

Statement of Earl W. Comstock
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House Small Business Committee hearing on
"Advancing the Innovation Agenda: The Perspective of the Technology and
Telecommunications Industry."
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Madam Chair and members of the Committee, my name is Earl Comstock and I appreciate the opportunity to be here today. I am the President and CEO of COMPTEL, a trade organization that represents all types of competitive communications service providers. Our more than 180 voting members range from multi-billion dollar companies like Sprint-Nextel and EarthLink to start-ups few people have heard of yet. The bulk of our members provide wireline communications services to small and medium size business customers, though we also have companies that serve large enterprise customers and the mass market, as well as companies that are deploying so-called "triple play" services (voice-video-data) to residential consumers. For more than a quarter century, COMPTEL has been aggressively advocating for competition in the telecommunications industry.

Today, the Committee is looking into "Advancing the Innovation Agenda." Four of the main planks of that agenda – a new generation of innovators; a sustained commitment to research and development; affordable broadband access for all Americans; and a competitive small business environment for innovation – are all critically dependent on communications networks for their ultimate success. As a result, I applaud the Committee for looking at how communications policy fits into the achievement of the Innovation Agenda.

Sadly, the United States is headed at full speed in the wrong direction with respect to communications policy. The Federal Communications Commission (FCC) has been rapidly removing the very policies that led to the creation and success of the Internet, and the Justice Department has been allowing the re-establishment of the communications giants that strangled innovation in the communications industry for decades.

Let me note a few statistics from a report by Free Press, the Consumers Union, and the Consumer Federation of America that was released last fall. That report, *Broadband Reality Check II: The Truth Behind America's Digital Decline*, accurately sets the stage for the topic we are discussing today. To summarize some key points from that report:

- the United States remains 16th in world in broadband penetration (i.e., the rate at which consumers purchase broadband services) according to the International Telecommunications Union;
- 14 other OECD nations saw higher overall net growth in broadband adoption than the United States did from 2001 to 2005;
- among OECD countries only Turkey, Slovakia, and Mexico had higher levels of students who had never used a computer;
- other countries' broadband success can largely be attributed to their successful implementation and use of non-discriminatory open access regulatory policies on communications networks;

- other countries enjoy broadband connections that are far faster and cheaper than those found in the United States;
- broadband prices in the United States show no real sign of declining; and
- that the threat of competition, and not deregulation, is the most important factor behind incumbent providers investment decisions.¹

Taken together, the statistics cited above illustrate the magnitude of the problem this Congress faces. The communications networks on which the success of the Innovation Agenda depends are rapidly becoming subject either to monopoly control by the newly deregulated telephone incumbents or else to a cozy duopoly between the incumbent telephone company and the unregulated cable companies. Without intervention by Congress – either in the form of guidance to the FCC to reverse its present trend toward wholesale deregulation of dominant carriers or in the form of new legislation that reinstates the common carrier framework that the FCC is so cavalierly abandoning – then America is likely to fall further and further behind other developed nations in a whole range of areas because we are burdened with higher prices, slower speeds, and less innovation with respect to the critical communications networks that are the essential lifeblood of our information age industries.

Communications networks are indeed the lifeblood of our economy. They are as important to our economy today as highways were in the 20th century and railroads were in the 19th century. Businesses today depend on communications networks to offer

¹ *Broadband Reality Check II: The Truth Behind America's Digital Decline*, Free Press et al (August 2006), pp. 3-4. Available at www.freepress.net/docs/bbrc2-final.pdf

goods and services to their customers, to advertise, to inform, and to be informed.

Without reasonable and non-discriminatory access to communications networks, no business can be certain of their ability to compete in the marketplace and no student can be confident of their ability to learn and innovate with the best and brightest.

Communications networks are the key to success in the 21st century, yet the United States is increasingly adopting policies that will permit a few network operators to decide which businesses succeed or fail, and which innovations are allowed to reach consumers in the marketplace, through their private control of these public information highways.

In particular, Congress can provide guidance to the FCC on four areas of critical importance that affect the ability of COMPTTEL members to continue to provide competitive services to small businesses and residential consumers. Those areas are access to incumbents' networks, special access pricing, forbearance petitions, and copper loop retirement. I will discuss each of these areas more fully below.

COMPTTEL is greatly concerned about access to the incumbent telephone companies' ubiquitous networks. Competitive service providers pay for access to incumbent networks at either an unbundled network element (UNE) rate, which is determined through arbitrations overseen by the FCC and state public utility commissions, or at a "special access" rate, which in most markets is set by the incumbent. Special access rates are significantly higher than UNE rates.

This Committee's concern is that America's small businesses have the ability to purchase the advanced communications services, most notably broadband services, which will enable them to compete in the new millennia. The only way to ensure affordable broadband for small business in this country is to maintain or reinstate the successful policies that enable competitors to reach small business customers. The FCC is busy dismantling the common carrier legal framework that enabled the development of the fax machine, computer modems, the Internet, and broadband over both cable and DSL technologies. It is this common carrier framework that enables competitors to offer new and innovative services to small businesses by allowing non-discriminatory access to the incumbent communications infrastructure on reasonable terms and conditions. The FCC's current approach increasingly requires competitors to first construct their own ubiquitous network in order to compete, something that has never been successfully done here in the United States or, for that matter, anywhere else in the world. If this unfounded FCC policy is allowed to continue, it will not only diminish competition among communications providers, it will ultimately destroy the Internet as an engine of US economic growth.

The Internet is an interconnected series of networks. It was created in the United States through common carrier policies that ensured reasonable and non-discriminatory access to transmission infrastructure for the attachment of devices, interconnection of networks, and the provision of services. The Internet is not a new network – it was made possible by the ability of innovators to attach new electronics to the existing Public Switched Telephone Network (PSTN) and obtain for a reasonable and non-discriminatory

fee the right to provide services to consumers using those electronics, all without those innovators having to obtain the consent of the incumbent network operators. The Internet, the PSTN, and increasingly the cable network, are one in the same when it comes to the physical infrastructure – either fiber, copper, and coaxial cables – that are used to carry Internet, phone, and video traffic. If you have any doubt about that, try cutting the phone or cable wire to your house and see what happens to your Internet service. Congress needs to make clear to the FCC that they expect all competitors to be able to access the underlying communications infrastructure on reasonable terms and conditions.

The second issue of great importance to COMPTEL members is special access pricing. Special access is an industry term of art for dedicated point-to-point transmission services purchased from the incumbent telephone companies that almost all competitors, including wireless carriers and Internet backbone providers, use special access to provide communications services to businesses and wireless customers. Competitors have to purchase more than 95% of their special access services from incumbent Bell companies, and AT&T and Verizon alone take home 82% of the special access revenue. The FCC claims that the special access market is competitive, yet according to information filed by the Bells with the FCC their rates of return last year on special access services ranged from 42% to nearly 100%!

A recent study by the Government Accountability Office (GAO) that was released in November 2006 at the request of Congressman Tom Davis, then Chairman of the

House Government Reform Committee, looked at the specific issue of special access. The GAO looked at the FCC's methodology for determining if competition exists in a specific market and then looked at what happened to prices in the specific markets where the incumbent Bell companies were given regulatory relief by the FCC.

First, the GAO found that the FCC's data did not provide a robust measure of the strength of competition in a market. The GAO wrote that:

FCC uses various data to assess competition for dedicated access, but most of these data have significant limitations in their ability to describe the presence, extent, or change in competition in any given area. For example, the data presented in a price flexibility petition measure potential competition at one point in time and FCC does not revisit or update them, even though competitors may enter bankruptcy or be bought by another firm.²

Even worse, the GAO found that prices for dedicated access were actually higher in markets where incumbent carriers had been granted full deregulation from pricing rules.³ As a result, competition in these markets declines and the cost of telecommunications services for small business goes up. This Committee and other members of Congress could bring rate relief to small businesses and wireless consumers and increase the level of competition by directing the FCC to reinstate special access price caps.

² GAO Report 07-80, *FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, November 2006, page 20.

³ *Ibid.*, p. 13.

The third area in which the Committee could be helpful in promoting access to communications networks is with respect to the forbearance petitions that incumbents are increasingly using as a means to get regulatory relief. Presently, the FCC is considering a number of petitions from the largest telecommunications companies – AT&T, Verizon and Qwest – that seek forbearance under section 10 of the Communications Act (47 U.S.C. 160) from other provisions of the Communications Act that require these incumbents to provide nondiscriminatory access to their monopoly networks. In essence, the ILECs have been using the forbearance process to re-write the 1996 Telecom Act to their benefit without Congressional involvement. The FCC is supposed to ensure that providing such forbearance is in the public interest and that approving it “will *promote* competitive market conditions, including the extent to which such forbearance will *enhance* competition among providers of telecommunications services.” (47 U.S.C. 160(b))

These petitions affect the largest metropolitan statistical areas (MSAs) in the United States. Verizon alone has requested forbearance in most of the major East Coast markets – from Boston to Virginia Beach. Should these be petitions be granted, competition will suffer. Prices for access to the incumbents’ networks will skyrocket, making it even harder for competitors to offer services to the small business community.

Let me give you an idea of what this means, practically speaking, to a small business. It is estimated that the price of a DS-1 or T1 line, one of the most common

services a business will purchase, will go up 25%⁴ if service providers are forced to purchase access to the incumbent network at rates set solely by the ILECs instead of rates regulated by rules established by Congress in the 1996 Telecom Act. For New York, the cost to competitors is estimated to exceed \$168 million per year. In Ohio, the cost estimate is more than \$114 million.⁵

COMPTEL strongly opposes the forbearance petitions and encourages Members of Congress to also oppose them. As members of the Small Business Committee, you should take to heart the fact that FCC Commissioner Copps has said “this Commission does not have a small business record to brag about.”⁶ Absent guidance from Congress, it is highly unlikely the FCC’s dismal record will improve.

A final issue of great concern for the competitive industry is the “retirement” of copper loops, which refers to the ILECs cutting or removing the copper wiring from their networks. Current FCC rules require only the disclosure of the ILECs’ intention to retire a copper loop, leaving limited opportunity for consumers and other affected parties to object to the proposed copper retirement.

⁴ *Economic Impact of the Elimination of DS-1 UNEs*, Microeconomic Consulting & Research Associates, Inc. June 2004.

⁵ Ibid.

⁶ *Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses*, Dissenting Statement of Commissioner Michael J. Copps, February 12, 2004.

It is access to these copper wires that enables many COMPTEL member companies to offer innovative and lower priced services to residential and business customers. Examples of these services include DSL service to residential customers and small business customers for a fraction of the monopoly price the incumbents' used to charge businesses for the same service, and also "triple play" services. Small businesses rely on the existence of the copper network with its competitive access rules to ensure that they have a choice among service providers. Even though the installation of new fiber facilities is part of routine network maintenance for incumbent providers, under the FCC's present pro-incumbent rules, competitors do not have a legal right to access more than 64 kilobits per second – a single voice line – on an incumbent's fiber transmission facilities. Thus the existing copper network is the only means by which we can provide competitive services to America's small businesses and consumers.

When a portion of the copper network is retired a critical piece of the network infrastructure, which could be used to provide alternative services to consumers, is lost. Under the present FCC rules, without copper loops to access, there is no possibility of competitive alternatives being provided over the incumbent infrastructure. Absent alternative facilities – and fewer than 6 percent of the *commercial* buildings nationwide have alternative (non-ILEC) fiber running to them – there is no realistic possibility for competitors to offer service to the customers whose copper has been removed.

The ILECs claim they no longer wish to maintain a network that they don't use and have little use for. However, our companies are using that network to do what the

“Innovation Agenda” seeks. For example, today in Richmond, Va., a company called Cavalier is providing the “triple-play” of voice, television and Internet access for \$95 per month *using the existing copper lines of the Verizon network*. As a result, consumers and small business customers enjoy lower prices and greater choice in services, not only from Cavalier, but also from Verizon and the incumbent cable operator, who both have to respond to Cavalier in the marketplace (though as noted above Verizon’s response has largely been to file a forbearance petition seeking to eliminate access by companies like Cavalier rather than continue to compete in the marketplace).

In 2006 Verizon filed one notice of copper retirement. In January of this year, a number of COMPTEL member companies filed a petition at the FCC on this matter requesting that the FCC establish a formal process for approval of copper loop retirement. Since January, the ILECs have filed 83 additional notices of copper retirement. Where will that leave the customers, your constituents, in those 83 markets? Congress needs to push the FCC to enact reasonable rules to ensure that Verizon and other incumbents do not use fiber deployment and the accompanying copper loop retirements as a means of diminishing competition. The FCC could easily address the issue by either establishing reasonable requirements to ensure continued access to copper facilities or by removing its 64 kilobit limitation on competitive access to fiber, thus ensuring that consumers can enjoy the benefits of fiber deployment and competition at the same time.

Madam Chairman and members of the Committee, I thank you for your time and welcome your questions.