

**TESTIMONY REGARDING HOW INTERNET PROTOCOL-ENABLED SERVICES  
ARE CHANGING THE FACE OF COMMUNICATIONS  
BEFORE THE U.S. HOUSE COMMITTEE ON ENERGY AND COMMERCE  
SUBCOMMITTEE ON TELECOMMUNICATIONS & THE INTERNET**

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**April 27, 2005**

**I. INTRODUCTION**

Thank you, Mr. Chairman, for inviting me here to testify. I am a Commissioner at the Florida Public Service Commission, the agency with regulatory jurisdiction over Florida's investor-owned telephone, electric, natural gas, and water utilities. My comments here today are those of an individual Commissioner. I am also before you as a consumer who has not had telephone service for over a year. I use a wireless phone, VoIP service over my cable modem, Blackberry data service and wireless broadband when traveling – but I have no telephone.

I would like to thank the Committee for its ongoing efforts to ensure that consumers in Florida and across the country benefit from policies to promote the development and deployment of advanced communications technologies. I would also like to thank the Florida delegation represented on this Committee for its consultation with the Florida Commission on energy and communication issues important to the State of Florida.

Under the leadership of Governor Bush and the Florida Legislature, Florida leads the nation in policies focused on bringing new technologies to all Floridians. Florida was the first state in the nation to provide that VoIP shall not be subject to regulation. Florida was the first state in the nation to provide that broadband, regardless of the provider or platform, would not be subject to a patchwork of local government regulations. As a result of forward looking policies,

companies like Vonage as well as cable companies are competing with established telecom providers for a share of the voice market. On the video side, Verizon is gearing up to compete with cable though its build out of a robust video over fiber network in central Florida. Competition is occurring in Florida, and it is occurring outside of “the regulated space.”

## **II. THE 1996 ACT: INSIDE AND OUTSIDE THE REGULATED SPACE**

### **A. The Traditional Telecom Sector**

The U.S. Chamber of Commerce recently reported on the state of the wireline telephony sector. From March 2000 to July 2004, market capitalization in the telecom sector plummeted from \$1,135 billion to \$375 billion (a 67% decline). The communications equipment-manufacturing sector experienced a 74% decline in market capitalization (from \$1,282 billion to \$338 billion) for the same period.<sup>1</sup> Some 380,500 jobs were lost between March 2001 and May 2004 in telecom service, Internet service, and equipment manufacturing.<sup>2</sup> The Yankee Group projects that U.S. landline revenue will fall from \$63.2 million in 2004 to \$47.4 million in 2008.<sup>3</sup>

### **B. Innovation, Investment and Competition Outside the Box**

Other sectors are flourishing under the regulatory policies established by Congress. The extent of innovation and investment “outside the box” is perhaps best demonstrated by the success of the wireless industry. The industry has, for example: invested more than \$174 billion (1983 to 2004) in wireless networks and reinvested some \$20 billion annually for upgrades and expansions;<sup>4</sup> directly employed 226,016 people as of December 2004 and generated more than \$9 billion in annual payrolls;<sup>5</sup> and increased subscribership to over 182 million while reducing per minute prices.<sup>6</sup>

While occurring outside the ILEC vs. CLEC competition envisioned by the 1996 Act, *competition is occurring*. Research firm IDC predicts, for example, that by 2009, some 27 million consumers will subscribe to VoIP.<sup>7</sup>

Cable is competing with traditional wireline telephony. Raymond James reported that Wall Street “expects between 1.5 million and 2.5 million cable telephony net adds by the public MSOs in 2005.”<sup>8</sup> Goldman Sachs estimates that telephone companies could lose 7% of residential lines to cable by 2006, and nearly 20% in the next 10 years.<sup>9</sup> Another estimate is that more than half of all 110 million households in the U.S. will have the option of getting phone service from their cable companies by the end of 2006 and that by 2008, cable companies will be selling phone service to 17.5 million subscribers.<sup>10</sup>

Wireless is also competing with wireline telephony. According to the FCC’s September 2004 report, the number of mobile wireless subscribers nationwide has grown 5% since 2002, with subscribership at 54% of the U.S. population as of December 31, 2003.<sup>11</sup> In contrast, local exchange companies saw a 6.1 million drop in access lines nationwide in 2003.<sup>12</sup> According to a 2004 study issued by In-Stat/MDR, 14.4% of U.S. consumers currently use a wireless telephone as their primary telephone. Of the remaining 85.6%, 26.4% of those would consider replacing their wireline telephone with wireless service. In-Stat/MDR predicts that by 2008, nearly a third of all U.S. wireless subscribers will no longer have a landline in their homes.<sup>13</sup>

Wireless is also competing for a share of the enterprise market. In a recent In-Stat survey of more than 300 mid-size businesses and large enterprises, nearly 1/4<sup>th</sup> of respondents stated that their firm had already deployed wireless VoIP. Approximately 1/3<sup>rd</sup> of the respondents indicated that their firm was planning or evaluating the implementation of the technology within the next six to 12 months.<sup>14</sup>

Internet-enabled communications are also competing with traditional voice. A 2003 J.D. Power and Associates study found that among high-speed Internet users, instant messaging displaced 20% of local calls, and email displaced 24% of such calls. Among dial-up Internet

users, the study concluded that instant messaging displaced 18% of local calls, and email displaced 23% of local calls.<sup>15</sup>

### **III. THE BENEFITS AND COSTS OF BROADBAND**

#### **A. The Importance of Broadband**

Broadband is critically important to the economic well being of the country – and of the states. Like with many states, Florida’s economic and social development – including its skills and job training, education and health care services,<sup>16</sup> and the recruitment and retention of businesses – is increasingly linked to an advanced communications infrastructure.

In their seminal study, Crandall and Jackson conclude that ubiquitous adoption of current generation technologies would generate some \$63.6 billion in capital expenditures over the next 19 years.<sup>17</sup> They further estimate a cumulative increase in GDP of \$179.7 billion and an additional 61,000 jobs created. The impact of more advanced technologies, such as fiber to the home, would generate an additional net \$82.8 billion in capital spending (\$4.34 billion per year) for a total of \$146.4 billion in new capital spending over 19 years, which would result in a total of 140,000 new jobs. Broadband enabled activities have the potential to spur new rounds in capital spending (on research, development, and deployment) and consumer spending (on content, software and applications, and devices).

#### **B. Bringing Broadband to Consumers Takes Capital**

Realization of broadband’s full economic potential will require billions in additional up-front investments in technology, networks, and deployment. To upgrade systems and make cable broadband service more widely available to homes passed by its network, cable operators have invested almost \$95 billion between 1996, when cable pricing was deregulated, and 2004.<sup>18</sup> ILECs are responding to FCC rulings that new build would not have to be unbundled or shared with competitors by making significant investments in fiber. For example, Verizon states that is

spending an estimated \$3 billion on fiber deployment in 2004 and 2005. In 2004 alone, Verizon announced that it was spending \$60 million to deliver fiber technology to customers in Florida.<sup>19</sup> Additionally, SBC has recently announced that it is accelerating its fiber deployment and plans to invest approximately \$4 billion to \$6 billion to deploy some 38,800 miles of fiber to reach 19 million homes by the end of 2007.<sup>20</sup>

Estimates by research firms on the potential for additional broadband investment are abundant. For example, one such estimate by InStat concludes that a \$3 billion investment would be necessary to deploy a WiMAX-based network that reaches 98% of U.S. homes.<sup>21</sup>

### **C. Florida's Focus on Promoting Competition**

Florida is promoting the deployment of new technologies in the state. In addition to not regulating wireless carriers,<sup>22</sup> Florida was the first state in the nation to deregulate VoIP.<sup>23</sup> The Legislature also freed broadband and information services generally from a potential patchwork of local government regulation that could hinder its deployment.<sup>24</sup>

Currently, the Florida Legislature is considering companion bills in the House and Senate<sup>25</sup> to further promote advanced communications technologies in the state. If ultimately enacted into law, the legislation would expressly:

- Encourage consistency with federal law.
- Exempt broadband services, regardless of the provider, platform or protocol, from state commission jurisdiction.
- Ensure that emerging technologies like VoIP, while not subject to traditional regulation, are “subject to [Florida’s] generally applicable business regulation and deceptive trade practices and consumer protection laws, as enforced by the appropriate state authority [or in court].”

Floridians are the beneficiaries. For example, over 20 wireless competitors serve over 10 million Florida subscribers,<sup>26</sup> and 77% of Floridians have a choice of five or more wireless carriers. Wireless carriers employed 13,893 Floridians in 2003. VoIP providers, including

Vonage, AT&T, and Bright House Networks are competing with traditional telecommunications providers. In terms of broadband access, Florida had over 1.76 million high-speed lines in service to residences and small businesses by December 2003 – up from 254,000 lines just three years prior.<sup>27</sup> In 2004, Verizon began deploying fiber to the premises (FTTP) technology. Verizon plans to pass more than 100,000 Florida homes and small businesses, and is set to launch its first television services on its new FTTP network this year.<sup>28</sup>

Florida's approach provides a model worthy of consideration at the national level. In exempting new technologies from old regulation, Florida has paved the road for delivering new technologies to consumers. At the same time, providers of new technologies remain subject to the state's aggressive, generally applicable consumer protection regime.

#### **IV. A NEW, NATIONAL POLICY FRAMEWORK IS NEEDED**

Policymakers should avoid casting the issue as one of states' rights versus federal preemption. State and federal policymakers are pursuing the same core goal – that being to promote investment in the development and deployment of broadband infrastructure.

At a time when some states are focused on harnessing the benefits of competitive new technologies for its consumers, other states are attempting to burden the new technologies with old rules designed to forge competition in the monopolized wireline telephony market. Fifty states with potentially fifty different regulatory policies will not further that goal.<sup>29</sup> A new, national policy is needed to both (a) help the telecom sector recover<sup>30</sup> and (b) ensure that consumers reap the benefits of advanced technologies.

##### **A. IP Challenges the Existing Regulatory Regime**

Current telecommunications regulation has its genesis in the economic regulation of monopoly providers of wireline telephony. Economic regulation acts as a proxy for competition. The 1996 Act intended to spur competition by encouraging CLEC market entry. The regulatory

approach is fundamentally grounded in a wireline paradigm, presupposes that the relevant market is local telephony, and is focused on the terms/conditions of market access. Consumer choice is a function of the ILEC vs. CLEC competition. The Act is not focused on other categories of competitors or technologies that may be competing with traditional telephony.

Further, under existing law, classification of a service as “telecommunications” or “information” is critical in that it determines the rights and obligations to which a provider will be subjected. In the IP world, the line between “telecommunications services” and “information services” is murky at best. VoIP represents the convergence of voice and information. Some would force IP-enabled voice services into the “telecommunications” service box or some similar definition under state law. In doing so, they are seeking to preserve a regulatory model that is increasingly obsolete and that was not intended to encompass such technologies.

Uncertainty as to the regulatory treatment of IP-enabled technologies, and efforts to pigeonhole new technologies into old regulatory constructs, will serve primarily to delay the development and deployment of these technologies for consumers.

## **B. Rationales for a National Policy Framework**

### **1. *Intent of the 1996 Act***

A national policy framework for IP-enabled services (and broadband generally) is fundamentally consistent with (if not required by) the Telecommunications Act of 1996, which was designed "to provide for a *pro-competitive, de-regulatory national policy framework* designed to accelerate rapidly private sector deployment of advanced telecommunications and information technology and services...").<sup>31</sup>

### **2. *Interstate Nature of the Market***

IP-enabled technologies and platforms exist and function without regard to state boundaries and as part of a national (indeed, global) communications infrastructure. Such

technologies are “borderless” in nature. Unlike with the circuit-switched network, which developed within states and then between states, traffic over an IP network does not follow any prescribed geographic path. IP traffic cannot be readily defined as within the jurisdiction of states.<sup>32</sup> The interstate nature of IP-enabled services and the need to avoid a patchwork of potentially fifty different state policies argue strongly for regulation at the national level.

### **1. Costs for Consumers of a State-Centric Approach<sup>33</sup>**

National regulation of IP-enabled services would provide greater regulatory certainty than would a patchwork of fifty potentially different state policies. An industry that faces potentially divergent or unknown regulatory regimes would have less of an incentive to invest risk capital than would an industry facing a more uniform, predictable national policy. With Congressional assurances of regulatory clarity, VoIP providers would likely be more willing to expand services, even in states like California that are considered riskier regulatory environments

*A patchwork of various state regulations all aimed at the same service would likely result in additional costs to the consumer.* If 10 of the 50 states each have good (but different) ideas for regulation and each of those 10 good approaches would cost on average \$2M for the providers to comply, the overall costs of service would increase. This additional level of state regulation would have resulted in \$20M in additional regulatory costs that will, in a competitive market, be socialized amongst the customers of the services. The costs of state specific regulation by Florida, California and New York would likely be borne by consumers in every jurisdiction represented in Congress.

### **C. Core Components of a National Policy**

#### **1. *No Economic Regulation***

Economic regulation is a proxy for competition. It includes the regulation of prices and of other terms and conditions of service that would otherwise be determined by the market.

While economic regulation of monopoly providers of a service is certainly warranted, such regulation is a certain disincentive to investment in competitive markets. Unlike the market for wireline telephony in 1996, the market for IP-enabled services is competitive. Even in the face of regulatory uncertainty, IP-enabled technologies are spurring robust price and service competition from a host of established firms and new entrants alike – and this competition is occurring across platforms. Consumers have far more choices than existed 5 years ago.

## **2. *Focus on Social Regulation***

While IP-enabled technologies should not be subject to economic regulation, “social regulation” is necessary to meet key societal objectives that may not be fully or properly addressed by the market (*e.g.*, 911/e911).

Uncertainty currently exists as to the scope of providers/technologies to which social regulation would apply. In considering the appropriate regulatory regime, Congress has the unique opportunity to articulate a clear *quid pro quo* for the regulation at issue. One technologically agnostic option might be for Congress to provide that any provider seeking to use North American Numbering Plan resources is subject to some universe of generally applicable social regulations as articulated by Congress (or the FCC by delegation). Tying social regulation to the use of a public resource would (a) provide certainty to providers relying on public numbering resources to deliver services, (b) offer a safe harbor to entities that are not relying on such resources, and, perhaps most importantly, (c) provide a clear benchmark for use by state and federal policymakers.

## **3. *Regulatory Parity and Technologically Agnostic Rules***

Competition is not sustainable in the long run where substitutable products are subject to asymmetrical regulation. In deciding where to invest, the market will compare the anticipated return on capital invested in a more regulated sector to capital invested in a less regulated sector.

A rational investor seeking a maximum return on its investment would, all else equal, choose the less regulated sector.

As such, the ultimate policy regime should not discriminate based on the underlying technology or platform used for the delivery of services: technological parity should result in regulatory parity. From the vantage of the consumer, there is no reason for regulating substitutable products differently. If, for example, Video over IP and Video over FTTH are substitutes from a consumer vantage, a similar regulatory regime should apply. From the vantage of the market, regulatory symmetry works to send accurate price signals, maintain a level playing field, and promote competition based on the merits. The best way to ensure regulatory parity is for Congress to set national policy with respect to competing technologies.

As Congress considers a rewrite of the 1996 Act, two avenues exist for achieving regulatory parity: “regulating up” or “deregulating down.” The market for IP-enabled services is competitive, and consumers have more choices than at any point in the past. As such, regulating similarly situated platforms down to the point of regulatory symmetry would likely do more to encourage investment and bring new choices to consumers than would regulating up.

#### **4. *Jurisdiction & Process: Cooperative Federalism***

In assigning jurisdictional responsibilities, future legislation ought to reflect that states *and* the federal government share certain interests and responsibilities. For example, both levels of government share an interest in ensuring a ubiquitous, reliable and affordable 911/e911 emergency services network. One cannot credibly argue, however, that the 50 states should have independent jurisdiction to set 911/e911 standards. Similarly, the states and the federal government share interests in protecting consumers against unscrupulous practices, in ensuring that networks interconnect, and in curbing abuses of market power.

The issue is not one of states versus federal rights and should not be cast as that. The issue is one of articulating a rational policy framework such that core public policy objectives are met, providers are not deterred from investing in and deploying new technologies to consumers, and consumers are protected against unscrupulous practices.

Federal statutory reform should focus on the skill sets of state and federal governments before delineating regulatory duties. The nation – its consumers as well as those investing in new technologies – would be best served by a set of national rules that could be aggressively enforced by the states (or federal agencies as the case may be). States have numerous “enforcement” vehicles already established. For example, states have substantial experience enforcing federal rules that provide for interconnection and intercarrier compensation, rules that establish 911 obligations, and rules that prohibit slamming or cramming. Going forward:

- Federal law could establish consistent requirements for platform interoperability and interconnection, with state commissions serving as arbitrators of disputes.
- Federal rules could establish the parameters for the use of North American Numbering Plan resources, while vesting states with enforcement authority (*e.g.*, denial of right to use numbers upon findings of misconduct).
- Comprehensive national truth-in-billing rules could be policed by state commissions (or other bodies deemed appropriate by a state, such as a state Attorney General).

## **V. KEY POLICY AREAS**

### **A. Consumer Protection**

States and the federal government share a common goal of ensuring that consumers are protected against unscrupulous companies and fraudulent practices. That shared goal could best be met by a national consumer protection regime with the following elements: (a) national rules specifically relating to the terms and conditions of communications services; (b) joint state and federal enforcement of such rules; (c) continued application of “generally applicable” state

consumer protection, fraud and deceptive business practice laws; and (d) recognition of industry self-policing.

National rules would prevent potentially conflicting (albeit well-meaning) state regulations. For example, California, in a consumer “bill of rights” issued by the state utility commission, dictated the font size to be used in the contracts of national providers. Twenty states requiring twenty different font sizes would be costly for consumers. Requiring that the contracts of national providers comply with a patchwork of state-specific terms and conditions would substantially increase transaction costs (which, in a competitive market, will undoubtedly be paid by consumers). Further, having to comply with potentially 50 sets of state-specific rules may simply deter some providers from even offering service in certain areas. In either case, the consumer loses.

Joint state and federal enforcement of national rules would ensure that the consumers have institutions in their states to which they can turn for assistance. As states have existing enforcement mechanisms (*e.g.*, to address cramming and slamming), the enforcement of consumer rights claims should, to the extent practicable, occur at the state level. Burdening a state consumer with a requirement to enforce his or her claim in a federal forum would be unreasonable in most instances.

Notwithstanding national rules focused on the communications sector, states should continue to have the right to continue to enforce their generally applicable consumer protection, anti-fraud, and deceptive trade practices statutes.

Where possible, public policy should give weight to meaningful self-policing initiatives such as CTIA’s Voluntary Consumer Code. Wireless carriers have demonstrated a realization that proper billing practices and consumer satisfaction are important objectives. The Code is designed to encourage greater wireless carrier communication and disclosure to consumers on a

voluntary basis.<sup>34</sup> Such initiatives should be encouraged and afforded a reasonable opportunity to address the particular issues at hand. If demonstrated to be effective, such efforts could serve as the basis for national rules or to establish liability of non-conforming providers.

**B. Public Safety**

Public policy argues for a ubiquitous, reliable and affordable public safety communications network. While market forces will likely encourage competitors to provide functional 911/e911 services over time, the issue should not be left solely to the market.

Congress (directly or via delegation to the FCC) should establish clear 911/e911 mandates for IP-enabled voice technologies. As was the case with the wireless industry, policymakers should afford a reasonable opportunity for providers of IP-enabled voice services to develop compliant systems to meet mandatory standards.<sup>35</sup> Market forces (*i.e.*, consumer demand for 911 service) and a pending government mandate should motivate effective solutions. As voice traffic migrates from the PSTN to new networks, all segments of the industry have an incentive to provide 911/e911 services sooner rather than later.

In the meantime, VoIP providers using public numbering resources should be required to fully inform consumers regarding the extent to which their service does (or does not) offer 911 service that is functionally equivalent to that provided by traditional telephone providers. To avoid a patchwork of potentially conflicting state regulations, which could chill the rollout of new services to consumers, Congress could provide for uniform, national disclosure guidelines to which VoIP providers using public numbering resources would have to comply in order to provide service.

Finally, all providers utilizing the 911 system (*i.e.*, those routing calls to the 911 system) should bear their “fair share” of the costs of maintaining the system. Regulatory parity argues that those who use the system should, regardless of the platform used, support the system.

### C. Taxation

In competitive markets, taxation increase prices, lowers demand, and reduces the amount of funds otherwise available for capital investment. Despite being drivers of the economy, the advanced communications services are generally taxed at rates far above generally applicable business tax rates. As more traffic moves to IP networks, some may argue that existing tax regimes should apply. Where and when possible, the disproportionate tax burden faced by various segments of the advanced communications industry should be addressed.

Taxation of the wireless sector highlights the problem. “States are taxing wireless customers at steep rates of up to 22%-an amount typically reserved for activities such as gambling and alcohol consumption.”<sup>36</sup> Estimates are that a typical consumer faces a nearly 17% total tax on wireless service.<sup>37</sup> In contrast, the average tax rate for other goods and services is 6.93%. Between January 2003 and April 2004, the effective rate of taxation on wireless service increased nine times faster than the rate on other taxable goods and services. According to a recent study, each 1% increase in the price of service reduces demand by an estimated 1.12 to 1.29%.<sup>38</sup> In Florida and New York, high taxes arguably reduce customer demand by about 20%.

Reducing an excessive tax burden on the nation’s advanced communications platforms is essential if the nation is to maximize its economic development potential. Economist Gregory Sidak estimates that reducing wireless taxes to the prevailing general business tax rates would increase GDP by \$53.6 billion to \$65.6 billion over ten years and that a one percent decrease in wireless prices would "increase U.S. GDP by between \$6.8 billion and \$7.8 billion within two years of the tax reduction.”<sup>39</sup>

Last year, Congress took the important step of banning Internet access taxes for an additional four years. It is respectfully submitted that this temporary ban should be made permanent.<sup>40</sup> A permanent ban would ensure that Internet access remains affordable for all

Americans, regardless of the platform used to access the Internet (dial-up, DSL, cable modem, Wi-Fi, etc.). Since 1998, the moratorium has contributed significantly to the development of the industry (and to economic development generally). Ubiquitous access to the Internet contributes positively to educational achievement, economic development and the delivery of governmental services by Florida and other states. Taxing Internet access would represent a tremendous transfer of wealth from the private sector to government. Such taxation would only make it more difficult for consumers with lower incomes to afford the Internet.

#### **D. Universal Service**

Universal service has proved an important tool in helping bring telecommunications services to economically disadvantaged consumers, to consumers with special needs, and to consumers in rural or high cost areas of the country. As consumers increasingly turn to substitutes for a taxed service, not subjecting those substitutes to USF obligations results in regulation picking market winners and losers. Some competitors, but not others, would bear the brunt of funding the program. In reforming the USF program, Congress (or the FCC under the authority delegated to it) should subject some “appropriate” universe of participants to non-discriminatory, technology neutral USF funding obligations.

While reform of USF is a complicated issue involving numerous policy choices and many stakeholders, it is respectfully suggested that any reform of USF recognize certain core principles, including the following:

- USF obligations ought to reflect, to the extent possible, a clear social contract or *quid pro quo* that exists without regard to technology or platform (*e.g.*, any provider that utilizes North American numbering resources shall be responsible for USF contributions regardless of the technology or platform used to provide service).<sup>41</sup>
- The extension of USF obligations to new providers or platforms ought *not* constitute simply a new tax. Rather, such extension should reflect a reallocation of planned costs amongst some group of similarly situated competitors.

- Providers that are required to share in the USF burden ought to, at some equitable level, be considered for USF distributions.

Reform of the USF should also strive to tackle distribution issues. For example, wireless providers (serving 182 million) contributed almost 33% of the total universal service fund in 2004 (approximately \$2 billion) but received only about 7% (approximately \$390 million) in distributions. In comparison, ILECs contributed about 26% of the total USF last year, but received almost 81% of the fund. Long distance providers contributed 37% of the total USF last year, and received about 2% of the fund. While parity in contributions and distributions across platforms may not be attainable, the cost benefit relationship is worthy of consideration.

#### **D. Content**

As the use of new technologies and new types of IP-enabled devices increases, so does the risk that that minors may be exposed to inappropriate content. Consider the following:

*Porn on mobile phones could grow into a \$5-billion market by 2010.*<sup>42</sup>

*Playboy Enterprises announced today that the company is set to offer nude and non-nude photo galleries that have been specifically formatted for viewing on Sony's PSP handheld.*<sup>43</sup>

In the home, access to the Internet is under the supervision of the parents or guardian, who can block access to content inappropriate for minors. Wireless technologies and portable devices make parental supervision substantially more difficult. Parents may not realize that inappropriate content might be accessible on the devices or may have no idea how to block access to age inappropriate content on a child's device (even assuming that blocking is possible). Exacerbating the issue is the fact that younger consumers tend to be the early adopters of new technologies. How many members of Congress own Sony's new PSP?

As this Committee is aware, efforts to regulate Internet content face a host of complex technical and constitutional challenges. Protecting the nation's youth from age inappropriate

content, however, requires that policymakers and industry work collectively toward solutions notwithstanding those hurdles.

Aggressive industry self-regulation may preempt the need for legislation in certain instances. For example, the Cellular Telecommunications Industry Association (“CTIA”) is leading an effort designed to restrict the access of minors to age inappropriate content.<sup>44</sup> The guidelines include the following provisions: (a) development of a voluntary industry-wide consumer content classification system; (b) requirements that users register and provide proof of age for accessing certain content<sup>45</sup> and requirements of subscriber consent to receipt of certain unsolicited commercial content; (c) controls to restrict access to content based on content classifications and a process to update the classification system in consultation with responsible stakeholders as appropriate; and (d) obligations to ensure compliance with applicable laws regarding the protection of minors and cooperation with appropriate law enforcement agencies.

## **VII. CONCLUSION**

The communications world of today is characterized by a host of new technologies and services that are empowering consumers, that are strengthening the nation’s education and health care systems, and that are enabling government to be more responsive to the citizenry. The advanced communications sectors are driving, in large part, the country’s economic growth.

Advocates for a national policy argue that the full potential for broadband to serve as the engine for the nation’s economic and social advancement is not yet being met. My policy views are based on a fundamental belief in markets and a fundamental belief that the beneficiaries of a robust broadband market are the consumers.

Those entrusted with making public policy decisions must aggressively pursue policies to ensure that we – *as a nation* – expeditiously provide consumers with more choices of innovative technologies at the most efficient prices.

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## ENDNOTES

- <sup>1</sup> “Sending the Right Signals: Promoting Competition Through Commerce. October 6, 2004.
- <sup>2</sup> In fact, 29% of jobs lost during this period were in telecommunications. “Sending the Right Signals: Promoting Competition Through Telecommunications Reform.” U.S. Chamber of Commerce. October 6, 2004.
- <sup>3</sup> [http://www.yankeegroup.com/public/products/decision\\_note.jsp?ID=12911](http://www.yankeegroup.com/public/products/decision_note.jsp?ID=12911)
- <sup>4</sup> “CTIA’s Semi-Annual Wireless Industry Survey Results.” CTIA. 2005. This investment includes a 7.8% increase in cell sites in service from year-end 2003 to year-end 2004.
- <sup>5</sup> “CTIA’s Semi-Annual Wireless Industry Survey Results.” CTIA. 2005. This number does not include related jobs, such as independent third-party retailers, construction, manufacturing, or research and development jobs with other companies. According to the Bureau of Labor Statistics data, the wireless industry (cellular and other wireless carriers) employed more than 13,893 people in the state of Florida during 2003.
- <sup>6</sup> “Innovation: The Keystone of the Commercial Mobile Wireless Experience.” Cellular Telecommunications & Internet Association (CTIA) Presentation to FCC. April 2004.  
<http://files.ctia.org/pdf/CMRSINNOVATIONmar04.pdf>
- <sup>7</sup> <http://www.internetnews.com/stats/article.php/3495076>
- <sup>8</sup> Raymond James Equity Research: Wireline: Industry Brief: Cable's Impact Factored Into Estimates, December 14, 2004, Frank G. Louthan IV, Raymond James.
- <sup>9</sup> Brown, Ken. “Cablevision to Offer Internet Phone-Call Bundle.” The Wall Street Journal. June 21, 2004.
- <sup>10</sup> Grant, Peter. “Here Comes Cable...and it Wants A Big Piece Of The Residential Phone Market.” The Wall Street Journal. September 13, 2004. p. R6.
- <sup>11</sup> FCC Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services, *Ninth Report*. FCC 04-216. Released September 28, 2004.
- <sup>12</sup> FCC Report on Local Telephone Competition: Status as of December 31, 2003. Released June 2004.
- <sup>13</sup> Skedd, Kirsten. “Landline Displacement to Increase as More Wireless Subscribers Cut the Cord.” InStat/MDR Press Room. February 25, 2004. <<http://www.instat.com/press.asp?Sku=IN0401644MCM&ID=895>>. Accessed May 3, 2004.
- <sup>14</sup> <http://www.tr.com/online/tr/2005/tr031505/tr031505-17.htm#TopOfPage>
- <sup>15</sup> J.D. Power & Associates. “2003 Residential Internet Service Provider Study (August 2003).”
- <sup>16</sup> Broadband technologies make distance irrelevant for many rural patients by providing access to out-of-area physicians and health care resources. High-speed networks allow health care professionals to deliver medical care more efficiently.
- <sup>17</sup> R.W. Crandall and C. L. Jackson, et al, *The Effect of Ubiquitous Broadband Absorption on Investment, Jobs, and the U.S. Economy*, Criterion Economics New Millennium Research Council (2003). Based on \$0.97B per year on residential DSL and \$2.38B per year on residential cable broadband for a total of some \$3.35B per year.
- <sup>18</sup> <http://www.ncta.com/Docs/PageContent.cfm?pageID=37>

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<sup>19</sup> [http://www2.verizon.com/about/community/fl/news/alan\\_opinion.html](http://www2.verizon.com/about/community/fl/news/alan_opinion.html)

<sup>20</sup> <http://www.sbc.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=21427>

<sup>21</sup> <http://www.instat.com/press.asp?ID=1221&sku=IN0401183WN>

<sup>22</sup> Section 364.01(1), Florida Statutes, grants the Florida Public Service Commission jurisdiction over “telecommunications companies,” and Section 364.02(13)(c), F.S., excludes CMRS providers from the definition of a “telecommunications company.”

<sup>23</sup> Florida law provides that VoIP is “free of unnecessary regulation, regardless of the provider” and exempt from the definition of “service” for purposes of state commission regulation Sections 364.01(3) and 364.02(12), Florida Statutes. In filings with the FCC, the Florida Public Service Commission distinguished between traditional economic regulation and social policy regulation is discussing necessary versus unnecessary regulation.

<sup>24</sup> Section 364.0361, Florida Statutes.

<sup>25</sup> Florida Legislature, 2005 Session, SB 2068 and HB 1649, as of April 25, 2005.

<sup>26</sup> FCC Report on Local Competition: Status as of December 31, 2003. Released June 2004.

<sup>27</sup> FCC report on “High-Speed Services for Internet Access: Status as of December 31, 2003.” Table 7.

<sup>28</sup> Verizon corporate news releases, July 19, 2004 and April 20, 2005. <http://newscenter.verizon.com/>

<sup>29</sup> The reasoning Justice Scalia, a states rights advocate, on the local competition issue supports having a national policy to govern IP-enabled services and broadband generally. As Justice Scalia has stated, “[T]he question . . . is not whether the Federal Government has taken the regulation of local competition away from the states. With regard to the matters addressed by the 1996 Act, it unquestionably has. The question is whether the state commissions’ participation in the administration of the new federal regime is to be guided by federal agency regulations. If there is any presumption applicable to this question, it should arise from the fact that a federal program administered by 50 independent state agencies is surpassing strange.”

<sup>30</sup> The U.S. Chamber of Commerce estimates that reforming telecom laws would add 212,000 jobs over a five-year period and lead to \$58 billion in new investment.<sup>30</sup>

<sup>31</sup> See H.R. Conf. Rep. No. 104-458, at 1, reprinted in 1996 U.S.C.C.A.N. 10 (emphasis added).

<sup>32</sup> An IP voice “call” between individuals in the same might carom between servers or gateways in different states. Determining the topography of such traffic – ahead of time – is often not possible.

<sup>33</sup> States can and should work to remove unnecessary barriers to broadband deployment. In particular, states can work with local governments on rights-of-way access and permitting issues. To address the supply side, states can also create financial and non-financial incentives for build-out of the broadband network. To address the demand side, states can offer e-learning applications and other e-government initiatives to promote the value of using broadband technology to carry out day-to-day functions.

<sup>34</sup> According to the CTIA website, 33 carriers, including all of the national carriers, have adopted the Code For the complete list of the 33 wireless carriers that have adopted the CTIA Consumer Code, please see: [http://www.ctia.org/wireless\\_consumers/consumer\\_code/index.cfm](http://www.ctia.org/wireless_consumers/consumer_code/index.cfm).

<sup>35</sup> A similar approach was adopted for wireless 911 services. Initially, the ability to pinpoint the location of a caller was not imposed. The industry was given a reasonable opportunity to develop a solution.

<sup>36</sup> [http://www.yankeegroup.com/custom/research/decision\\_note.jsp?ID=12704&PID=6DD2924EE68446BB](http://www.yankeegroup.com/custom/research/decision_note.jsp?ID=12704&PID=6DD2924EE68446BB)

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<sup>37</sup> This total represents a 6.05% federal tax and a 10.74% state/local tax.

<sup>38</sup> <http://www.pacificresearch.org/events/2003/wireless/SidakFactsheet.pdf>

<sup>39</sup> <http://www.pacificresearch.org/events/2003/wireless/SidakFactsheet.pdf>

<sup>40</sup> A permanent ban Internet access taxes does not have to preempt state and local taxation of online commerce; impact state and local taxation of traditional telecommunications services or long-distance service that are not solely used to provide Internet access; impact state sovereignty over taxation, except to the extent that taxing interstate service of Internet access is prohibited; affect the State Streamlined Sales Tax Project; impact a state or local government's ability to collect any corporate, property, or income taxes; or prevent taxation of products or services that are otherwise taxable just because they are bundled together with Internet access services.

<sup>41</sup> Defining the "proper pool" might consider factors such as: the share of the voice market held by the provider (so as to exclude providers with but a negligible share of the market); whether the VoIP is a computer-to-computer application (such as Skype); or whether the VoIP does not "touch" the PSTN at either end

<sup>42</sup> <http://www.redherring.com/Article.aspx?a=11541&hed=Mobile+porn%3A+Moving+fast>

<sup>43</sup> <http://news.gaminghorizon.com/media2/1114012080.741.html>

<sup>44</sup> <http://www.wirelessweek.com/article/CA506391?spacedesc=Departments&stt=001>

<sup>45</sup> Compare [http://www.theregister.co.uk/2005/02/14/orange\\_adult\\_filter/](http://www.theregister.co.uk/2005/02/14/orange_adult_filter/) (Wireless company Orange UK has started blocking the delivery of adult content to users not registered as over 18).