an ongoing FCC inquiry and reporting requirement with regard to implementation of the FCC's accessibility requirements as they relate to people with disabilities. It is important for the FCC to continue to work with the disability community and others to ensure that these requirements are being implemented. This inquiry must be ongoing because the telecommunications industry is subject to rapid change. We recommend a three year cycle for these inquiries.

The access requirements included in both H.R. 3636 and H.R. 3626 are important and we will work with you and the FCC to preserve, enforce and implement them. The FCC should be directed to establish a standard-setting mechanism which allows representatives of the disability community and the telecommunications industry to participate fully.

It is hoped that information provided through electronic publishing is understood as a network service and individuals deserve access to that information on an equal basis. H.R. 3626, as written, is unclear on this point.

We urge the Congress to apply the access requirements more broadly. Access to the information highway will increasingly depend upon hybrid information home appliances. These hybrids may or may not be covered under Title II of the Communications Act. At a minimum, it is essential that providers regulated under Title VI, (and Title VII, if the

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Congress adopts the Administration's proposal), should be required to meet the access needs of individuals with disabilities. Currently, many Cable-TV boxes are not fully usable by, or accessible to, individuals with disabilities. This situation is only likely to worsen. Expanding the coverage of the access requirements to all relevant industries and providers would enhance equality for people with disabilities and establish parity within the telecommunications industry with respect to ensuring access.

Universal Service

Mr. Chairman, a ramp onto the information highway is perhaps more critical for Americans with disabilities than for others. For that reason we are particularly pleased that the proposed new Section 229 of the Communications Act included in H.R. 3626 includes a requirement that Bell Operating Company manufacturing affiliates seek to promote access to advanced telecommunication services by people with disabilities.

When captured in a digital format a newspaper, letter, book, virtually any piece of information, can readily be made accessible to and usable by individuals with disabilities and transmitted immediately over tremendous distance, at high speed and in immense volume. For individuals with disabilities, the information highway may be the only way to obtain access to a great quantity of information and services, while for others electronic access will continue to be an alternative to other more traditional forms of distribution. For example, I cannot "read" a standard newspaper. But with a proper electronic interface, I can "read" a newspaper in digital format. With a proper electronic interface, an individual with a speech disability can communicate and get equal services. Other barriers also exist which cause individuals with disabilities to require enhanced and more immediate access to the information infrastructure. Home shopping has become the derisive exclamation for changes now taking place in the telecommunications industry. I have no doubt that home shopping will be offered ubiquitously. But this Subcommittee should understand that individuals with disabilities, who have never been able to freely browse, examine and compare prices and promotional material are now happily using on-line services for shopping because these services offer a degree of independence not available before. We must preserve and enhance that independence by calling upon the FCC to promote universal service for people with disabilities. Even more important, the power of the new information technology and services can open opportunities for employment and education as well as alternative methods for handling some health care and personal assistance needs for individuals with disabilities. Consequently, we urge the Subcommittee to amend H.R. 3636 to include in the charge to the FCC on universal service to determine the appropriate means by which individuals with disabilities will be linked with advanced telecommunications services.

Captioning and Description

Americans with disabilities, particularly those with hearing impairments and vision impairments, believe that the time is right to ensure that video programming is fully accessible. For too long, individuals with hearing and visual disabilities have been unable to benefit from significant portions of televised programming. In the new world

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of megachannel platforms and video on demand, this lack of access will be magnified a thousand times. The barriers to access for these Americans are unnecessary and they can be readily dismantled. Closed captioning and video description offer enormous potential for full access for individuals with disabilities and they also offer useful benefits to others in the population. We urge the Subcommittee to include language requiring the inclusion of captioning and video description. (See Attachment 1)

Privacy

It is paramount that privacy safeguards in any proposed legislation also address the needs of individuals with disabilities and their family members. As more and more records kept by employers, health care providers and social service providers, among others, become "digitized", electronic access and transmittal becomes more likely, including the possibility of access by unauthorized users or by authorized users that results in discriminatory behavior by the user. To prevent the 'information highway' from becoming a "snooper highway" to the detriment of individuals with disabilities, CCD supports strong curbs and punishments for illegal and discriminatory use of information electronically gathered. CCD notes that included among the class of individuals protected from discrimination by ADA are those with a record of having a disability. CCD also notes that similar protections are extended by ADA to the associates of individuals with disabilities. To wit, "It is discrimination to exclude or deny equal goods and services to an individual or entity because of the known disability of another individual with whom the individual or entity has a relationship or association".

For instance, it is conceivable that during a mortgage application process, an electronic file containing details about an individual's modifications to a property negotiated during the purchase agreement stage -- modifications such as doorway widening or a custom alarm system for a person with a vision or hearing disability -- could result in denial of an application when the mortgage broker learns in this fashion that the applicant, or a family member, has a severe disability.

Conclusion

The revolution in communications, the production and distribution of information and entertainment now underway offers Americans with disabilities unparalleled opportunities for equality and advancement. The information superhighway will transform the content and conduct of work locally, regionally, nationally, and globally enhancing opportunities for employment for individuals with disabilities as well as greater benefits resulting from the increased productivity that these technologies make possible. Interactive communication offers tremendous potential for the delivery of efficient and effective education, health care, and possibly even personal assistance services for individuals across the age and disability spectrum.

Those who have the ability to obtain and use information have the power to make choices and enhance our opportunities for independence, productivity, and self-sufficiency. But, artificial barriers have been interposed by society between individuals with disabilities and our freedom with respect to information. That is why the Consortium for Citizens with Disabilities believes it is so important for the legislation you are considering to accelerate the process of systematically dismantling these barriers by ensuring that the communication accessibility needs of individuals with the full range of functional disabilities are advanced right along with advances for all Americans. This is best accomplished not by government acting alone but by ensuring that both the private and public sectors design an information superhighway which is usable by and accessible to all individuals.

With the passage of ADA, people with disabilities no longer have to accept second class access to buildings and the physical community, and we now look forward to ending second class access to the electronic community.

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ATTACHMENT #1

November 22, 1993

CAPTIONING AND DESCRIPTION AMENDMENTS

SEC. 1. DEFINITIONS

(1) CLOSED CAPTIONING - The term "closed captioning" refers to the method of providing a visual depiction of information simultaneously being provided on the audio portion of a television signal. This term includes closed captions which are transmitted on line 21 of the vertical blanking interval of the television broadcast signal. Such term includes real time captioning for live television programming.

(2) VIDEO DESCRIPTION - The term "video description" refers to the insertion of narrated descriptions of a television program's key visual elements -- including, but not limited to, its action, facial expressions, and its locale -- into natural pauses between the program's dialogue. Such term includes real time video description for live television programs.

SEC. 2. AVAILABILITY OF CLOSED CAPTIONING AND VIDEO DESCRIPTION SERVICES

(1) IN GENERAL - In order to carry out the purposes established under section 1 of the Communications Act of 1934, to make available to all individuals in the United States an accessible nationwide communication service, the Commission shall ensure that all programming carried by cable channels is fully accessible to individuals with disabilities through the adaptations of closed captioning for deaf and hard of hearing individuals and video descriptions for blind and visually impaired individuals. Such captioning and description services are to be delivered complete, in place, without time delay, and unaltered by signal processing and delivery systems.

(2) REGULATIONS - The Commission shall, not later than 180 days after the date of enactment of this section, prescribe regulations to implement this section, including regulations that establish technical standards for the provision of video description.

(3) USE OF GENERAL AUTHORITY AND REMEDIES -

[Note: Our goal in this section is to ensure the following: For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission should have the same authority, power, and functions over common carriers and cable operators with respect to their captioning and video description obligations as it has with respect to their other obligations.]

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The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

SEC. 3. PROVISION OF SERVICES

Each cable channel shall provide, in compliance with the regulations and in accordance with the timelines prescribed under this Act, closed captioning and video description. A cable channel shall be considered to be in compliance with such regulations --

(1) with respect to closed captioning, if the captioning provided by such channel meets the performance and display standards promulgated by the Commission pursuant to Section 330 of this Act. Each channel shall ensure the provision of captioning as follows:

(a) All programming produced six months after the date of enactment shall be captioned;

(b) All programming that will be broadcast or transmitted, which is produced prior to six months after the date of enactment, shall be captioned within two years after the date of enactment.

(2) with respect to video description if the descriptions provided by such channel meet the technical standards to be promulgated by the Commission pursuant to this section. Each channel shall ensure that provision of video description as follows:

(a) All programming produced one year after the date of enactment shall contain descriptions;

(b) All programming that will be broadcast or transmitted, which is produced prior to one year after the date of enactment, shall contain descriptions within two years after the date of enactment.

SEC. 4 TECHNOLOGY

The Commission shall ensure that the closed captioning and video description required by this Act are fully compatible with advances in technologies, including, but not limited to, advances in user interfaces, video compression, digitization of audio and video signals, satellite encoding and encrypting methods, and fiber optic technology.

SEC. 5 METHOD OF FUNDING

The Commission shall prescribe regulations governing the funding of closed captioning and video description. Such regulations shall provide that users of captioning and description services will pay cable rates no greater than the rates such individuals would otherwise pay to receive cable programming.

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(2) REGULATIONS - The Commission shall, not later than 180 days after the date of enactment of this section, prescribe regulations to implement this section, including regulations that establish technical standards for the provision of video description.

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(a) All programming produced six months after the date of enactment shall be captioned;

(b) All programming that will be broadcast or transmitted, which is produced prior to six months after the date of enactment, shall be captioned within two years after the date of enactment.

(2) with respect to video description if the descriptions provided by such channel meet the technical standards to be promulgated by the Commission pursuant to this section. Each channel shall ensure that provision of video description as follows:

(a) All programming produced one year after the date of enactment shall contain descriptions;

(b) All programming that will be broadcast or transmitted, which is produced prior to one year after the date of enactment, shall contain descriptions within two years after the date of enactment.

SEC. 4 TECHNOLOGY

The Commission shall ensure that the closed captioning and video description required by this Act are fully compatible with advances in technologies, including, but not limited to, advances in user interfaces, video compression, digitization of audio and video signals, satellite encoding and encrypting methods, and fiber optic technology.

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The Commission shall prescribe regulations governing the funding of closed captioning and video description. Such regulations shall provide that users of captioning and description services will pay cable rates no greater than the rates such individuals would otherwise pay to receive cable programming.

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Mr. MARKEY. Thank you very much, Mr. Schroeder for very excellent testimony.

Our final witness on this panel is Salim A.L. Bhatia, who is here testifying as the president and CEO of BroadBand Technologies, Incorporated, in Research Triangle Park, North Carolina.

Thank you, sir.

STATEMENT OF SALIM A.L. BHATIA

Mr. BHATIA. Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify before this subcommittee. My name is Salim Bhatia, and I am the president of BroadBand Technologies, Incorporated. We are a start-up high technology company located in Research Triangle Park, North Carolina. We were founded in 1988 by a group of present BroadBand Technologies officers and employees including myself.

Our mission at BroadBand Technologies is to provide telecommunication network operators with the systems required to transform the local exchange carrier network to transform it to provide interactive switched digital broad band technology. We provide a key enabling technology for making the national information infrastructure accessible to all people.

The BroadBand Technologies' Fiber Loop Access system has been installed in trials and first office applications at several major telecommunications companies and is currently being deployed to serve consumers in New Jersey.

Broadband Technologies is honored to be invited to testify at this hearing and to be in the company of such distinguished witnesses including those representing multibillion dollar companies.

I will keep my remarks brief. My points are quite simple. The MFJ manufacturing restriction undermines the ability of small telecommunications manufacturing companies such as BroadBand Technologies to do business with the Bell Companies, and I believe stifles the rapid deployment of advanced network technology that is so critical to the long- term development of the NII.

I am here today to address why I think it is important that Bell Comm needs to be given relief from the MFJ restriction on manufacturing such as that defined in H.R. 3626. In the first place, I must mention that BroadBand Technologies is not alone in its belief that this restriction is counterproductive and inefficient. I have brought with me a list of nearly 200 telecommunication manufacturers that believe it is important that the manufacturing restriction be lifted. These companies, of which we are one, employ more than 40,000 U.S. workers.

Furthermore, I agree with the nearly 30 manufacturing company leaders who just yesterday wrote Chairman Dingell and Brooks that the manufacturing restriction stifles the growth of manufacturing companies by denying them access to substantial resources and expertise of the Bell Company customers.

I also agree with the conclusion that no public policy is served by delaying the repeal of this provision. The immediate repeal of the manufacturing restriction is even more important now given the recent U.S. Court of Appeals decision denying U.S. telecommunication manufacturing companies yet another means to fund research and development.

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Let me explain in a little more detail why this is so important to us. As a company we believe that we can be successful if we are focused on our customer's ultimate success. Right now, the manufacturing restriction thwarts us from having the normal customer supply relationship that is critical to developing quickly a product that truly meets customer needs.

Over the years, the Courts' interpretation of the manufacturing restriction has generally inhibited independent telecommunications manufacturers from engaging in product development and innovation. As we approach our customers with new ideas, we don't necessarily know all the applications that will define the functionality of the network. Yet because of the manufacturing restriction, Bell Companies are often hesitant to allow us to work with their engineers, those with the best knowledge of the network design and needs. If we were deploying a broad band network for General Motors, you can be sure we would work very closely with their engineers in defining their system requirements, in adapting our technology to their specific needs. If our technology was strategic to them, it would be quite likely that they would be quite involved with us and may even share in the financial risk. But in our work with the Bell Companies, the key engines in the NII, the same level of customer interaction and innovative thinking is impossible.

But enough technical challenges in trying to assure the world class network design. We do not need to add to them the burden of unnecessary working restrictions. At a minimum, such restrictions are wasteful and inefficient. In the worst case, they affect the capabilities of the network and the productivity of the Nation as a whole.

Technological excellence through innovation is critically important to competitive success in a sector of the market as technically sophisticated as telecommunications. Innovation leads to beneficial product development, network modernization that ultimately benefits consumers. The ubiquitous nature of the telephone network enables many of these benefits to be widely available.

I have addressed how the manufacturing restriction hinders the effective development of customer supply relationships, that is when others manufacturer products for the Bell Companies. However, it is also important that these companies which are so active overseas be allowed to participate in their own domestic manufacturing market. The possibility of profiting from their own contributions to products and network developments would provide a powerful incentive to innovate. Without this incentive, I fear that we will not see as a great a leap forward in our move toward a national information infrastructure. These companies might find it easier to rely on existing solutions and technologies, such as hybrid fiber coaxial cable, than to move towards a truly open platform and interactive broad band networks such as those offered by BroadBand Technologies. These companies risk their networks becoming obsolete and we risk being left behind as a Nation.

To summarize and conclude, BroadBand Technologies agrees with the many independent telecommunications manufacturers that believe it is important that the manufacturing restrictions be lifted. This restriction affects our relationship with our customers

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and probably hinders the rate of technological deployment and development in the network.

Mr. MARKEY. If you could wrap up, Mr. Bhatia, please.

Mr. BHATIA. We can see no good reason for the continuation of the manufacturing restriction and applaud the subcommittee on its efforts here today.

Thank you very much.

[Testimony resumes on p. 130.]

[The prepared statement of Mr. Bhatia follows:]

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Statement of Salim A.L. Bhatia
President

Hearing on H.R. 3626
Antitrust Reform Act of 1993

Before the Subcommittee on
Telecommunications and Finance

of the

House Energy and Commerce Committee

February 8, 1994

Mr. Chairman:

Thank you for the opportunity to testify before this Subcommittee. My name is Salim Bhatia, and I am the President of BroadBand Technologies, Inc. We are an American start-up high technology company, located in Research Triangle Park, North Carolina. We were founded in 1988 by a group of present BroadBand Technologies officers and employees, including myself.

Our mission at BroadBand Technologies is to provide telecommunications network operators with the systems required to transform the local exchange carrier network to interactive switched digital broadband technology. We provide a key enabling technology for making the National Information Infrastructure accessible to all. The BroadBand Technologies' Fiber Loop Access (FLX) system has been installed in trials and first office applications at several major telecommunications companies and is currently being deployed to serve consumers in New Jersey.

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BroadBand Technologies is honored to be invited to testify at this hearing, and to be in the company of such distinguished witnesses, including those representing multi-billion dollar companies. I will keep my remarks brief -- my points are quite simple. The MFJ manufacturing restriction undermines the ability of small telecommunications manufacturing companies such as BroadBand Technologies to do business with the Bell Companies, and quite possibly stifles the rapid deployment of advanced network technology that is so critical to the longterm development of the NII.

I am here today to address why I think it is important that the Bell Companies be given relief from the MFJ restriction on manufacturing, such as that in H.R. 3626. In the first place, I must mention that BroadBand Technologies is not alone in its belief that this restriction is counterproductive and inefficient. I have brought with me a list of nearly 200 telecommunications manufacturers that believe it is important that the manufacturing restriction be lifted. These companies, of which we are one, employ more than 40,000 U.S. workers.

Furthermore, I agree with the nearly 30 manufacturing company leaders who just yesterday wrote Chairmen Dingell and Brooks that the manufacturing restriction "stifles the growth of manufacturing companies by denying them access to substantial resources and expertise of their Bell company customers." I also agree with their conclusion that no public policy is served by delaying the repeal of this provision. The immediate repeal of the manufacturing restriction is even more important now, given the recent U.S. Court of Appeals

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decision denying U.S. telecommunications manufacturing companies yet another means to fund research and development.

Let me explain in more detail why this is so important to us. Right now the manufacturing restriction prevents us from having the normal customer/supplier relationship that is critical to developing a product that truly meets customer needs. Over the years, the Court's interpretation of the manufacturing restriction has generally inhibited independent telecommunications manufacturers from engaging in product development and innovation. As we approach our customers with new ideas, we don't necessarily know all the applications that will define the functionality of the network. Yet, because of the manufacturing restriction, Bell Companies are often hesitant to allow us to work with their engineers, those with the best knowledge of the network design and needs. If we were deploying a broadband network for General Motors, you can be sure we would work closely with their engineers in defining their system requirements. But in our work with the Bell Companies, key engines in the NII, the same level of customer interaction and innovative thinking is impossible.

Examples abound of the waste that results from the manufacturing restriction. Companies such as BroadBand Technologies must deal with Bell Companies at arms-length while designing a new product for the telephone network. Because of the manufacturing restriction, a normal customer/supplier relationship does not exist between Bell companies and their suppliers. This relationship is the key to success in the development of any manufactured product -- it is critical to the development of sophisticated telecommunications products. You

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can't ask a Bell company engineer to participate in the product-development team. It would be illegal.

There are technical challenges enough in trying to assure world class network design -- we do not need to add to them the burden of unnecessary working restrictions. At a minimum, such restrictions are wasteful and inefficient. In the worst case, they effect the capabilities of the network and the productivity of the nation as a whole.

Technological excellence through innovation is critically important to competitive success in a sector of the market as technically sophisticated as telecommunications. Innovation leads to beneficial product development and network modernization that ultimately benefit consumers. The ubiquitous nature of the telephone network enables many of these benefits to be widely available.

I have addressed how the manufacturing restriction hinders the effective development of a customer/supplier relationship, that is, when others manufacture products for the Bell Companies. However, it is also important that these companies, which are so active overseas, be allowed to participate in their own domestic manufacturing market. The possibility of profiting from their own products and network developments would provide a powerful incentive to innovate. Without this incentive, I fear that we will not see as great a leap forward in our move toward a National Information Infrastructure. These companies might find it easier to rely on existing solutions and technologies, such as hybrid coaxial cable, than to move toward

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a truly open platform and interactive, broadband networks, such as that offered by BroadBand Technologies. These companies risk their networks becoming obsolete and we risk being left behind as a nation.

To summarize and conclude, BroadBand Technologies agrees with the many independent telecommunications manufacturers that believe it is important that the manufacturing restriction be lifted. This restriction affects our relationship with our customers, and probably hinders the rate of technological development in the network.

We at BroadBand Technologies believe that lifting the manufacturing restriction contributes to Congress's overall vision and intention to promote investment in the information infrastructure, and build a "world-class business environment" for innovation and investment in telecommunications. This one act could help BroadBand Technologies and other innovative telecommunications manufacturing companies unleash a tremendous creative and productive energy, accessible to all Americans. This will promote economic growth and strength throughout our nation.

We can see no good reason for the continuation of the manufacturing restriction, and applaud the Subcommittee on its efforts here today.

Thank you for your attention and consideration. I am happy to respond to any questions that you may have.

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Small Telecommunications Manufacturing Companies Who Support Legislation Allowing Bell Companies to Participate Fully in Telecommunications Manufacturing Process

Eagle Telephonics, Inc.
Urix Corp.
Voice Control Systems
PairGain Technologies, Inc.
* Summa Four, Inc.
International Light Inc.
* Integrated Network Corp.
Racon, Inc.
* Adtran, Inc.
Centigram Commun. Corp.
Systematix Electronics
AVO Biddle Instruments
Advanced Electronic Appl., Inc.
Dianatek Corp.
Everett Sound Machine Works, Inc.
Applied Voice Tech. Inc.
* Crest Industries, Inc.
Meteor Communications Corp.
ICOM America
XTP Systems Inc.
Olympic Controls Corp.
Viking Electronics, Inc.
* TeleSciences, Inc.
* Superior TeleTec
Cortelco
International TeleService Corp.
* Teltrend Inc.
Multipoint Networks
* Silicon General, Inc.
* Verilink Corp.
Phone - TTY
American Pipe & Plastics, Inc.
Avtec, Inc.
Communications Test Design
Able Telecommunications, Inc.
* Applied Digital Access, Inc.
* Keptel, Inc.
* Applied Innovation, Inc.
Digital Systems Int'l Inc.
* EMAR, Inc.
XY Resources Inc.
HealthTech Services Corporation
LC Technologies, Inc.
* Microwave Networks Incorporated
EIS Wire & Cable
X-10, Inc.

* Telect
* Seiscor Technologies, Inc.
Ambox Incorporated
Bejed, Inc.
Restor Industries, Inc.
Accurate Electronics, Inc.
AmPro Corporation
Lumisys
* BroadBand Technologies, Inc.
The Triangle Tool Group, Inc.
* Elcotel, Inc.
BI, Inc.
Vicorp Interactive Systems, Inc.
Lernout & Hauspie Spch. Prd., Inc.
Axes Technologies Inc.
* Teradyne, Inc.
* XEL Communications, Inc.
TeleSensory Systems, Inc.
Aptek Technologies, Inc.
Electronic Modules, Inc.
Network General Corp.
* Brite Voice Systems, Inc.
Taesung Industries
Melita International
* Intelect, Corp.
* Senior Technologies, Inc.
Quest Electronics
Young Design, Inc.
Jon/Beau, Inc.
Information Transfer, Inc.
International Telesystems Corp.
Accu-Com, Inc.
H & L Instruments
Inovonics, Inc.
VSI Telecommunications, Inc.
California Amplifier, Inc.
Pacific West Electronics
Sequoia Electronics
Solonics, Inc.
Remarque Mfg. Corp.
Perception Technolog Corporation
MAR Associates
Chromatic Technologies, Inc.
* Artel Communications Corporation
OK Champion Corporation

* means member of TIA

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Easi File Corp.
Greenbriar Products, Inc., (Orbitron Div.)
Senecom Computer Company, Inc.
* Senior Industries, Inc.
Oza Communications Corp.
* Larus Corporation
AML, Inc.
* Innovative Data Technology
* Klein Tools, Inc.
* Telecommunications Techniques Corp.
Telebit Corp.
Tennessee Telecom, Inc.
Sound Technologies Corp.
DeYoung Mfg., Inc.
BekTel, Inc.
American Microwave Corporation
Lingo, Inc.
Colcom, Inc.
Lippincott Co. Inc.
Expeditor Systems, Inc.
ABL Engineering Inc.
Dynamote Corp.
FOCS Inc.
Fore System, Inc.
Payphone Systems
G. R. Associates
DGM&S, Inc.
American Reliance Inc.
Keltronics Corporation
Manhattan Electric Cable
* Tekelec
Metric Systems Corp.
Communitech, Inc.
Electronic Info. Systems, Inc.
A Q Systems, Inc.
Micro Integrated Commun. Corp.
Innovative Technology, Inc.
Level One Communications, Inc.
Puleo Electronics, Inc.
Pentagram Software Corp.
* DSP Group Inc.
OptiVideo Corporation
RDL Inc.
Metal-Flex Hosing Inc.
Riser Bond Inc.
Special Product Company
Signal Transformer Co., Inc.
* TEL Electronics, Inc.
T T Technologies, Inc.
Telemax Corp.
* Tamaqua Cable Products Corp.
Unifi Communications Corp.
Microtech
V Band Corporation
Primary Access Corp.
Reach Electronics, Inc.
USA Corp.
Shore Microsystems, Inc.
Waveline, Inc.
American Int'l Communications
C. Sjoberg & Son Inc.
TouchFax Information Systems, Inc.
Rhetorex, Inc.
Access Technology Association
Health Care Keyboard Co., Inc.
USA Video Corp.

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February 7, 1994

Hon. John D. Dingell, Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Hon. Jack Brooks, Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

Re: H.R. 3626

Dear Chairmen Dingell and Brooks:

As chairmen or CEOs of telecommunications manufacturing companies, we want to commend you for including a section in H.R. 3626 that would repeal the provision in the AT&T consent decree that bars any of the seven Regional Bell Operating Companies from any involvement in the telecommunications manufacturing process.

We support the immediate repeal of the "no-manufacturing" provision from the decree because we believe it stifles the growth of manufacturing companies by denying them access to substantial resources and expertise of their Bell company customers. A decision last month by a U.S. appeals court illustrates this point dramatically. In its decision, the court held that the "no-manufacturing" provision prohibits a Bell company from entering an R&D funding contract with an independent manufacturing company under which the Bell company would help fund a manufacturer's R&D to develop a new product in return for royalties on the sale of the product if the R&D effort is successful. The court's ruling effectively denies American manufacturing companies with access to a significant amount of R&D financing.

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We can give many other illustrations of how barring involvement by Bell companies in the manufacturing process hurts manufacturers. For example, prohibiting Bell involvement in manufacturing means a manufacturer cannot enter into a joint venture with a Bell company to design a new product for the telephone network. Similarly, a manufacturer would be wasting its time by asking a Bell company customer to assign an engineering team to help the manufacturer design a new product in a way that will meet the Bell company's needs most efficiently, since Bell companies may not lawfully provide such assistance.

While we applaud inclusion in H.R. 3626 of a section that would repeal the "no-manufacturing" provision from the AT&T decree, we note that the bill does not repeal the provision until one year after the bill is enacted. We believe no public policy is served by delaying repeal of this provision, and we urge you to amend the bill in order to repeal the provision immediately upon enactment of the legislation.

Thank you for considering our views.

Sincerely,

Barry Gorsun
President
Summa Four, Inc.
(Manchester, NH)

Yo-Sung Cho
President and CEO
Integrated Network Corp.
(Bridgewater, NJ)

George Sollman
CEO
Centigram Commun. Corp.
(San Jose, CA)

Joseph M. Greenleaf
President
Everett Sound Machine Works, Inc.
(Everett, WA)

Larry Green
President
XTP Systems Inc.
(Santa Barbara, CA)

Anthony E. Scandora
President/CEO
Olympic Controls Corp.
(Elgin, IL)

Don C. Springer
CEO
Viking Electronics, Inc.
(Hudson, WI)

Richard K. Laird
President/CEO
Keptel, Inc.
(Tinton Falls, NJ)

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Joseph A. Lahoud
President
LC Technologies, Inc.
(Fairfax, VA)

Arthur W. Epley, III
President
Microwave Networks
Incorporated
(Houston, TX)

James E. Keith
President
Ambox Incorporated
(Houston, TX)

Jacquelyn M. Belliveau
President
Jon/Beau, Inc.
(So. Weymouth, MA)

Robert J. Landman
President
H & L Instruments
(Burlingame, CA)

James B. Wood
President, Chief Engineer
Inovonics, Inc.
(Santa Cruz, CA)

J.R. Panholzer
Vice President
Remarque Mfg. Corp.
(W. Babylon, NY)

Frank Tripi
Vice President, Sales
Perception Technology
Corporation
(Canton, MA)

Jan S. Pirrong
President
Chromatic Technologies, Inc.
(Franklin, MA)

Pete Knoerzer
President
OK Champion Corporation
(Hammond, IN)

Tracey L. Gray
President/COO
Elcotel, Inc.
(Sarasota, FL)

Michael S. Klein
President
Klein Tools, Inc.
(Chicago, IL)

Giles Barton
President
Expeditor Systems, Inc.
(Alpharetta, GA)

Rex A. McWilliams
President, CEO
DGM&S, Inc.
(Mt. Laurel, NJ)

Alfred W. Yakel
President
Keltronics Corporation
(Oklahoma City, OK)

William H. Combs, III
President/CEO
Tamaqua Cable Products Corp.
(Schuylkill Haven, PA)

Gordon Lee
CEO
USA Video Corp.
(Los Angeles, CA)

Richard Riccoboni
President
Eagle Telephonics, Inc.
(Bohemia, NY)

Peter P. Savage
President and CEO
Applied Digital Access, Inc.
(San Diego, CA)

Harry J. Saal
Chairman
Network General Corp.
(Menlo Park, CA)

Howard Oringer
Chairman
TeleSciences
(San Francisco, CA)

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Mr. MARKEY. Thank you very much. That concludes the opening statements of our witnesses.

Let's turn now to the chairman of the full committee and the author of this legislation has arrived, the gentleman from Michigan, Mr. Dingell, and it is appropriate for us to recognize him at this time, and give him as much time as he may consume.

Mr. DINGELL. Thank you, Mr. Chairman. I want to commend you for your leadership on many matters in the area of telecommunications as well as in the area of securities, and I want to particularly commend you for the introduction of your legislation, and also for the vigorous manner in which you are processing that and the legislation co-sponsored by Mr. Brooks and me.

I want to express to you my appreciation and commendations, and also the same commendations and appreciation to the members of this subcommittee who have done such a fine job in working on telecommunication programs and problems, and the leadership which they have shown which has resulted in a significant advancement in terms of the structure of telecommunications inside the United States and the benefits that it has conferred on the public.

First, Mr. Schroeder, I want to tell you that we will try to see to it that you and the people who are in the disabled community will be able to fully participate in the universality of service available to all Americans. I think that is an extremely important thing, and it will be my purpose to see to it that universal service continues to be a right of every American, and universal access to this kind of service will be an important opportunity in which America can participate.

This question to Mr. Major. Mr. Major, as I understand the ownership structure of Bell Canada, this gives a telephone monopoly through a substantial portion of Canada. Is that correct?

Mr. MAJOR. I am not an expert on Bell Canada, but that strikes me as an accurate reflection.

Mr. DINGELL. Would I be unfair in inferring that?

Mr. MAJOR. Yes. That matches my understanding.

Mr. DINGELL. Now, I gather that Bell Canada or its parent, BCE, have an ownership share in companies that are engaged in the manufacturing of telecommunications equipment?

Mr. MAJOR. That's correct.

Mr. DINGELL. That they own about 52.4 percent, as I note, of Northern Telecom?

Mr. MAJOR. It does.

Mr. DINGELL. Does Northern Telecom sell telecommunications equipment in the United States?

Mr. MAJOR. It does.

Mr. DINGELL. They're a very substantial seller as a matter of fact. Would MFJ's current manufacturing restrictions permit any of the U.S. Bell Operating companies to own a 52.4 percent of a manufacturing enterprise?

Mr. MAJOR. They would.

Mr. DINGELL. They would?

Mr. MAJOR. Permit? Permit, no, they would not permit.

Mr. DINGELL. The question was would the MFJ's current manufacturing restrictions permit any——

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Mr. MAJOR. No.

Mr. DINGELL [continuing]. —Of the U.S. Bell Operating Companies to own a 52.4 percent share of a manufacturing enterprise?

Mr. MAJOR. No.

Mr. DINGELL. I guess I come down to a question in two parts. Is there a reason why the Government of the United States should have a policy which favors Canadian Bell Operating Companies over U.S. Bell Operating Companies inside the United States?

Mr. MAJOR. It is interesting that Canada is about the only country in the world that provides that type of organizational structure. And Northern Tel, this year, is not the business success story that we are all repeating.

The fact that Canada offers that structure, though, does, in fact, offer the hope or opportunity that Northern Tel could be more successful in the future with the continued access to a source of funds. I would guess that it would not be inappropriate for our country to suggest that there is a trade imbalance that is caused by that, but it doesn't necessarily mean that our conclusion should be to change our laws; it might be that Canada should change theirs.

Mr. DINGELL. And probably in the realm of raw theory, there is a strong justification for what you've just said. Would you explain to me why the Telecommunication Industry Association has testified that U.S. policy should then discriminate against U.S. Bell Operating Companies and in favor of Bell Canada, to come up and to support a cause which would permit Bell Canada to operate both a long-lines monopoly in Canada and a telephone and telecommunications operating in Canada, while being able to manufacture here, while our own telecommunications are not afforded the same privilege.

I have difficulty understanding this, and perhaps you can assist me in that.

Mr. MAJOR. Artfully asked. The fact is, Mr. Chairman, we look forward to the era when the local phone companies can be manufacturers if they chose to, and service providers if they chose to, and providers of alarm services if they chose to.

The issue today, from our perspective, is how do you get an open and flat playing field. How do you make things equal, and today things would be far from equal.

I'll give one quick example. A million cellular telephones is a lot of cellular telephones. The world's best manufacturer has perhaps a 20 percent product cost advantage over the world's most recent entrant in that market. That might translate to $30 on the outside, $30 dollars is $30 million; $30 a phone, $30 million to become a major player in the cellular phone business. Thirty million dollars is well within the rounding area of a $16 billion RBOC.

What we are talking about unleashing here is a force of tremendous potential that will not guarantee us world-class competitive companies. World-class companies compete on their own merit, not as subsidiaries or as partners of companies that have monopoly interests. I don't think that is necessarily good for Northern Tel going forward; I wouldn't think it would be necessarily good for the manufacturing companies going forward.

The problem is solvable by doing what is in 3636, waiting for the time to pass, and I think with an accelerated enthusiasm behind

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3636, we could be talking in a 3- to 5-year period on the outside, and then we could unleash seven more additional strong companies in the manufacturing area.

Mr. DINGELL. We, on a continuing basis, have great enthusiasm for competition on the part of everyone who comes before this committee. We also hear that this competition should come about at an early time, like 5 years hence.

We also are advised that everyone favors the Bells being in this kind of thing, but they ought not be in now while others are taking advantage of the market, developing market share.

Interestingly enough, sometimes it is foreign manufacturers, sometimes it is domestic manufacturers. Everybody seems to seek just this little bit of time in which they can further develop their market, further achieve market penetration, further achieve control of this process, while denying Americans the opportunity to go in and be on the same terms as the foreigner do.

I have difficulty understanding it. You've helped me slightly, but I would observe, Mr. Major, I thank you very much for that, but only slightly.

Mr. MAJOR. Thank you.

Mr. MARKEY. The gentleman's time has expired. I think, once again, he has accurately observed the very high hypocrisy coefficient that surrounds many of the issues in this jurisdiction when it comes to the embrasive competition.

The Chair recognizes now the ranking minority member, the gentleman from Texas.

Mr. FIELDS. Thank you, Mr. Chairman.

Mr. Schroeder, your testimony was excellent. My staff whispered in my ear that recently in the ice storm you had an early morning appointment and were a few minutes late and apologized for being a few minutes late, so obviously you don't look for excuses or you don't look for problems, you look at everything as a challenge, and I can just say to you that this member appreciates that attitude.

You mentioned the bill that the chairman and I had introduced. Let me just ask you if you could be specific on what you want us to focus on with the definition of open platform and advanced telecommunication service?

Mr. SCHROEDER. Thank you, Mr. Fields. I think the language in H.R. 3636 is a great start in requiring, as it does, advances in network services to be accessible. I think there are probably some expansions which could be included in that bill since I think it is fair to say that in some ways it has a broader sweep than H.R. 3626. I am not comfortable talking legislative language with you today, but I would very much like to see us explore within the confines set out in that bill and within the confines that you and the Chair are comfortable, some ways to expand requirements to ensure that anyone providing a network service is going to be under the same umbrella requirement for access that bill says for local exchange carriers.

I think we certainly want to try to move toward a requirement that anyone providing video programming is providing closed captions and video description with that program, it is an industry that is now, as I said in my testimony, inaccessible in many ways, particularly on cable as it is delivered today for hearing impaired

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and vision impaired individuals, and I certainly think that when the bill is urging the FCC to look at universal service and how that can be established that, in my view, and I think it is fair to say the view of millions of Americans with disabilities, we have been shut out of the standard access to information.

Mr. Fields, I can't walk into a bookstore and pick out much that I can use. I can't, as I said in the press conference, go out here and put 25 cents in a newspaper box and get anything I can use, but I can get on to a communications network if it is one that doesn't employ a graphical user interface that shuts me out because my speech system can't make any valid use of those icons. I can get onto that system and download that newspaper or download that novel, and then I can read it.

Mr. FIELDS. Mr. Schroeder, I wasn't going to ask you to give anything specific today, but just to tell you that we are sensitive to your particular concerns. I have heard the chairman speak many times about the cost of the chip that was placed in the TV for those who have hearing impairments. We are at a historic opportunity, a watershed moment, when issues like this can be dealt with, and certainly we think this is the most cost effective time to address some of these, so I will be anxious to hear specific comments that you have.

Let me ask you, even with the language of 3626, and as I understand it is not only a year from date of enactment but after you file with the Justice Department there is an additional year that you must wait. It is my understanding it is not an additional year?

Mr. SMITH. I was hoping to be confusing.

Mr. FIELDS. Let me just ask, even after that, let's say you satisfy that time requirement, are there additional restrictions that you have to deal with that other manufacturers are not having to deal with, and the reason I am asking this particular question, I was really impressed with a magazine article I read in this month's World Trade Magazine that talked about a company, if I remember correctly, Antech, that developed some technology, but really technology that was to be deployed in foreign markets because there were restrictions here, and that was the point of the article, that our policy is so antiquated that we are actually forcing some of our best technologies to go foreign and, of course, you shored up that particular thought this morning with your example of the set top box concept.

Mr. SMITH. In particular, we are working right now on an issue of a fixed wireless loop, which is an ability to replace the local connection in a place where there is not copper available to get into the homes, and we have some ventures overseas in which we are working very closely with the manufacturer for the design of that equipment to be cost effective in, in particular in this case, in an India market. We cannot have similar discussions in the United States with local manufacturers of that kind of equipment to, for example, address our rural areas which have very similar kinds of needs as those areas in India that we were providing. So we have an AB comparison right now that is facing us and our ability to serve cost-effectively our rural areas.

Mr. FIELDS. The question I ask you, and I will just ask you to come back with a written response to me was, if 3626 stays as is

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and you have the 1 or 2-year, whatever it is, additional manufacturing restriction that you might face, I would like to turn to one other question because I know my time is running short, in my opening statement, I expressed a concern that many of us have because of the 60 percent domestic content requirement, and all of us would hope that you and other companies would use American components, American labor, do things here, but there is a real question as to whether that violates GATT and NAFTA, and we are just interested if your company has done any analysis on how this legislation affects those particular treaties?

Mr. SMITH. I am not personally very expert on those treaties, so I can't comment directly to them. But I can say that our company policy has been and continues to be under this bill to concentrate on local American manufacturers. That would be our intent. So, therefore, we have supposed the domestic content provisions of the bill.

We feel that the exclusion at the 40 percent level, or 60 percent domestic level would give us the flexibility we would need in most of the kinds of areas we would be anticipating being in any kind of a manufacturing arrangement, particularly through an alliance.

Mr. FIELDS. Thank you, Mr. Chairman.

Mr. MARKEY. The time of the gentleman has expired, and the Chair would note that the subcommittee is going to work to have the written views of the U.S. Trade Representative presented to us before we mark up the legislation.

The Chair recognizes the gentleman from Virginia, Mr. Boucher.

Mr. BOUCHER. Thank you very much, Mr. Chairman.

Mr. Smith, I have just a couple of questions for you that fall within the general category of clarification of your understanding of what the manufacturing restrictions and the modifications of those contained in the bill are designed to achieved, and what they may inadvertently, in fact, be achieving.

First of all, Mr. Fields mentioned—and I would like to amplify this—the potential that whereas the bill seeks to build in a one-year delay with respect to your ability to engage in manufacturing, the effect of the way that it is actually structured may be to impose a 2-year delay: one year before you can notify the Attorney General of your intent to engage in equipment manufacturing, and then potentially another year before you can start the manufacturing activity.

Do you read the legislation as potentially imposing of what amounts to a 2-year delay instead of the originally-intended 1 year delay?

Mr. SMITH. Our view is that we are unclear on that subject. It potentially could be a 2-year delay, and that delay would be a delay before the time we could start working with a manufacturer on, for example, a cross- functional design responsibility.

Mr. BOUCHER. It is your understanding, I'm sure, as it has been mine, that the original intent was to have a 1-year delay only, and that to the extent the legislation is interpreted as imposing more than a 1-year delay, that would be an incorrect interpretation of the provisions, and perhaps clarification would be needed to make sure one year only is involved. Is that correct?

Mr. SMITH. We would certainly like such a clarification, yes.

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Mr. BOUCHER. Is there also a problem with regard to the distinction between R&D and design work on the one hand, and fabrication work on the other? Would you like to elaborate on that concern?

Mr. SMITH. Yes. That is one of the critical issues to us. It is very clear that cross-functional teams, which mean the product developers and the manufacturing engineers today work closely together in any new kind of development. That is a technique that was pioneered by the Japanese, and one of the reasons they are so quick to get to market because they don't have the serial handoffs that are required that used to characterize development of new products.

As a consequence, that wall there between the product development and the manufacturing is a serious impediment to the speed by which new products can come to market.

Mr. BOUCHER. How do you rate the bill as drafted? Would it impose a 1-year delay before you could engage in design work or R&D work with regard to a new product?

Mr. SMITH. The way I would read it is if these are, in fact, a sequential as opposed to overlapping intervals, that it would not be until that period were complete that we would begin to do design work in conjunction with manufacturing.

Mr. BOUCHER. What would you like to see the provision provide? Would you like to be free to engage in R&D and design without having to notify the Attorney General of the fact that you're doing that, and have the 1-year delay following notification therefore apply only to fabrication activities?

Mr. SMITH. I think this would be a very substantial improvement of the current bill if we were able to achieve that because that's where the innovation process is getting locked up, in fact, is in the ability to work with the manufacturing organizations.

Mr. BOUCHER. Have I accurately stated the desire of the Bell Companies with respect to that change and the fact that you should be able to do R&D and design work without having to provide notification on any delay?

Mr. SMITH. Yes, you have.

Mr. BOUCHER. All right.

Mr. SMITH. Thank you.

Mr. BOUCHER. Only one other question, and that deals with the potential that you might have to notify the Attorney General with respect to even modifications of a product once you have obtained the general right to manufacture that product. What is your view of the potential that you might have to notify with respect even to minor changes in the design?

Mr. SMITH. I think that would be very difficult to do because the kind of process that normally occurs in rapid transfer of product design into manufacture is a very iterative process with lots of design changes occurring, and we would need to have some mechanism by which a category of area would be cleared in one go, rather than each one being taken back. That would make it an intolerable process if that were required.

Mr. BOUCHER. And you are suggesting that clarification in the statute is necessary in order to make sure that sequential notification is not required every time you have a design change?

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Mr. SMITH. That's right. In fact, I would even take it further in that I question the desirability of the product-by-product market-by-market philosophy built in the bill because I feel that will cause further needless interpretation and analysis at each stage of what is basically a continuous process.

Mr. BOUCHER. Is it the Bell Companies' view that once you have obtained approval under this provision to engage in manufacturing, that you then ought to be able to engage in manufacturing generally without having to go back to DOJ every time you desire to make another product?

Mr. SMITH. We would certainly prefer to see that kind of an enablement.

Mr. BOUCHER. Do you read the legislation now as providing that freedom, or do you think it would require separate approval each time?

Mr. SMITH. There is some confusion in our reading it with respect to what it means to be product-by- product and market-by-market. That is not clear to us and to our attorneys.

Mr. BOUCHER. Well, I think we've identified, Mr. Chairman, a number of areas here where some clarifications will be necessary, and I will look forward to working with you and your staff in order to promote these. Thank you very much.

Mr. SMITH. Thank you.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentleman from Ohio, Mr. Oxley.

Mr. Oxley. Thank you, Mr. Chairman.

Mr. Major, I would like to ask you about a case from 1989 involving Ameritech in which the Court of Appeals ruled on a two to one decision that it was unlawful for an independent manufacturing company to enter into research and development contract with a Bell Company under which the Bell Company would help finance the manufacturers R&D in return for royalties on the sale of that manufacture of any product.

I would like to quote you the dissenting opinion from Judge Williams in which he said such arrangements should be permitted because they: "Are likely to enhance competition in telecommunication products by providing a new course of funding for smaller manufacturing companies with innovative ideas. The BOC's have a comparative advantage in judging the prospects for investment in research and development of products complimentary to their business, and an obvious interest in ensuring that such innovation occurs."

Do the majority of your small manufacturers at TIA agree with Judge Williams?

Mr. MAJOR. The small manufacturers at TIA are well aware that when the restrictions are lifted there will be an opportunity of direct funding of projects with the RBOC's. Quite frankly, that is their reason for enthusiasm in looking forward to a day when that can appropriately occur.

They also remember well what it was like 20 years ago when a very select group of manufacturers—and for that matter, in many cases, only internal manufacturers—were allowed to provide products for the network. And in that era the telecommunications industry did not do as well as it is doing today. It didn't do as well

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in the export market as it is doing today, it didn't do as well in the U.S market as today.

Today, the industry is strong. Seventy percent of our members when polled said given a choice, yes, we want to be able to provide services to the RBOC's, but not until the non-competitive issues can be corrected. When we asked our board, they voted unanimously for the same criteria.

Mr. OXLEY. So your answer is that 70 percent of your members support what the judge said?

Mr. MAJOR. Support that Ameritech should not be allowed to receive royalties and provide funding for manufacturing products while it is still part of a network where it has a monopoly access.

Mr. OXLEY. Well, of course, that is what this legislation is all about, isn't it?

Mr. MAJOR. That is exactly what the legislation is about.

Mr. OXLEY. But I am sorry I missed your testimony, but as I understand it, you testified against the bill.

Mr. MAJOR. That's right. We are for what the result, once we have gone through the appropriate waiting period, and after we have received—and if we can receive some type of procedural parity.

Mr. OXLEY. Mr. Smith, do you have a comment on that?

Mr. SMITH. I think that the evidence is very clear. There are two comments I would like to make, one is that the dramatic change that has been occurring in CPE kind of developments really started with the car phone decision and the decision to open up the market. It was not a specific issue associated with the divestiture in 1984. As a consequence, that proliferation of manufacturers has been going on for a number of years. In those areas in which the RBOC's have, in fact, provided CPE through other manufacturers, they have not by any means dominated the market. Whether that is in cellular, and in fact we do offer both a separate rental for cellular from the service at U.S. West, but we have not in any cases that we know of been the dominant supplier. So I think this is a fear that is not based on any of the data since divestiture.

Mr. OXLEY. Do you have any evidence, Mr. Major, of any anticompetitive behavior on the part of the RBOC's industry?

Mr. MAJOR. The industry was shocked as recently as a month ago when one of the RBOC's placed a $16 billion sole source order with one manufacturer for additional equipment going forward, $16 billion. There are numerous examples of that——

Mr. OXLEY. What does that mean? Was that anticompetitive?

Mr. MAJOR. Well——

Mr. MARKEY. That is Bechtel having all of its equipment built in my district by AT&T. AT&T will be the sole provider for Bechtel.

Mr. MAJOR. If you are a small manufacturer, you don't look at that as just necessarily the best thing that has happened.

Mr. OXLEY. As what?

Mr. MAJOR. As necessarily the best thing that has happened. The idea would have been to have more opportunity for open access, open standards, and participation by a broader number of manufacturers.

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Mr. OXLEY. Would you like to be in a position to second guess decisions by the RBOC's at each step of the process, is that is essentially what you want to do?

Mr. MAJOR. No. What we have suggested doing today is the following, we would like to see procedural that is manufacturing is every bit as important in electronic publishing as in the alarm business. We would like to see a delay period to account for the fact that we don't yet have a truly competitive service with the RBOC's. Then we would like to aggressively move forward with the provisions of 3636 to create a competitive market just as quickly as possible so that we can get on with allowing everyone to compete on a level playing field.

Mr. OXLEY. Mr. Chairman, I would say just in response that a few years ago we had a news conference in which we featured many small manufacturers who were, at that time, long before the stars were aligned the way they are today, and we are fairly certain we are going to get legislation, were very much supportive of doing business with the RBOC's, and were very desirous of providing innovative products and new ideas and the like. We have, I think, come to that now and I think that is a good thing, not a bad thing, and not even a bad thing that contract was placed in your district.

Mr. MARKEY. Was that the press conference where Mr. Ritter was using a sledgehammer to break up the Toshiba equipment, no?

Mr. OXLEY. No, that wasn't part of that. No.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Illinois, Mr. Hastert.

Mr. HASTERT. I thank the chairman.

First of all, Mr. Schroeder, I just wanted to say I very much appreciate your testimony. I remember back in 1984 when we did the Universal Telephone Act in Illinois, testimony such as yours was a very major factor in making sure that the TDY's were available to everybody in that State. One of the issues that came along is how you paid for that, and there was a crosssubsidy that was put in to cover that. Do you see that type of financing mechanism being necessary?

Mr. SCHROEDER. Mr. Hastert, it is possible, but the first cut really ought to be at trying to make the existing or the equipment that is deployed for everyone's common use to be useable. In other words, there is not really any reason why the typewriter-type keyboard couldn't be deployed right along with a telephone. That may add some cost, so that is where we get into issues of undue burden, and then potentially when it isn't doable then, yes, I think we should explore universal service type funds where some of this adaptive equipment can be provided to individuals at a reasonable or no rate to get the same access everybody else gets.

Mr. HASTERT. Thank you very much.

Mr. Bhatia, is your company a member of TIA?

Mr. BHATIA. Yes, it is.

Mr. HASTERT. Do you support the Bell Companies' ability to manufacture telecommunications equipment?

Mr. BHATIA. Yes.

Mr. HASTERT. Is that an official position of TIA? Is your company's view an official position of TIA?

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Mr. BHATIA. I guess not based on the testimony that has been presented.

Mr. HASTERT. So there are some differences among the association. It is interesting, in my district I had over 2,000 jobs, it used to be a company called Western Electric, now it is AT&T Industry—evidently it all went to the chairman's district—but most of those jobs are overseas today, and it is also interesting that in my district we have many, many small telephone manufacturing companies that have grown up in their absence, and there is probably almost as many telephone manufacturing jobs in my district today as there was maybe 15 years ago because of all these different and the whole spectrum of telecommunications equipment.

Mr. Major, are there other members of TIA similar to Mr. Bhatia's company which support the lifting of the MFJ and the manufacturing, although it is not the official position of the TIA?

Mr. MAJOR. Mr. Congressman, as I said before, when we polled our members, 70 percent were for withholding the lifting of the MFJ until appropriate safeguards could be developed, 30 percent——

Mr. HASTERT. Is that 70 percent by number of by——

Mr. MAJOR. By number.

Mr. HASTERT [continuing]. —Volume?

Mr. MAJOR. No, by number, 70 percent of the individual members over 400 members.

Alternatively, it is correct to say that the 30 percent felt the other way. This is a very difficult decision for our members, many of them have ongoing business relationships with the RBOC's and would prefer not to be identified and be proposing a strategy that is not necessarily in the direct interest of the RBOC's today.

Mr. HASTERT. Although none of the companies in my district are testifying here today, but in my discussions with them, they would hope to be able to do joint ventures with not just RBOC's but anybody who is out there, but specifically RBOC's that they haven't been able to do the joint ventures with over the last several years, I think back to 1984, and so they have been held captive to some degree.

I have, Mr. Chairman, a list of over 200 small telecommunications manufacturing companies, some of whom are in my district, all of them are not obviously, but stated publicly that they believe that their industry would benefit if the MFJ restriction was lifted. I would like to note that this list contains the names of only small manufacturers, not larger manufacturers, and additionally bear in mind that most large manufacturers such as Northern TeleComm and DEC and others have stated that they also support allowing Bell Companies to participate in the manufacturing process.

So with your permission, Mr. Chairman, I would like to insert this list in the record, and thank you very much. I yield back my time.

Mr. MARKEY. Without objection, so ordered.

[The list referred to follows:]

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Small Telecommunications Manufacturing Companies Who Support Legislation Allowing Bell Companies to Participate Fully in Telecommunications Manufacturing Process

Eagle Telephonics, Inc.
Urix Corp.
Voice Control Systems
PairGain Technologies, Inc.
* Summa Four, Inc.
International Light Inc.
* Integrated Network Corp.
Racon, Inc.
* Adtran, Inc.
Centigram Commun. Corp.
Systematix Electronics
AVO Biddle Instruments
Advanced Electronic Appl., Inc.
Dianatek Corp.
Everett Sound Machine Works, Inc.
Applied Voice Tech. Inc.
* Crest Industries, Inc.
Meteor Communications Corp.
ICOM America
XTP Systems Inc.
Olympic Controls Corp.
Viking Electronics, Inc.
* TeleSciences, Inc.
* Superior TeleTec
Cortelco
International TeleService Corp.
* Teltrend Inc.
Multipoint Networks
* Silicon General, Inc.
* Verilink Corp.
Phone - TTY
American Pipe & Plastics, Inc.
Avtec, Inc.
Communications Test Design
Able Telecommunications, Inc.
* Applied Digital Access, Inc.
* Keptel, Inc.
* Applied Innovation, Inc.
Digital Systems Int'l Inc.
* EMAR, Inc.
XY Resources Inc.
HealthTech Services Corporation
LC Technologies, Inc.
* Microwave Networks Incorporated
EIS Wire & Cable
X-10, Inc.

* Telect
* Seiscor Technologies, Inc.
Ambox Incorporated
Bajed, Inc.
Rastor Industries, Inc.
Accurate Electronics, Inc.
AmPro Corporation
Lumisys
* BroadBand Technologies, Inc.
The Triangle Tool Group, Inc.
* Elcotel, Inc.
BI, Inc.
Vicorp Interactive Systems, Inc.
Lernout & Hauspie Spch. Prd., Inc.
Axes Technologies Inc.
* Teradyne, Inc.
* XEL Communications, Inc.
TeleSensory Systems, Inc.
Aptek Technologies, Inc.
Electronic Modules, Inc.
Network General Corp.
* Brite Voice Systems, Inc.
Taesung Industries
Melita International
* Intelect, Corp.
* Senior Technologies, Inc.
Quest Electronics
Young Design, Inc.
Jon/Beau, Inc.
Information Transfer, Inc.
International Telesystems Corp.
Accu-Com, Inc.
H & L Instruments
Inovonics, Inc.
VSI Telecommunications, Inc.
California Amplifier, Inc.
Pacific West Electronics
Sequoia Electronics
Solonics, Inc.
Remarque Mfg. Corp.
Perception Technolog Corporation
MAR Associates
Chromatic Technologies, Inc.
* Artel Communications Corporation
OK Champion Corporation

* means member of TIA

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Easi File Corp.
Greenbriar Products, Inc., (Orbitron Div.)
Senecom Computer Company, Inc.
* Senior Industries, Inc.
Oza Communications Corp.
* Larus Corporation
AML, Inc.
* Innovative Data Technology
* Klein Tools, Inc.
* Telecommunications Techniques Corp.
Telebit Corp.
Tennessee Telecom, Inc.
Sound Technologies Corp.
DeYoung Mfg., Inc.
BekTel, Inc.
American Microwave Corporation
Lingo, Inc.
Colcom, Inc.
Lippincott Co. Inc.
Expeditor Systems, Inc.
ABL Engineering Inc.
Dynamote Corp.
FOCS Inc.
Fore System, Inc.
Payphone Systems
G. R. Associates
DGM&S, Inc.
American Reliance Inc.
Keltronics Corporation
Manhattan Electric Cable
* Tekelec
Metric Systems Corp.
Communitech, Inc.
Electronic Info. Systems, Inc.
A Q Systems, Inc.
Micro Integrated Commun. Corp.
Innovative Technology, Inc.
Level One Communications, Inc.
Puleo Electronics, Inc.
Pentagram Software Corp.
* DSP Group Inc.
OptiVideo Corporation
RDL Inc.
Metal-Flex Hosing Inc.
Riser Bond Inc.
Special Product Company
Signal Transformer Co., Inc.
* TEL Electronics, Inc.
T T Technologies, Inc.
Telemax Corp.
* Tamaqua Cable Products Corp.
Unifi Communications Corp.
Microtech
V Band Corporation
Primary Access Corp.
Reach Electronics, Inc.
USA Corp.
Shore Microsystems, Inc.
Waveline, Inc.
American Int'l Communications
C. Sjoberg & Son Inc.
TouchFax Information Systems, Inc.
Rhetorex, Inc.
Access Technology Association
Health Care Keyboard Co., Inc.
USA Video Corp.

* means member of TIA

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Mr. MARKEY. The Chair will recognize himself and I will ask you, Mr. Roach, and you, Mr. Smith, this question. At the hearing we held last week on set top boxes, the General Instrument representative argued that network security could be breached if these systems were open and accessible to other vendors.

In your testimony, Mr. Roach, representing Tandy, you suggest that the public interest would be better served by limiting the function of the box to security only and letting consumers decide what features and functions they need in a competitive retail equipment market.

Could you explain to us how such a system would work, the one that you propose, and comment upon General Instrument's concerns about security? First of all, how many people are in your company, Mr. Roach?

Mr. ROACH. About 40,000.

Mr. MARKEY. Forty thousand people and it is primarily a retail business?

Mr. ROACH. Primarily a retailer but we are also very knowledgeable about manufacturing. We were the largest consumer electronics manufacturer in the United States until we recently divested so I think we understand the issue very, very well.

I think it is amazing to me that when you use the telephone network you need a modular plug and they can meter at the central office your usage. When you use electricity, they meter the usage at your house and yet they put no restrictions on what you can plug in or no practical restrictions on what you can plug in. You can buy many types of devices. Your water meter meters the water coming in and they don't care whether you put it in a glass or refrigerate with it or something of that nature.

So I think we want the maximum signal passed through the interface and if we need at the home a metering device because the FCC determines that you can't effectively meter it elsewhere, I think that is OK but there is no reason why you can't use a smart card or other metering device to do simply that.

Of course, the cable companies would have to develop a few standards and it would have to be far more interested in this being a broadly opened marketplace before that would work. I also if you will permit me have a small view on this MFJ issue which is not what you asked me but I have been sitting here wondering how I was going to get it in.

That is simply that we have opposed the MFJ restriction in the past because we don't know how you stop the cross-subsidization of the manufacture of equipment and then turn around and bundle it or force it on the user in other ways through the process.

So as we go forward if we have a 60-percent local content restriction that means that it is likely to be higher priced, then conceivably subsidized by the RBOC.

Mr. MARKEY. Reebok is a sneaker. RBOC is the Regional Bell Operating Company.

Mr. ROACH. And then cross-subsidized and forced on the consumer as a Tel Co product simply does not satisfy our general position of saying that we need an open marketplace that lets all manufacturers and all consumers participate.

Mr. MARKEY. Let me yield to the gentleman from Texas.

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Mr. FIELDS. I didn't have time earlier in my first round and I appreciate the chairman yielding, I was going to say that I wish we would have had you at the set top box hearing the other day and I had whispered to the chairman just a moment ago to see if you would venture an idea of what a set top box or some component would cost.

Mr. Smith, if I remember what he said just a moment ago, said that it could be in the $10 range.

Mr. SMITH. I said the chip could be in the $10 range with volume.

Mr. FIELDS. But it is a real issue and the chairman was, I think, very wise in having a hearing strictly on the set top box. So I would interested in any comment you had.

Mr. ROACH. Well, it clearly depends on what you limit the functionality of the box to. If the box is primarily a metering a device or a mechanical interface to the network then the cost is relatively low, $50.00 to $100.00.

If the box does a lot of other things like decompression and other things that should be on the user's side of the process, then the box can get very expensive. It is amazing to me how much ingenuity there is in the world and if you just give us a signal there, I think all of the manufacturers and the retailers can have a very competitive marketplace.

Mr. SMITH. Mr. Fields, may I add a comment to that? The nature of technology in the chip, the cost of chips, is volume is the critical issue. Therefore, it very much behooves both the manufacturers and service providers to adopt standards and open connections. So I would support that kind of position.

In fact, our interest is to have more people using our network, not fewer people. So there is no reason why we would want to exclude usage.

The second comment is that an artificial position that breaks the, for example, security kind of issues from some other parts in the set box have some concerns to me because then we have put a legislative parameter into what is fundamentally how do we find the lowest possible cost solution. So sometimes those artificial parameters can, in fact, raise the cost of the system. The principle that I think we need to go forward with is the principle of an open interconnect into those kind of devices.

Mr. FIELDS. Thank you, Mr. Chairman.

Mr. MARKEY. Just so we can ask the question simply then, Mr. Roach, you want Mr. Fields or I to be able to walk into Radio Shack, your company, and any Radio Shack in America and buy this equipment on an unbundled basis and plug it into the network, is that correct?

Mr. ROACH. That's right and any other retailer.

Mr. MARKEY. Any other retailer in the country as well, I appreciate that. That is your objective.

Mr. ROACH. Yes.

Mr. MARKEY. And you, Mr. Smith, you don't disagree with that, do you?

Mr. SMITH. I support that. That is correct.

Mr. MARKEY. You support that. All right. That is very helpful to us. Mr. Roach, if this legislation passes, you wouldn't mind if the

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telephone company purchased Reebok. I can see the ad now, do the walking through our yellow pages in our new Reebok sneakers. I can just see that.

Mr. FIELDS. Mr. Chairman, let me point out that I understood Mr. Roach completely. It could just be an accent problem. I don't say "Boston" either.

Mr. MARKEY. I told you, I used to think it was "Massachusetts" until I went to Basic Training in Texas at Fort Bliss in 1969 and my Drill Sergeant kept saying, "Massatusetts," "Massatusetts" and I said that it was "Massachusetts" Drill Sergeant and he said that it was "Massatusetts" Mr. Markey and I said that it was "Massatusetts" Drill Sergeant. They have a way down in Texas of helping you understand the language a lot better.

So on this security question, Mr. Smith, you didn't comment yet on how you view the security question as raised by General Instrument.

Mr. SMITH. I am not familiar with the particular testimony there but in the principle, clearly security issues have to be addressed in any telecommunications operation or computer linkage operation. However, a lot of that can be done by various server techniques that can provide and there are a lot of different technical places to provide security. It is not necessarily only in the chip and the set top box.

Mr. MARKEY. Thank you. Mr. Bhatia.

Mr. BHATIA. Yes. I would just like to add to the security issue. I think the network approaches that are being provided like provided by our company provide switching and therefore security in the network and then takes that issue off the table from the consumer product point of view.

Mr. MARKEY. Thank you. Let me say as well, Mr. Schroeder, echoing what Mr. Fields said that when we put in the provision that each television set would have to have a chip for closed circuit decoding of signals sent over television networks, we were told that it would cost $25.00 or $30.00 a TV set.

It wound up costing $3 a TV set and as well on that little chip it is now possible for Mr. Fields and I and other members of the subcommittee to now debate whether or not they should put an extra "V" on that chip to block out violence coming in with an additional cost of maybe ten or 15 cents per television set.

The debate is, of course, possible because we insured that this technology was able to change and move along and we want to and Mr. Fields whispered to me while you were testifying, Mr. Schroeder, how he felt and I share his views that a lot of what we are doing is going to make all new opportunities open to many people in this country who have been walled out in the future if we do this right.

And you represent a class a people who could be clear beneficiaries of these technologies in terms of the ability for you and people like you to contribute to your economy and I think we share a common goal on the subcommittee of insuring that we give you the maximum number of opportunities in the future.

So we thank each of the witnesses and let me ask each of you to just give us a one-minute summary statement that will wrap up

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this hearing and then we will move on. So let's begin with you, Mr. Smith, give us your one-minute summation.

Mr. SMITH. I would make as my summation that the technological development has progressed dramatically in the last few years. Modern techniques which have been pioneered in Japan require integrated cross-functional teams to bring products to market.

Artificial barriers between product development and the engineering of manufacture would impede that process and cause these arrangements to be less effective. The loser of that is the customer and when those constraints apply only to American companies, the losers are also American business and American jobs.

So I urge the Congress to eliminate these kinds of restrictions from the RBOC's.

Mr. MARKEY. Thank you. Mr. Major.

Mr. MAJOR. Thank you, Mr. Chairman. TIA would like to offer the following, that we look forward to the era when the RBOC's can enter manufacturing and, in fact, other fields as well. We think the acceleration of H.R. 3636 and its linkage to H.R. 3626 is a critical part of that transition.

Unfortunately, the playing field is not level today and we again suggest that a little more time is necessary and the fact that each of the services is treated differently in the bill should be re-examined.

Mr. MARKEY. Thank you, sir. Mr. Roach.

Mr. ROACH. Clearly from the retailers' perspective and we identify very closely with the consumer, we think the consumer should have a right to own their equipment if they so choose, that they should have a right to choose whether to obtain customer premises equipment and information equipment from the service provider or from someone else who provides commercially available equipment.

We also think that they should be guaranteed access to the network so that they have the choice once again from buying from either the provider or from others and the MFJ restriction is somewhat related to this, very closely related to it, because there needs to be guarantees that licensing, cross-subsidization and bundling are not used to the detriment of other manufacturers and other retailers who are trying to provide equipment on an economical basis to the end users and as a minimum, a prohibition against bundling would make it much more desirable for the marketplace to be on a competitive basis.

Mr. MARKEY. Thank you, Mr. Roach. Mr. Schroeder.

Mr. SCHROEDER. Mr. Chairman, we are looking for the power and enjoyment which comes from full and equal access to information. We hope that the Information Super Highway provides that to us.

That means that we have access to equipment that we can use, that we can walk into Mr. Roach's Radio Shack or we can walk into any number of other retail locations or roll in for that matter, for those using wheelchairs, and pick up a piece of equipment that we can understand, we can read the directions on or that the directions are imprinted electronically and we can use it that isn't off limits to us and that isn't needing adaptive equipment at $300.00 or $3,000.00 to use and that when we wire into the network, whatever information is being provided at a reasonable cost to other in-

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dividuals that we can make use of as well and move freely throughout the network without being restricted by artificial kinds of barriers.

Mr. MARKEY. Thank you, Mr. Schroeder. Mr Bhatia.

Mr. BHATIA. I would just like to say that we at BroadBand Technologies appreciate the fast track work that this subcommittee is doing to allow companies like ours to bring the innovation possible so that the advances of technology and the enabling environment is there to bring the advances of technology to the American people. Thank you.

Mr. MARKEY. Thank you, Mr. Bhatia. We will continue our series of hearings tomorrow with testimony on the local competition provisions of the legislation that Mr. Fields and I have introduced with Mr. Boucher and Mr. Oxley and others and then on Thursday, we will complete this series of hearings with testimony on the long distance restrictions on the regional telephone companies and the implications that the Dingell-Brooks bill has in that area as well.

We welcome all to participate. We are moving closer to the end of this series of hearings and then onto the negotiations that will take place pending the markup of the legislation and we want all of you to participate. You, Mr. Roach, and you, Mr. Schroeder, I particularly appreciate your contributions today to help us to open up our minds to other ways in which we can deal with important issues and we appreciate that. I would like to welcome you and all of the other participants today to work with us over the coming weeks. Thank you. This hearing is adjourned.

[Whereupon, at 12:54 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[The following material was received for the record:]

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Computer and Business Equipment Manufacturers Association 1250 Eye Street, NW Suite 200 Washington, DC 20005 (202) 737-8888 Fax (202) 638-4922

February 25, 1994

The Honorable Edward J. Markey
Chairman
House Subcommittee on Telecommunications
and Finance
316 Ford House Office Building
Washington DC 20515

Dear Congressman Markey:

I am writing on behalf of the Computer and Business Equipment Manufacturers Association (CBEMA) to ask that you make the enclosed document concerning H.R. 3626 and H.R. 3636 a part of the official hearing record.

If I can be of any further assistance to you, please do not hesitate to contact me.

I look forward to working with you on these and future telecommunications issues.

Sincerely,

Rhett B. Dawson
President

Enclosure

RBD/kc

C B E M A

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CBEMA

Computer & Business Equipment Manufacturers Association

INTEROPERABILITY STANDARDS AND INTELLECTUAL PROPERTY IN THE NII

Interoperability standards play an enormous, though largely unrecognized, role in the daily lives of every American. Standards make it possible to play a video tape in a VCR, to buy film for a camera, to screw a light bulb into a socket, and to participate in electronic discussion groups through a modem and a home PC. All of these activities involve interoperable products made by different manufacturers and selected by consumers in the competitive marketplace. Standards make consumers' lives easier and choices more plentiful, and they make manufacturers' operations more efficient, while creating and expanding markets for products and services. Standards are so pervasive in our lives that it is impossible to imagine a modern society without them. Remarkably, the tremendous public benefits realized from standards have been achieved predominantly without government intervention, without spending taxpayers' money, and without depriving inventors of their intellectual property rights.

There are proposals under consideration that would drastically change today's successful, open, voluntary, private-sector-led, consensus standards development process in the important technology area of the National Information Infrastructure (NII). These proposals, which advocate varying degrees of government intervention and in one case the extreme action of abolishing intellectual property rights for critical interface standards, would be harmful to U.S. competitiveness and would impede innovation.

SUMMARY OF KEY FINDINGS

The private-sector-led, consensus standards development process has produced many benefits:

- An open and voluntary process;
- Nondiscriminatory access to standards on reasonable terms;
- Interoperable products in competitive markets; and
- Protection for intellectual property rights used in a standard.

Proposals for government intervention in the standards development process and elimination of intellectual property rights for critical NII interface standards create a serious risk of causing:

- Inadequate or inappropriate standards;
- Delays in both development of standards and implementation of technologies;
- Destruction of incentives for innovation and invention; and
- Relinquishment of U.S. competitive advantage in a critical technology and the possible loss of U.S. jobs.

The clear choice is to continue the existing open, voluntary, private-sector-led, consensus standards development process for critical NII interfaces and other interoperability standards. Government, as a major user of computer and communications products and services, can play an important role in advancing interoperability by continuing to participate in this existing standards development process.

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THE ROLES OF GOVERNMENT AND INDUSTRY

Standards in the U.S. are currently developed, and should continue to be developed, in an open, voluntary, private-sector-led, consensus process. Private-sector-led groups have been very effective in creating standards to enable markets and meet customer needs. For example, they have established the computer standards for 5.25 inch and 3.5 inch diskettes, communications protocols for modems, local area network standards, and standard computer programming languages. Where proprietary technology is incorporated into national and international standards, industry practice has evolved to ensure the nondiscriminatory licensing of the intellectual property rights on reasonable terms.

All interested parties are free to participate in the development of American National Standards under procedures approved by the American National Standards Institute (ANSI), a privately funded, non-profit organization. Currently there are about 1,300 companies, 250 professional, technical, trade, labor, and consumer organizations, and some 30 government agencies that participate in standards-developing activities as members of ANSI. Many thousands of product developers, product users, and technical experts participate in developing standards in the organizations that ANSI accredits. These organizations include, among others: the Information Technology Committee (X3), the Telecommunications Committee (T1), the Telecommunications Industry Association (TIA), the Society of Motion Picture and Television Engineers (SMPTE), and the Institute of Electronics and Electrical Engineers (IEEE).

Government, in its role as a user, participates in many standards setting organizations, working cooperatively with industry and other user organizations. As a major purchaser of information technology and other products, government plays an important role in helping to develop standards that will impact its use of these goods.

In certain limited cases, the government sets technical regulations, but for the information technology and telecommunications industries, the government does not set commercial interoperability standards. For example, the federal government sets public health and safety requirements for medical devices and in areas such as electromagnetic emissions. The government also sets requirements for its own procurement of computer and communications equipment. Consistent with the 1979 Trade Act and as directed by OMB Circular A-119, the federal government establishes its standards by adopting private-sector consensus standards whenever possible. To illustrate this point, 83 of the 93 Federal Information Processing Standards (FIPS) covering technical specifications were adopted from previously developed private-sector-developed standards. In the area of electrical safety standards, state and local governments simply require compliance with particular private-sector standards, such as those developed by the National Fire Protection Association, a not-for-profit organization funded and run entirely by members.

The industry-led process to establish technical standards for high definition television (HDTV) demonstrates the benefits of limited government involvement. Indeed, even though the Federal Communications Commission (FCC) has the statutory authority to set terrestrial broadcasting standards, the FCC wisely chose to apply its leadership in support of a process that is led and funded by the private sector. In contrast, the governments of Japan and the European Community took much stronger roles in funding and determining HDTV standards. The result is that the United States, in an open, consensus-based process combining the best elements of competition and collaboration, has developed world-leading technology far superior to the government-planned and subsidized systems overseas. Thus, government intervention has been shown to be unnecessary and potentially detrimental to some standards development efforts.

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Any expansion of the government's role to one of controlling or mandating U.S. industry standards could slow the process, stifle innovation, and place a greater burden on taxpayers, thereby hurting U.S. international competitiveness. The expertise in commercial technology and market demand needed to create advanced interoperable systems for the NII exists in the many thousands of private-sector professionals who design products and write software to meet customers' needs. The voluntary, consensus process in which these private sector personnel work with interested users and academic and government experts will continue to create successful, open standards to meet the needs of the information highway.

INTERNATIONAL STANDARDS

In today's global economy, internationally recognized standards are increasingly important. The U.S. government and U.S. standards organizations cannot unilaterally set standards for the world, but many international standards are adopted from standards or technology first developed in the United States. This is due to the strength of the existing U.S. standards development process and the merits of U.S. technology. ANSI and the U.S. National Committee of the International Electrotechnical Commission (IEC) work through the International Organization for Standardization (ISO) and the IEC, respectively, providing a single voice to reflect the consensus U.S. position, as recognized in the 1979 Trade Act. Consensus U.S. positions are also developed via an open public process for International Telecommunications Union (ITU) global standards development.

The process for establishing internationally recognized standards is voluntary and includes many different parties, sometimes with opposing interests. Reaching consensus in this environment may require more time than would be necessary to establish a U.S.-only standard. Companies, particularly information technology companies, prefer to manufacture products to comply with only one standard, not with a different standard for each country or region, since a common standard reduces technical barriers to trade, lowers product development and manufacturing costs, and simplifies planning and management. Similarly, global standards are sought by U.S. telecommunications companies to improve their competitiveness. A global standard can ultimately offer better compatibility and greater economic benefits. Consequently, the preponderance of X3 domestic standards are now being developed concurrently with international standards. For example, the Language Independent Data Types standard, currently under development in JTC1, which sets information technology standards for the ISO and the IEC, will also be adopted as an ANSI standard upon completion. Given the interdependence of national and international development of information technology and communications standards, it would be unworkable for the U.S. government to mandate these standards.

ACCELERATING THE PROCESS

The importance of interoperability standards for computers and internetworking has become increasingly apparent in recent years, as computer use has evolved from the operation of isolated machines and islands of private company networks, to the need for widespread connectivity and interoperability. While conscious of the need for spending sufficient time in the development of complex technical standards, industry, in response to market demand for new interoperability standards, is taking positive steps to accelerate the standards development process. These steps have already paid off by reducing average development time for all standards in the ISO by one third over the last five years, during which time output of technical standards pages increased 20 percent annually. Ongoing process improvement programs in ANSI and the IEC have also

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reduced standards development times and continue to show progress. By the end of 1992, JTC1 had reduced the time to reach consensus on a stable draft standard to an average of under 20 months. At this point, when the draft standard is stable, companies often begin implementing the standard. The increasing acceptance of the Internet as a vehicle for inter-company, international communications among technical professions is expected to further accelerate the process by making dissemination and discussions of proposed standards almost instantaneous.

PATENT POLICY OF STANDARDS ORGANIZATIONS

Today's voluntary, private-sector-led standards development process provides for nondiscriminatory access to standard interface specifications. For a standard to be adopted, the owner of any patent rights involved must voluntarily agree to license the patents on reasonable and nondiscriminatory terms. Any company not agreeing to license its patents on these fair terms has little chance of seeing its technology adopted as part of a formally recognized standard. This policy is followed by all ANSI-accredited standards bodies, the ISO, the IEC, and the ITU. Standards organizations thus act to ensure availability and usability of their standards.

The existing standards process provides fair access to interoperability standards and allows competition to flourish, while providing inventors and innovators the incentive they need to invest money, take risks, and devote time and effort to create new technology. These important benefits are realized without the need for government intervention. The patent policy common to all major standards setting organizations appropriately balances the needs of users and the rights of technology creators. There is no need to change this policy.

There are many examples of successful standards that incorporate proprietary technology licensed on reasonable and nondiscriminatory terms. The patented modular telephone jack is incorporated in Federal Communications Commission (FCC) Part 68 rules and is the basis for an IEC standard. North American Philips licenses its audio compact disc patent to over 100 manufacturers. A teleconferencing and refresh coding standard adopted by the ITU uses AT&T-patented technology. Xerox and IBM offer reasonable licensing terms on patents needed to implement IEEE standards for their respective Ethernet and Token Ring local area networks. The fact that reasonable license fees have been collected for the relevant patents has not prevented the above standards from being widely implemented in a competitive market.

If there is any concern that a particular company might not reasonably license rights to its proprietary technology, then the standards setting organization is free not to include that technology in a standard. This simple safeguard is a product of allowing all interested parties to participate in the consensus standards development process.

Decisions to offer royalty-free or minimal-royalty licenses, or to waive other rights, are sometimes made by companies to gain support for, and widespread implementation of, their technologies. For example, IBM granted royalty-free licenses under its patents that would necessarily be infringed by parties implementing the Data Encryption Standard adopted in the mid-1970s by the U.S. National Bureau of Standards. In addition, AT&T permits non-royalty use of its 32 kilobit fixed-rate encoding system patents for use in an ITU standard. This option to provide royalty-free or minimal-royalty licenses is the right of the patent owner and is made as a business decision, not as an obligation under legislative or regulatory fiat.

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PROBLEMS WITH PROPOSED CHANGES

The current standards development process, as just described, has been very successful. Despite these successes and industry's ongoing efforts to improve the process, some propose that government become much more involved in the creation of standards. Proposals include government determination of what standards are needed, government development of new standards setting procedures, government establishment of deadlines for industry to meet in setting standards, and actual government creation of interoperability standards to be imposed on industry. One radical approach would even eliminate intellectual property rights for certain critical interfaces in the NII.

None of these proposals is necessary to achieve interoperability, and all of these proposals could harm industry and users.

Government Intervention Is Unnecessary

Standards setting for complex technologies is a difficult task that takes time to address the issues and reach consensus. The private sector has developed a voluntary, open process to consider alternatives, carefully weighing relevant technical and economic factors, before reaching consensus on appropriate interoperability standards. Standards are created for the computer and communications industries through this process without government control, mandates, or deadlines. The private sector will continue to respond to users' needs by creating interoperability standards for the NII where the market demands it. In those specific circumstances where the FCC has oversight authority, private sector bodies should be given adequate time to develop a voluntary interoperability standard before the FCC takes further action through a rulemaking to establish a standard. Government intervention to bypass the consensus standards process could lead to the premature adoption of technologies for which there is no market demand, potentially costing industry millions of dollars in wasted development effort.

After the breakup of the Bell System as a result to the AT&T consent decree, there was some concern about how interoperability standards would be established, since there would no longer be a monopoly to unilaterally set standards. Some people believed that the FCC would have to step in to set telephone system standards, but this did not turn out to be the case. The private sector established an open process to create and maintain standards to enable continued network interoperability without the need for FCC intervention. The concerns of a decade ago are echoed today by some who believe the FCC will need to become more involved in standards setting for communications networks. But the private sector is fully capable now, as it was after the breakup of AT&T, of leading the development of interoperability standards to meet market demand.

Government enforcement of a standard for which there is no demand simply does not work. Even when setting standards for its own use, the government cannot ignore market forces. This point is illustrated by the federal government's adoption of a Federal Information Processing Standard for the Government Open Systems Interconnection Profile (GOSIP) as a requirement for federal procurements of computer networking products and services. GOSIP products have not emerged as quickly as expected, despite the government procurement mandate, and products based on the Internet Protocol Suite have had much greater market acceptance.

Under the open, voluntary, consensus process, standards are reviewed, updated and revised as technology evolves and as the market dictates. Flexibility is essential to respond as quickly as possible to changing requirements. Voluntary standards enhance flexibility, as opposed to mandatory standards, which are unlikely to keep up with

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advancing technology and which are more likely to freeze technology and inhibit innovation. Technical advances would be greatly impeded if each time it were necessary to update or improve a standard, a federal agency had to give its approval. Any argument that governmental bodies could create a faster standards development system than the current private-sector-led process, through any means other than arbitrarily selecting a standard after only cursory review, ignores the history of bureaucracies in action.

Intellectual Property Rights are Essential

The proposal that intellectual property rights and licensing fees not be allowed for "critical" interfaces in the NII is both bad and unnecessary. Successful standards are developed while recognizing the legitimate rights of patent holders. Existing policies have not prevented full competition or widespread adoption of standards. On the contrary, they have encouraged rapid innovation, thriving competition, and market-driven adoption of interoperability standards, as evidenced by the examples cited earlier.

It takes time, money, and ingenuity to develop interface specifications and adopt U.S. and international standards. Any resulting intellectual property deserves full protection in the U.S. and abroad. Some countries have proposed compulsory licenses or decompilation of software as ways for their companies to quickly and painlessly overcome the competitive advantage of U.S. companies. Elimination of intellectual property rights for critical NII interface technology in the U.S. would give other countries technology to the disadvantage of U.S. industry, possibly resulting in the loss of U.S. jobs. Indeed, U.S. representatives worked long and hard to preserve and strengthen international protection for intellectual property rights in both the GATT and NAFTA negotiations, and it would be a terrible irony for the U.S. government now to act unilaterally to relinquish those rights in a technology of such critical importance.

To avoid the prospect of having their intellectual property taken from them, companies would try to avoid having their technology declared part of a "critical" interface. This would likely create counter-productive maneuverings that would slow, or prevent altogether, any serious consideration of what interfaces truly are critical for the creation of an interoperable NII.

The notion that NII interfaces or standards are "different" from standards in other areas, because the NII will play such a critical role in everyone's lives, and therefore requires government intervention to preempt intellectual property rights, does not hold true. The same flawed argument could be made that pharmaceuticals are critical to the health of American citizens, and therefore companies should not be entitled to patent protection for their discoveries. Society would have the benefit of far fewer "wonder drugs" if this were the case. Without protection for intellectual property, entrepreneurs and companies would have no incentive to take the risk of investing in research and development, because they would be forced to share the fruits of their efforts without fair compensation. This is a sure prescription for halting innovation and invention.

Abolishing the incentive of intellectual property rights in the area of critical NII technologies will not reduce barriers to the formation of new companies and industries; it will have just the opposite effect, discouraging entrepreneurs who would not be able to benefit from their own inventions. The computer industry has a history of intense competition, amazingly fast technological advancement, and widespread entrepreneurship. The ability of an individual to start with one good idea and build a successful company is based on protection for intellectual property. To remove intellectual property rights as an incentive to investment in the NII, a critical technology

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in which U.S. companies have an international competitive advantage, is to throw away that advantage and allow the appropriation of these inventions by foreign competitors.

As a replacement for investment by individual private companies, some might say that the government could conduct research and development in the areas in which intellectual property rights were stripped away. However, government labs, while technically strong in many areas, are not experienced in responding to the demands of the commercial marketplace and could not be expected to provide the technical base for the private sector's rapid level of product improvement. Alternatively, some have argued that private sector consortia could invest in the development of the critical interfaces. But some companies could get a "free ride" by not contributing to the development effort and waiting for the results of the research of others, so there would be a great disincentive to participate in these types of cooperative effort.

CONCLUSION

Industry recognizes the importance of interoperability standards as we move to an increasingly interconnected, on-line society on the information highway, and the private sector is working to create the technology and standards to make the NII a reality. Given the tremendous number of successful interoperability standards established through the open, voluntary, private-sector-led standards development process, and given the private sector's continuing efforts to improve this process, there is no need for government intervention to ensure the adoption of interoperability standards for the NII. Any process that involves complex issues, competing interests, and compromise takes time, whether a governmental process or a private-sector-led standards development process. Imposing government control or oversight on the private-sector standards development process will not speed this process and may create barriers to standards development, particularly for international standards.

The full recognition of intellectual property rights plays a vital role in the development of critical interoperability standards, providing an incentive for innovation and invention. The existing patent policies of standards organizations have been successful at ensuring the wide availability and acceptance of interoperability standards, and these policies will continue to ensure that these standards are available on reasonable and nondiscriminatory terms. Intellectual property rights must not be eliminated in the critical technology area of NII interfaces.

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PRODIGY. Service

Prodigy Services Company
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White Plains, NY 10601
Telephone 914 448-8000

Office of the Senior Vice-President

February 15, 1994

Chairman Edward J. Markey
Subcommittee on Telecommunications
and Finance
United States House of Representatives
2135 Rayburn House Office Building
Washington, DC 20515

Re: February 8 Hearing on H.R. 3626

Dear Chairman Markey:

In response to your question at the Subcommittee hearing on Tuesday, February 8, 1994, concerning the scope of the definition of electronic publishing in Title II of H.R. 3626, I am pleased to submit the following on behalf of Prodigy Services Company and the Electronic Publishing Group. While we believe that the existing definition arguably covers all services commonly understood as electronic publishing, your questioning of Mr. Cullen illustrated the need for clarification of the legislative language. That colloquy confirmed that the modifications suggested in my testimony are required to avoid the potential for future litigation, permit rational business planning, and ensure that competition in all aspects of electronic publishing is preserved through effective structural safeguards.

As currently defined in Title II of H.R. 3626, electronic publishing is a carefully enumerated listing of particular information subject matters and formats that inevitably lends itself to a substantially underinclusive interpretation. Surely, there can be no sound basis in law or policy for any content-based limitations on pro-competitive, public interest protections. Yet, Mr. Cullen suggested that electronic games would not be covered by the definition at all and public record publications such as those offered by West would be covered as "archival materials used in publishing."

In view of these statements, it is possible that a number of existing electronic publishing services could be argued to fall outside of the existing definition in H.R. 3626. Examples of electronic publishing activities that would benefit from our suggested clarification, some of which have already been the subject of debate, include:

- legal and other public records publication services;
- books, journals, magazines, and loose-leaf services, as well as educational, scientific, instructional, technical, professional, or trade (e.g., religious, general fiction or non-fiction, poetry, children's literature, or reference) materials and similar services such as those of concern to the American Association of Publishers;

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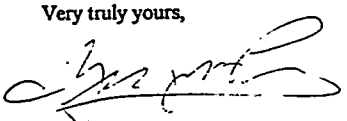
- non-video entertainment services;
- interactive services such as educational offerings and electronic games; and
- multimedia offerings that might combine voice, text, video, and/or user interaction, but would not fall within the meaning of "full motion video entertainment on demand" or "video programming" under the enumerated exceptions to the electronic publishing definition in H.R. 3626.

Indeed, although the above categories of information appear to us to come within the H.R. 3626 definition of electronic publishing, it could be argued that any information content subject matter not specifically identified in the statute and not carried in the typical newspaper of today as well as any information content offered in a format not represented in the traditional printed newspaper could fall outside that definition. It follows that innovative types of electronic publishing that might be offered in the future would be at even greater risk of engendering disputes. Accordingly, we believe that clarification is warranted.

On behalf of Prodigy and the Electronic Publishing Group, I want to again thank you for the opportunity to appear before you to testify on these critically important issues. I look forward to working with you to see this legislation improved as I have suggested and enacted into law.

Very truly yours,



George M. Perry
Senior Vice President,
Legal and Government Affairs

cc: Members of Subcommittee

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Allen R. Frischkorn, Jr.
President

TELECOMMUNICATIONS TIA INDUSTRY ASSOCIATION

February 16, 1994

The Honorable Edward J. Markey
Chairman
House Subcommittee on Telecommunications
316 Ford House Office Building
Washington, D.C. 20515-6117

Dear Chairman Markey:

I am writing to thank you for granting TIA the opportunity to testify last week on the telecommunications legislation currently pending before your subcommittee. TIA stands ready to work with you and your staff to develop legislation to promote the deployment of advanced telecommunications services and to preserve a competitive telecommunications equipment marketplace.

I would also like to address certain factual discrepancies in the testimony of Salim Bhatia of Broadband Technologies. In his written testimony, Mr. Bhatia included a list of telecommunications equipment manufacturers which he claims support removal of the manufacturing restriction imposed on the Regional Bell Operating Companies by the Modified Final Judgment. Among the companies listed were several which were highlighted as TIA members.

Specifically, Mr. Bhatia includes 32 companies which allegedly belong to TIA among those which allegedly "...support legislation allowing Bell Companies to participate fully in [the] telecommunications manufacturing process." Of the 32 companies listed by Mr. Bhatia, 12 are not members of TIA, and several others, including two companies -- Verilink Corp. and TeleSciences Inc. -- represented on TIA's Board of Directors, have supported TIA's position that the manufacturing restriction should be removed on a phased basis as competition develops in the provision of local telecommunications services.

As the enclosed letter from Leigh Belden, President and Chief Executive Officer of Verilink, indicates, neither Mr. Bhatia nor anyone purporting to represent him ever contacted Verilink to inquire as to Verilink's position on the MFJ. The fact that nearly half of the TIA members Mr. Bhatia claims as supportive of his position either are not TIA members or are not supportive of his position should lead you to question the accuracy of his list.

TIA's position advocating a phased lifting of the restriction was reached after a great deal of input from and discussion by the Association's membership. While I do not doubt that some member companies may disagree with TIA's position on the MFJ, TIA's Board of Directors -- which represents both large and small companies -- unanimously adopted the phased-entry position, which we firmly believe is supported by an overwhelming majority of

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TIA's 570 member companies. I hope you will enter this correspondence in the hearing record to correct the erroneous impression left by Mr. Bhatia's written testimony.

Sincerely,

Allen R. Frischkorn, Jr.

Enclosure

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VERILINK

February 16, 1994

Mr. Allen R. Frischkorn, Jr.
President
Telecommunications Industry Association
2001 Pennsylvania Avenue, N.W., #800
Washington, DC 20006-1813

Dear Mike:

Thank you for your call regarding the use of Verilink's name at last Tuesday's hearing on the MFJ's manufacturing restriction.

I find it interesting that the witness from Broadband Technologies named Verilink as a manufacturer which supports allowing the RBOCs unfettered entry into manufacturing. You know as well as I that is not the case. Not only did I support adoption of the position as a member of TIA's Board, but at the time it was adopted, I was the Chairman of the TIA MFJ Subcommittee.

Mike, I don't know where Mr. Bhatia got the idea Verilink shared this view on RBOC entry. I never heard from him or anyone who represented him asking Verilink's position on the MFJ. If I had, I would have said I support TIA's position, both in my capacity at Verilink, and as Vice Chairman of TIA's Board of Directors. I am embarrassed that Verilink's name was used by Bhatia, and I am very concerned that the company's name was used without authorization. I am going to have my attorney check into the latter issue.

I hope this clears up any misunderstanding.

Sincerely,

Leigh S. Belden
President

LSB:dme

VERILINK CORPORATION
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SAN JOSE, CA 95134
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NATIONAL COMMUNICATIONS INFRASTRUCTURE

WEDNESDAY, FEBRUARY 9, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:21 a.m., in room 2123, Rayburn House Office Building, Hon. Edward J. Markey (chairman) presiding.

Mr. MARKEY. Good morning. Today's hearing brings before the subcommittee an impressive panel of witnesses to discuss the provisions of H.R. 3636, to promote competition in the local telephone market. I welcome the witnesses and appreciate their indulgence on appearing on such a large panel but I think the subcommittee has found that it helps crystallize the issues by having a number of different views on the same panel.

Title 1 of H.R. 3636 seeks to open up the local telephone market to competition in the same way that the long distance market was opened up to competition 10 years ago. The bill would require local exchange carriers to provide equal access and interconnection to their switches and transmission facilities. The bill also recognizes that a Federal policy of competition in communications necessitates some preemption of state law.

However, the bill also provides that States will continue to play a role in preserving universal service and in protecting consumers.

The bill is designed to provide access to the telephone company's switches and facilities to a variety of possible competitors, which could include cable companies, competitive access providers, information service providers, or anyone else who wants to interconnect and meet the obligations of a carrier. In that way the bill is neutral on who will take advantage of the access and interconnection rights built into the legislation, and that is how it should be.

In order to assist the subcommittee in pulling together all the information we have received over the past 2 weeks, I hope the witnesses will address the points made by the administration in their testimony. In particular, I hope we hear more about the administration's proposal to tighten up the unbundling requirement and the proposal that a new title, Title VII, should be added to the Communications Act to regulate broad-band carriers at some point in the future.

The provisions on local competition, which we will discuss today, are an integral part of H.R. 3636, and indeed an integral part of all the telecommunications legislation before the subcommittee.

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I look forward to today's testimony so that we can perfect this fundamental aspect of telecommunications legislation.

That completes the opening statement of the Chair. We now turn to recognize the ranking Minority member of the subcommittee, the gentleman from Texas, Mr. Fields, for his opening statement.

Mr. FIELDS. Thank you, Mr. Chairman. I want to compliment you on this historic hearing today and ask that my statement be included in the record.

Mr. MARKEY. Without objection, so ordered.

Mr. FIELDS. And if I could, Mr. Chairman, I want to deviate for just a moment. Since this is a historic day I really want to ask a special favor and consideration from the people in our audience. The chairman and I were touched yesterday by the testimony of Mr. Paul Schroeder, who represents the American Council of the Blind, and we were thinking about his testimony and what a historic watershed moment and opportunity that is presented to help some people that lead very difficult lives, people who don't look at their particular situation as a problem but as a challenge, and so what we were going to ask of you is to help us think through perhaps an incentives package that would encourage good corporate citizenship, people taking some of their R&D money at this watershed moment and putting this aside to develop special equipment, special products for people who we could help, people who we could bring on the information superhighway, making those people more productive.

I don't want to speak for the chairman, but we talked yesterday, perhaps modelled after the Orphan Drug Act where Congress created some incentives for our pharmaceutical companies to go out and create a product for a small population, and if you have suggestions, I know I would be very interested. I think I can speak for the chairman and say he would be very interested, and I use this opportunity today because I raised a point at a meeting like this about 3 years ago, when I was talking about the need to beam educational material into places like Africa. In April, I'm proud to report, because some people have come forward we are going to have a demonstration project where we are beaming educational modules into Nairobi and into Harare and Zimbabwe, and I am very proud of that and I am proud that people that people like you step forward.

I am really encouraging that if you have any suggestions I would be very interested on how we could craft a piece of legislation to do the right thing to help some people at this particular juncture. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Hall.

Mr. HALL. Thank you very much, Mr. Chairman. As a co-sponsor of the legislation that we are discussing here today, I believe it seeks to move communications in America beyond the regulatory regime of the past and into a competitive environment that will provide the best, most advanced services at market-based prices.

One concern I have and one reason I am asking for the opportunity to say a few words at this time is how consumers in less populated areas—I hate to use the word rural areas because we don't really have too many rural areas anymore—but how people

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in less populated areas will receive the same benefits as those who live in metropolitan areas, and while I think that competition in local phone service is a laudable goal, I don't want to see the kind of customer cherry-picking in rural areas that will drive up residential phone rates in those areas to levels that they just can't afford.

That is why I think the rural protections outlined in H.R. 3636 are crucial and I thank you, Chairman Markey, and Jack Fields for including these provisions in the bill. However, I would like to see some further refinements such as drafting a clearer definition of a rural area, adding a mechanism which would ensure sufficient and continuing support for universal service in rural areas, and including Mr. Boucher's infrastructure sharing proposal in the legislation in order that the rural residents would have advanced communications services available to them at reasonable rates. I hope my colleagues can support these changes because they are important to the future communications in rural areas.

Tomorrow's hearing is going to be, I think, very important to us. It's going to focus on long-distance service. But today's subject, competition in local phone service, is really the key to the competitive long-distance industry which includes the RBOC's.

I think the more competition we have in the provision of local phone service, the fewer built-in advantages we're going to have for anyone. The more players, the better, be they alternative access providers, cable companies, wireless companies, and yes, electric utilities.

While I am on the subject, just let me close by saying that Mr. Boucher was absolutely right to raise the issue of electric utilities being involved in the information superhighway and if we find that electric utilities are viable entities to provide communications services, and I think we will, then I can't see any sound policy reason for keeping PUHCA registered utilities out while letting their non-registered counterparts participate.

Now Mr. Chairman, I represent the district that once was represented by the sponsor of the Public Utility Holding Company Act, Sam Rayburn, so I have a lot of respect for that act and the serious problems it addressed. But that was 60 years ago and I think we have to recognize as Thomas Jefferson once did that a man can't wear the same coat he wore as a boy, and I think times change and our laws need to be changed to keep up with the current challenges.

This is one of the situations. I thank the Chair and yield back my time.

Mr. MARKEY. Great. The gentleman's time has expired, and we are going to work with the gentleman, Mr. Fields and I, on his rural concerns, and we thank you for raising them.

The Chair recognizes the gentleman from Ohio, Mr. Oxley.

Mr. OXLEY. Thank you, Mr. Chairman. There is a phrase that has become familiar during these hearings. That is "Let's have full competition in the other guy's business first."

Today we are addressing competition in a very important market that not too long ago was thought to be manageable only through regulation, the local telephone exchange. The reality of local competition in turn will allow us to unshackle the RBOC's.

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Talk in the industry has gone from monopoly to competitors entering the local exchange, and even bypassing it. We can hasten the day when consumers, not regulators, rule by setting a fair price at the pump. This legislation allows new competitors reasonable access to the loop. We will have fair play and fair pricing.

Since our goal is a seamless nationwide communications network, it doesn't make sense to have a patchwork of state regulations. This legislation sets a uniform guide by pre-empting state rules that might prevent local competition.

We know that the pace and extent of hand-to-hand combat will vary. Setting benchmarks on what constitutes vigorous competition in a local market gets us into some tricky business.

Consumers can be assured that they will be protected either through competition or regulation. As we give competitors their shot at the local market we also have to make sure that we don't stick the incumbents with a load of blanks. The regulations governing them will need to be reviewed should their rivals be permitted to prosper under less onerous rules.

We can have a best case scenario where the local market has opened up and the RBOC's are allowed to compete in other fields. Who knows? What we might eventually start hearing is give me more competition in my market.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentlelady from Pennsylvania, Ms. Margolies-Mezvinsky.

[No response.]

Mr. MARKEY. The Chair recognizes the gentleman from Colorado, Mr. Schaefer.

Mr. SCHAEFER. Thank you, Mr. Chairman. I think it's one of the more important hearings we will be holding on 3636 and 3626 to make sure that local competition does exist and I appreciate the chairman holding these hearings.

I particularly want to welcome Mr. Ron Binz, from Colorado Office of Consumer Counsel, here today. I know he had a tough time after landing in a plane and getting into town, sitting on the runway for 3 hours, and I do have to be at an O&I hearing shortly so I want to also thank my colleague Mr. Fields for his timely remarks yesterday regarding the possibility of additional rollbacks in cable rates by the FCC.

I would waive any more of an opening statement, Mr. Chairman, in lieu of time.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the gentlelady from California, Ms. Schenk, for an opening statement.

Ms. SCHENK. Thank you, Mr. Chairman. This is quite an extraordinary array of witnesses that we have before us. We are all eager to hear what they have to say and so I will dispense with an opening statement. Thank you.

Mr. MARKEY. The gentlelady's time has expired. The Chair recognizes the gentleman from Illinois, Mr. Hastert.

Mr. HASTERT. Thank you, Mr. Chairman.

You know, local competition is at the heart of the discussion certainly today and I think probably throughout the scheme of this whole thing. The other day we talked a great deal about universal-

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ity but unless you really solve the problem of local competition you never solve the problem of universal service.

As we debate both pieces of legislation before this subcommittee, certainly that is the theme—specifically, should the Bell companies be able to provide long distance services; also, should local exchanges, exchange carriers, be able to provide cable service and cable operators be able to provide local exchange service.

The answers to these questions depend, to a large extent, on the state of local competition here in this country. Local competition is a current phenomenon at the high end of the telecommunications business. Right now 80 percent of the customer base, residential, that is, produces 20 percent of the local telephone revenues. The other 20 percent of the customer base, businesses, contributes 80 percent of the local revenues. There is clearly certainly a competition in the latter category from caps to cable companies to long distance companies. There is little competition where the local exchange carriers must provide service under the Communications Act of 1934 to residential customers.

What is critical to note is that because business and long distance customers are leaving the local loop, subsidies to residential customers are in jeopardy and thus so is universal service and affordable local telephone rates. I think that is the heart of this discussion today and certainly I would look forward to these witnesses here today to address that specific issue. Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired. The Chair recognizes the ranking Minority member of the full committee, the gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman, and I do want to welcome all of the witnesses we have today. You are a very imposing group of people and we are very anxious to hear what you have to say on what is a most important subject for our constituents, the people who are paying the telephone bills that we have.

I think it's obvious that competition is going to increase both for local telephone service and for the broader long distance services. Just exactly what this legislation will do will perhaps be interpreted by many of you this morning, and we are waiting to hear your testimony.

Thank you, Mr. Chairman.

Mr. MARKEY. The gentleman's time has expired and the Chair recognizes the gentleman from Texas, Mr. Barton.

Mr. BARTON. I have no statement, Mr. Chairman, no statement.

Mr. MARKEY. Do any other members seek recognition for the purpose of making an opening statement at this time?

[No response.]

Mr. MARKEY. The Chair sees none so we'll turn to our witnesses. What we have tried to gather here today is every possible perspective that could be represented in this debate and voices coming from the very highest levels of each of those perspectives to sit at this table. We thank each of you for your participation.

What we would like to ask, if we could at the outset, is that each of you keep your opening comments to 5 minutes. As you could imagine, even at that rate, times ten, we're at 50 minutes from

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now before the subcommittee members would be able to begin the question and answer period. That will be extensive and lively.

We would like as a result for you to get your major points out so that we can get into the period where there is an exchange between the subcommittee members and the witnesses and amongst the witnesses, so that we can hear contradictory points of view expressed that the members of the subcommittee could hear.

So let's then begin and we'll begin first with the Honorable Lisa Rosenblum, who is the deputy chair of the New York Public Service Commission. The reason we invited her today is that New York State is one of the leading States in the country promoting competition in the local loop.

We appreciate very much your willingness to participate and whenever you are ready, please begin—if you could turn on your microphone, please.

STATEMENT OF LISA ROSENBLUM, ON BEHALF OF THE NARUC COMMUNICATIONS COMMITTEE; ALEX J. MANDL, EXECUTIVE VICE PRESIDENT, AT&T; IVAN J. SEIDENBERG, ON BEHALF OF THE UNITED STATES TELEPHONE ASSOCIATION; BRIAN L. ROBERTS, PRESIDENT, COMCAST CORP.; JOHN K. PURCELL, CORPORATE VICE PRESIDENT, ROCHESTER TELEPHONE CORP.; RONALD J. BINZ, ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES; GARY E. LASHER, CHAIRMAN, ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES; LAWRENCE C. WARE, ON BEHALF OF THE RURAL TELEPHONE COALITION; RALPH NADER, CENTER FOR STUDY OF RESPONSIVE LAW; AND RICHARD C. NOTEBAERT, PRESIDENT, AMERITECH

Ms. ROSENBLUM. Good morning, Chairman Markey, and members of the Subcommittee on Telecommunications and Finance. I am Lisa Rosenblum, a member of the New York Public Service Commission and the NARUC Communications Committee, on whose behalf I am appearing today.

NARUC commends the subcommittee for its leadership role in developing national policy and is appreciative of the committee's invitation to testify. As further evidence of our interest I would like to introduce Ed Salmon, second vice president of NARUC and commissioner from New Jersey, who is here today.

Mr. MARKEY. Could I just ask that you move the microphone a little bit closer?

Ms. ROSENBLUM. I'm sorry—no problem. At the outset let me make clear that NARUC supports the overall objectives of H.R. 3636, to ensure access to a high quality, open network and preserve universal service and welcomes national policy direction.

We are concerned, however, that the rebalancing of Federal-State authority as proposed may actually impede the transition to local competition, create regulatory gridlock, and jeopardize universal service. We believe the bill can be revised to meet its overall objectives, more competition in the local loop, more effectively by providing the States with authority and flexibility to meet these national goals or risk Federal pre-emption.

In our formal testimony, we have submitted specific amendments to address our concerns. In these comments, I will focus on issues

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related to local competition. Dismantling the monopoly structures that have characterized the industry for close to a century is a complex undertaking. Done wisely, it will bring enhanced consumer benefits, lower prices, more choice and greater efficiencies. Done unwisely or too rapidly, it could lead to rate shock, poor service, and a deregulated monopoly.

State commissions are much better positioned to make the many complex decisions involving pricing, cost allocation and interconnection necessary to a successful transition. We are more knowledgeable about the composition of the markets in our own States, the structure of the industry and the needs of our residential and business customers. As a result, States are better equipped to protect local rates against uneconomic bypass, safeguard competitors against predatory pricing, and provide the appropriate regulatory flexibility necessary for local exchange companies to compete fairly. In working through the details of all the necessary arrangements that are required for local competition to take place, state commissions can facilitate discussions among all the parties and assist in the development of these arrangements.

Right now, States as diverse as New York and Oregon are moving ahead with competitive policies which in some instances have formed the very model on which FCC recent competition decisions are based. While joint boards will enable some state input into Federal policies, and we are pleased that they are included in the bill, States must have the latitude and flexibility to develop responsive policies consistent with Federal objectives.

Federally mandated policies which are out of touch with local concerns could trigger consumer backlash and damage the transition. Our data suggests that had the FCC instead of the state commissions set local rate levels under the formula it has used for interstate rates over the past several years, local rates would have increased substantially, in some instances perhaps as much as 30 percent.

Moreover, even if centralized decisionmaking is superficially more appealing in terms of efficiency, in fact, H.R. 3636 has the potential to create gridlock and slow down the transition by requiring the FCC, already overburdened by cable reregulation, to assume an enormous amount of additional work. Under the bill, the FCC will assume responsibility for completing over 20 new inquiries, rulemakings, and reports, and reviewing complex tariff filings from companies in 50 States, all under aggressive deadlines. Given the often competing interests of the various parties, this is an invitation for procedural paralysis.

Maintaining universal service, as a number of the members of the panel have said, is the central issue that must be resolved to enable local competition. In a competitive environment there is significant pressure to reduce the subsidies that now flow from business and toll services to support residential rates. While there are a variety of views regarding the extent of these subsidies, it is a given that eliminating them will lead to substantial local rate increases.

In NARUC's view, the legislation's preemption of state regulation of the terms and conditions of entry will impede the State's ability to impose the appropriate level of contribution on new entrants or,

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in turn, require that they make minimum commitment necessary to preserve affordable rates.

When the New York Commission recently——

Mr. MARKEY. Could you please wrap up?

Ms. ROSENBLUM. When the New York Commission recently certified Time-Warner to provide local service, it reserved the right to impose entry conditions.

In sum, it would be a critical mistake in terms of meeting the objective of the bill to preempt necessary state authority. Preemption tends to be a slippery slope. The arguments for limited preemption today will become arguments for full Federal ratemaking tomorrow. It will be argued that cost allocations are artificial and state depreciation practices hinder Federal objectives. We have walked that road before.

One more line?

Mr. MARKEY. Please.

Ms. ROSENBLUM. I apologize.

We urge this committee to resist this approach and revise the legislation to provide the States with the necessary authorities and flexibilities.

I apologize.

[Testimony resumes on p. 182.]

[The prepared statement of Ms. Rosenblum follows:]

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THE HONORABLE LISA ROSENBLUM
DEPUTY CHAIRMAN
NEW YORK PUBLIC SERVICE COMMISSION

Testimony of Commissioner Rosenblum for the NARUC on H.R. 3636 1

Good Morning and thank you for giving me the opportunity to comment on H.R. 3636, the National Communications Competition and Information Infrastructure Act of 1993. My name is Lisa Rosenblum. I am a member of the New York Public Service Commission and a member of the National Association of Regulatory Utility Commissioners' (NARUC) Committee on Communications, on whose behalf I appear today.

As you may know, the NARUC is a quasi-governmental, non-profit organization founded in 1889. Within our membership are the governmental agencies of the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands which are engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of government regulation in America. More specifically, the NARUC is composed of, inter alia, State and territorial officials charged with the duty of regulating the telecommunications common carriers within their respective borders. As such, they have the obligation to assure the establishment of such services and facilities as may be required by the public convenience and necessity, and the furnishing of service at rates that are just and reasonable.

NARUC supports the principles on which this legislation is based and applauds your effort to bring the National Information Superhighway to the public. Like members of this subcommittee, the members of NARUC seek to: ensure access to a high quality seamless, open telecommunications network; preserve and enhance universal service; encourage development and deployment of an advanced telecommunications infrastructure and ensure the equitable cost allocation of new services and networks.

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NARUC also supports many of the principles articulated in the Administration's telecommunications policy. We concur in its effort to establish a legislative framework to encourage private investment, provide open access to the network and avoid creating a nation of information "haves" and "have nots."

NARUC's concerns with the legislation, as currently drafted, fall along these lines:

1. The legislation, by unduly centralizing authority and decision making in the Federal Communications Commission (FCC), will create regulatory gridlock and undercut the legislation's primary objective: the smooth transition to an open, interconnected competitive telecommunications network.

2. The legislation's preemption of state authority to establish terms and conditions of market entry will undercut universal service, service quality and consumer protection objectives.

3. The legislation, by endorsing the deployment of one network to provide voice, video and data, may result in costly and unnecessary investment given rapid changes in technology and the demands of various markets.

NARUC believes that the bill can be revised to ensure that the overall objectives of the bill would be achieved more effectively and expeditiously. We recommend that Congress establish national policy goals to achieve local competition and that the Federal Communications Commission (FCC) promulgate broad guidelines consistent with these goals. States would be given the responsibility and flexibility to meet the overall national policy subject to subsequent

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federal intervention for failure to act.[1] Such a system would allow states to fine-tune the federal policies to fit local conditions. Implementation would occur at the state level, avoiding the difficulties recently experienced with federal implementation of the Cable Act and ensuring a smoother transition to competition with a minimum of rate or service disruption.[2]

Below, I will expand on NARUC's concerns with this legislation and address the changes that NARUC is proposing to H.R. 3636.

Redefining the Federal/State Relationship

While national policy direction is needed in telecommunications and this will inevitably carry with it some revision of Federal and State responsibilities, NARUC has serious concerns with the redefinition of responsibilities under this legislation, as proposed.

In its present form, the legislation shifts responsibility away from the states and concentrates it at the FCC rather than creating a federal/state partnership to facilitate the transition. Under the bill, the FCC would have responsibility for such critical issues as compensation rules for interconnection and equal access, the criteria for allowing pricing flexibility, the pace of infrastructure development, and the development of service quality

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[1] NARUC's approach is modeled in part after the state/federal relationship as created by the Public Utilities Regulatory Practices Act of 1978, or more commonly known as PURPA. Under PURPA, states are allowed flexibility to implement policies to reach a national goal. PURPA provides a model in which the competing goals of national uniformity and concern for local conditions are balanced.

[2] Using universal service as an example, the states would first have input into the recommendations put forth to the FCC via the Joint Board. In addition, after the FCC has established standards, the states would develop policies consistent with federal polices and the overall goal of preserving and enhancing universal service.

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standards, and benchmarks.

State oversight of the transition will enhance, not impede, the achievement of local competition. The experience of states that have instituted procompetitive policies underscores the complexity involved in unbundling the network and creating a fair and level playing field. This regulatory oversight is necessary to protect the dominant provider and its captive customers against the rate effects of cream skimming while protecting new providers against unfair pricing and cross subsidization by the local exchange company. Also, vigilance is required to ensure that new providers have equal access to the dominant carrier's network. Without close attention by state regulators to pricing practices, interconnection arrangements and service quality in each of their states, there is a real potential for rate shock and service degradation.[3] States are in a superior position to address consumer complaints and intercompany disputes which will undoubtedly arise as they did following divestiture.

The legislation will create regulatory gridlock by requiring the FCC to undertake an enormous amount of additional, substantive work at a time when it is already overburdened by the cable reregulation.[4] All told, under H.R. 3636, the FCC will assume responsibility for over 20 new rulemakings, inquiries, and reports and is required by the Act to complete them under aggressive deadlines.[5]

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[3] In a more competitive environment, companies will understandably focus their resources on the potentially more profitable markets and seek to shift cost to their captive customers.

[4] The Cable Act gave the FCC responsibility for 26 new rulemakings, inquiries, and reports. (Allard, Nicholas W., Reinventing Rate Regulation, The Federal Communication Law Journal, December 1993, page 97.) Furthermore, the Cable Act required additional appropriations for the hiring of new employees to carry out the Act. There is no reason to think that these limits will not affect the implementation of H.R. 3636 as well.

[5] Attached is an outline of the new FCC mandates required by the Act.

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Under the bill, the FCC is required, after 18 months, to review local exchange carrier tariffs which must identify the rate elements needed to open up the network and examine whether the charges for these services are cost based for each of these elements. Each of these rate decisions requires complex cost allocation studies, which are likely to be contested by numerous parties. The FCC would have to review all of the arguments of the parties across 50 different states and decide whether to approve, or modify the tariffs.

To rebalance the federal/state division of responsibilities in the interest of better meeting the objectives of the bill, NARUC proposes amending the legislation to provide states with the clearer responsibility to implement policies consistent with federally established objectives. Failure of the states to act would trigger federal intervention.

Preemptive Removal of State Authority

NARUC supports the removal of statutory and legal barriers to competition if local loop competition is the federal objective. We agree that the Federal/State Joint Board process is a good approach to developing national minimum standards for equal access and interconnection. In NARUC's view, however, the legislation's preemption of state regulation of the terms and conditions of entry is most troublesome and will tie the state's hands in its effort to protect universal service and service quality.

In many markets, competitive entry would have the beneficial effect of lowering prices, expanding choices for consumers, and increasing efficiency. Rural, less dense, or uneconomic markets may not be capable of sustaining robust competition. In these cases, state policies must ensure that selective by-pass by a few large customers will not saddle remaining customers with

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significant lost revenues and stranded plant and that basic consumer protections are assured.[6]

In New York State, where the Commission has unbundled New York Telephone's network two years prior to similar action by the FCC, the State has certified a number of carriers to provide local and private line services. Each of these companies are required, as a condition of entry, to provide funding for the provision of telephone relay service (TRS), 911, and lifeline services and the Commission is considering applying minimum quality of service standards and basic consumer safeguards against arbitrary disconnection and billing practices when local dialtone is actually provided. These conditions may prove to be essential to the smooth functioning of a multi-provided network at least during a transition period.

We suggest that Sec. 102(c)(3)(A)(B)&(C) of the legislation be amended to make it clear that such conditions are not considered barriers to entry or limitations on the ability to provide service. Our proposed amendment to Section 102 (c) (3) preserves the federal goal of local loop competition, while allowing states to pursue those options which it deems necessary to meet this objective. We believe that Section 102 (c)(3)(A)(B)&(C) should be deleted and in its place the following language should be added:

> *"(3) STATE AUTHORITY. - Notwithstanding section 2(b), State and local governments shall, after one year after the date of enactment of this subsection, not prohibit entry by an entity seeking to provide telecommunications services. A state may impose those requirements as are necessary to preserve and advance universal service, protect public safety and welfare, ensure the continued quality of telecommunications services, safeguard rights of consumers and ensure that*

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[6] Existing legal and statutory barriers are relics of a by-gone day when competition in the local exchange marketplace was not even imagined. These existing prohibitions should not be considered as opposition to competition as they can easily be removed by state legislatures. Our concern is that the preemption language of this legislation goes beyond removal of entry barriers to prohibit any state law or regulation that could be interpreted as restricting a state commission's ability to provide terms and conditions under which these services could be provided.

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rates are just and reasonable."

Moreover, Section 102 (c)(1)(A) and Section 102 (c)(1)(B)(ii) should be amended to require carrier compliance with both equal access and interconnection regulations prescribed by both the Commissioner *"and the states provided that a state's policies are not inconsistent with the federal standards."*

To ensure a level playing field in the transition, providing the local exchange company with additional pricing flexibility needs to be carefully calibrated to the degree of competition in the market. Section 102 (c)(5)(A)(i) permits the FCC to grant pricing flexibility when a service is *"reasonably certain imminently to become, subject to competition."* Section 102 (c) (5) (B) (i) then requires states to apply this same criteria for intrastate services. Many states, however, believe that the presence of actual competition, not the threat of future competition, is the appropriate test to determine whether to grant price flexibility.

To solve this problem, we believe that the language quoted from Section 102 (c)(5)(A)(i) should be stricken from the legislation. In addition, Section 102 (c)(5)(B) should be revised to read:

> *Upon application, states shall consider pricing flexibility in accordance with the criteria established under clauses (i) and (ii) of subparagraph A concerning the service or providers that are the subject of such application. Nothing in this subsection shall limit the state authority to consider additional criteria necessary to ensure that universal service is preserved and advanced.*

Universal Service

Protecting this Nation's longstanding commitment to universal access to affordable basic service during the transition to competition is one of the most critical challenges facing federal

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and state regulators. While there is disagreement about the extent of the subsidies flowing from business and toll services to support local rates at reasonable levels, competition will inevitably place downward pressure on the pricing of competitive services, exposing remaining captive customers to increased prices. States must retain the authority to evaluate new approaches to preserving universal service, including assessing new market entrants through interconnection charges, and targeting subsides more specifically to those in need.

NARUC supports the establishment of a Federal/States Joint Board for the purposes of addressing universal service issues. In particular, the Joint Board process provides the opportunity to develop criteria by which federal and state regulators can assess whether certain services and capabilities should be considered in the definition of universal service and explore funding options.[7]

NARUC's suggested amendment of Sec. 102 (c)(6)(B) relating to universal service includes striking the last sentence of this section which reads *"A State may adopt regulations to implement the Joint Board's recommendations, except that such regulation shall not, after 18 months after such date of enactment, be inconsistent with regulations prescribed by the Commission to implement such recommendations"* and substituting the following language:

> *A State shall:*
> *(i) Consider the recommendations of the Joint Board for preserving universal service. Nothing in this subsection shall prohibit any State from considering other approaches provided that within two years after the Commission establishes*

[7] While the Joint Board makes recommendations to the FCC, which then issues the final regulations, the FCC is not bound in any why to follow the recommendations of the Joint Board. Because the legislation, as drafted, prohibits states from implementing, after 18 months, regulations inconsistent with those prescribed by the FCC, the states may be put in the position of enforcing FCC rules and regulations, which would not be either workable or effective in a specific jurisdiction.

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regulations, adopt regulations that are not inconsistent with the universal service principles in this section.

Rate regulation remains the most important tool regulators have to protect universal service. To clarify that states retain authority over intrastate tariffs, we suggest adding the words *"in the appropriate jurisdictions"* following references to the Commission in Section 102 (c)(4)(A) and (B) relating to tariffs.

Open Platform

NARUC believes that there is a legitimate federal objective in seeking to ensure the availability of advanced telecommunications services in less economically attractive areas. However, it strongly urges Congress to refrain from prescribing winning technologies. A one-size-fits-all approach may result in costly and unnecessary expenditures in certain states, particularly if sufficient demand does not materialize in all markets. Additionally, technology moves ahead far more quickly than the legislative process and should today's available technology be mandated, it may soon be out of date, leaving stranded investment in its wake.

Section 102(d)(3)(A) should read *"The Commission shall initiate an inquiry to consider the rules and policies necessary to make available open platform service, or sufficient network capacity, through one or more networks to services that provide a combination of voice, data, and video. The inquiry shall consider the costs associated with making access to such services available to all subscribers at reasonable rates."*

Cable-Telco Issues

Our final suggestion for amendments to H.R. 3636 relate to the elimination of the cable-

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telco cross ownership restriction. The safeguards proposed by H.R. 3636 – the requirement of a separate subsidiary for programming and a prohibition against subsidizing video programming by subscribers of telephone exchange service – will help to ensure against unfair anti-competitive practices. States can face significant hurdles in monitoring cross subsidization abuses and NARUC believes that the legislation could be strengthened by the inclusion of additional safeguards that would prevent a common carrier video programming affiliate from having recourse to the common carrier's assets in the event of default; that require assets transferred from a common carrier to its affiliate to be valued for ratemaking purposes at the greater of net book cost or fair market value; and that provide that a common carrier must offer the services it provides to its video programming affiliates on a tariffed basis to nonaffiliated interests. In addition, state and federal regulators must be afforded access to books and records of the common carrier video programming affiliate upon request.

Summary

In summary, NARUC supports the overall objectives of H.R. 3636 to open markets to competition and to preserve universal service. We strongly believe, however, that H.R. 3636 would be substantially improved by amendments that would rebalance the federal/state division of responsibilities in accordance with practical realities and good policy. Such changes can be made while preserving the policy goals that are the centerpiece of the Act. States must be given the regulatory flexibility to respond to the local market conditions and to ensure that our ratepayers, who are also your constituents, will have access to an affordable, reliable, and advanced telecommunications system.

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APPENDIX
FCC ACTION MANDATED UNDER H.R. 3636
PREPARED BY THE NARUC

30 Days After Enactment:

- Convene a Federal/State Joint Board on equal access and interconnection *[Sec. 102 (c)(2)(D)]*
- Convene a Federal/State Joint Board on the Preservation of Universal Service *[Sec. 102(c)(6)(A)]*
- Convene a Federal/State Joint Board to ensure proper jurisdictional separation and cost allocation for video platforms *[Sec.658(a)]*

90 Days After Enactment:

- initiate an inquiry on rules and policies for an open platform available to all subscribers to be completed within 120 days of enactment *[Sec. 102(d)(3)(A)]*

180 Days After Enactment:

- initiate rulemaking procedure to establish performance benchmarks for maintaining common carrier network quality *[Sec. 102(d)(5)(A)]*

270 Days After Enactment:

- establish criteria to determine if: 1) a service or provider is or will become subject to competition in geographic area or within a class or service; 2) if such competition will prevent unjust and unreasonable rates; and 3) establish flexible pricing procedures to be used in lieu of tariff schedules *[Sec. 102(c)(5)(A)(i), (ii) & (iii)]*
- report recommendations on universal service preservation *[Sec. 102(c)(6)(B)]*
- Issue recommendations regarding Joint Board results on video platform *[Sec. 658(a)]*

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1 Year After Enactment:

- establish regulations for equal access and interconnection *[Sec. 102(c)(2)(A)]*
- establish rules for interconnection and equal access compensation *[Sec. 102(c)(2)(B)]*
- complete proceedings to implement universal service recommendations *[Sec. 102(c)(5)(B)]*
- Initiate an inquiry to examine the effect of competition on the provision of telephone service and rates furnished by rural exchange carriers *[Sec. 102(c)(9)]*
- prescribe regulations to ensure accessibility for disabled individuals *[Sec. 102(d)(4)(A)]*
- *Establish rules for cross-subsidization [Sec. 658(b)]*

18 Months After Enactment:

- Review LEC tariffs on equal access and interconnection *[Sec. 102(c)(4)(A)]*
- Have in effect rules regarding accessibility for disabled individuals *[Sec. 102(d)(4)(E)]*

2 Years After Enactment:

- Conduct an inquiry on the progress of achieving an open platform. Results of inquiry due to Congress within 90 days. *[Sec. 102(d)(3)(C)]*
- Report results (proposed regulations) of study regarding the establishment of a video platform *[Sec. 653 (b)]*
- Report to Congress on evaluation video programming marketplace *[Sec. 654(b)]*

Annually After Enactment:

- report on open platform status for five years *[Sec. 102(d)(3)(C)]*

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Once Every Three Years After Enactment:

- Conduct a proceeding to: 1) determine if regulations have opened the networks to new carriers; 2) review the definition of universal service and address its success; 3) report to Congress on the results of this proceeding *[Sec. 102(c)(8)(A),(B) & (C)]*

New Responsibilities, Without Deadline:

- approve or reject pricing flexibility applications within 180 days of submission [Sec 102 (c)(5)(B)]
- establish procedures for coordinated network planning and standards *[Sec. 102(d)(2)(A) & (B)]*
- prescribe regulations for open platform based upon inquiry *[Sec. 102(d)(3)(B)]*
- perform expidited rulemaking for new technologies, establish application and review process for new technologies *[Sec. 104 (c)(1)(A) & (B)]*
- review petitions regarding join telemarketing waivers *[Sec. 652 (b)(3)]*
- review smaller and rural telco waiver requests on business transactions *[Sec 652 (d)(1) & (2)]*
- With the states, establish regulations on video platform rates, terms and conditions for access *[Sec 654(a)]*
- establish regulations prohibiting common carriers from cross-subsidizing video programming affiliates or operations *[Sec. 655(a)]*
- prescribe regualtions prohibiting cable operator illegal practices *[Sec. 655(b)]*
- approve or disapprove buyout waiver applications *[Sec. 656 (c)(2)]*
- establish regulations ensuring that video platforms have PEG channels, capacity for commercial use, etc. *[Sec. 659(b)(1)]*

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Mr. MARKEY. Thank you, Ms. Rosenblum.

Our next witness, Mr. Alex Mandl is the executive vice president of AT&T. He heads up AT&T's Key Communications Businesses and is the number two executive at AT&T. This legislation potentially opens up new opportunities for AT&T, and we would like to hear from them here today.

STATEMENT OF ALEX J. MANDL

Mr. MANDL. Thank you, Mr. Chairman.

First, I would like to add AT&T's voice to those commending you, Congressman Fields, and the 11 other members for introducing H.R. 3636. Your bill recognizes well the importance of telecommunications infrastructure to the Nation's future. It recognizes the fact that competition, not monopoly, should be the key ingredient in building that infrastructure, and perhaps most important it represents the first step in testing whether competition can work in a market that has remained an entrenched monopoly, the provision of local phone service.

Although my filed written testimony outlines a few suggested improvements that we believe are needed, AT&T applauds and supports your bill. Competition in long distance and manufacturing, particularly since the break-up of the Bell System in 1984, has created increased investment and productivity, wider choices, more innovation, better products, higher quality and lower prices.

There is no real local phone competition now. Yes, there are some good new companies like Teleport, MFS, and others offering limited access services in some cities. These new ventures may be the start of some local competition, but for some certain business services only. But how many customers last year switched to another full service local telephone company to get better service or better prices? The answer is virtually none. Compare that to long distance where 16 million customers switched long distance companies last year alone. That is nearly 44,000 per day. There are 4 nationwide fiber optic networks, many regional fiber networks, 9 or more long distance companies offer service in at least 45 States, 92 companies offer service in at least four States. Customers in every household in every State, rural or urban, can choose among multiple long distance companies today.

Much is being written now about what telephone companies, cable companies, and others may be capable of doing, but no one should confuse what may be, what could be, with what is today. What exists now is essentially what existed in 1984 and before, local telephone company monopolies. A new study by Economics and Technology, Inc., showed clearly that there is no effective competition for local exchange services now, and the study concludes, "sustained Bell Operating Company dominance and control of essential bottleneck facilities will persist for at least 5 years." I have attached the executive summary of this new study in my written statement for you.

Mr. Chairman, the simple reality is that there are too many barriers to entry in the local telephone market. The FCC and a few States have begun the job of removing some of the regulatory barriers. I am pleased to be on the panel with Lisa Rosenblum of the New York PSC because New York State has certainly led the way.

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I should also compliment NYNEX as I understand they have expressed support for H.R. 3636.

It will take the kind of provisions contained in 3636 to provide the regulatory climate for new carriers to invest and try to make it in the local telephone market. We should all hope competition will work in local services, if it does it benefits the public and would be of a substantial progress for all of us.

A few words are in order, Mr. Chairman, on the many possible new business combinations proposed in our industry and their relationship to our bill. The central question in all the transactions is whether they strengthen or retard competition, anticipating and we hope accelerating the arrival of local telephone competition, we have Bell Atlantic, TCI, Tom Warner, U.S. West and others proposing ventures. We believe all these mergers and alliances have positive potential and should be approved subject to an important condition at the heart of your bill, that the combined firms offer open inter-operable competing networks and services with equal access for customers and competitors alike.

AT&T also applauds the general thrust of H.R. 3626, the Brooks-Dingell Bill, the result of extensive negotiations and work by the two chairmen. That bill reaffirms the important principle that the RBOC's should not be permitted to use monopoly power to impede competition. AT&T believes that the continued success of competition in telecommunications depends directly on the proper sequencing of local telephone competition and MFJ changes.

Although the bill embodies this principle with the impeding competition test for many aspects, there are some major exceptions that cause grave concern. For instance, the bill as now written allows the RBOC's in state and long distance resale with no effective competition requirement, no entry test, and not even a requirement to offer potential competitors full interconnection and equal access. These exceptions would not create incentives to build the information super-highway. It would only serve to expand the monopoly.

Mr. MARKEY. Please try to wrap up.

Mr. MANDL. Mr. Chairman, you said it best last year in several speeches, first comes effective competition and then comes relaxation of MFJ, and that is why AT&T will support H.R. 3636 and will support H.R. 3626 when those exceptions are appropriately modified.

Thank you.

[Testimony resumes on p. 230.]

[The prepared statement of Mr. Mandl follows:]

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Statement of Alex J. Mandl
Executive Vice President of AT&T
CEO, Communications Services Group
Before the Committee on Energy & Commerce
Subcommittee on Telecommunications & Finance
February 9, 1994

Mr. Chairman and members of the Subcommittee: my name is Alex J. Mandl. I am Executive Vice President of American Telephone & Telegraph Company (AT&T) as well as Chief Executive Officer, Communications Services Group. We appreciate the invitation to appear today to discuss H.R. 3636, the "National Communications Competition and Information Infrastructure Act of 1993," and its relationship to H.R. 3626, the "Antitrust Reform Act of 1993." By introducing H.R. 3636, you, Mr. Chairman, and Messrs. Fields, Boucher, Oxley and others, have moved to redress the most pressing national problem in the telecommunications industry: the "lock" that the local phone companies have over the delivery of local service, to use Assistant Attorney General Bingaman's recent metaphor.[1] Customers do not have an effective choice of local telephone providers today, even in the most populous areas, and there is no reasoned basis to think they will any time soon. A customer who wants to switch to a competing local carrier to obtain lower prices or better, more innovative local services is simply out of luck.

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[1] Statement of Anne K. Bingaman, Assistant Attorney General, Antitrust Division, Department of Justice, before the Subcommittee on Telecommunications and Finance, dated January 27, 1994, p. 6. ("Bingaman Statement").

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This is not a criticism of the local phone companies; the lack of competition in the local exchange is rather a consequence of decades of federal and state policies that assumed that local service was and would remain a natural monopoly, and that created a regulatory regimen to keep the local monopoly in place. Even assuming a favorable regulatory climate can be established, it is also true that it will be difficult, and it will be very expensive, for any one to compete successfully with the incumbent local carriers and offer customers the full ubiquity and interconnectivity that is at the heart of local service.

If effective competition is to develop, it will be through the rigorous and sustained efforts of entrepreneurs and their investors, seeking to overcome decades of entrenched local telephone monopolies. But for these latter-day pioneers to succeed at all, lawmakers can and should reform the current federal and state regulatory system that works to protect the local monopolies, replacing it with a new set of rules and incentives more hospitable to the development of local competition. AT&T supports H.R. 3636, which would go a long way toward changing the nature of regulation, and providing the necessary incentives for the development of local competition.

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