

Reform Florida Telecom Law

Regulation threatens jobs and harms consumers

By Hance Haney and George Gilder | March 2011

FOREWORD

In the free-enterprise system, there's an adage that offers sound advice for any business that wants to survive and thrive: Adapt or perish.

In a free-market economy, adaptability generally determines the winners and losers. In the first decade of the 20th Century, for example, the winners were those who could switch from making products such as buggy whips and horseshoes and instead serve America's emerging auto industry. Conversely, the losers were those who did not, could not, or waited too long.

Those changes from about 100 years ago occurred gradually while the developing infrastructure of the auto age – passable roads, fuel distribution, mechanical knowledge, the assembly line – allowed motor vehicles to spread across the land.

Nowadays, of course, the pace of change is much faster, with new technologies often displacing the older forms in little more than a year. To see how quickly obsolescence occurs, check out movies that portray the 1990s. There you may see computer mainframes depicted as bulky enough to fill a large room, folks using portable phones the size of a small shoebox, and the animated version of Clark Kent ducking into a phone booth to change into his Superman garb.

Meanwhile, you won't see anyone Googling, Twittering, or Facebooking. Those phenomena have burst onto the scene faster than a speeding bullet, and they vividly illustrate the axiom that technology nowadays is revolutionized every 18 months or so.

Successful businesses adapt to these rapid changes. Unfortunately, government is less adaptable. Legend has it, for example, that the British Royal Navy once posted sentries along the English Channel to provide a warning if the Spanish Armada showed up again – and continued the practice until the 1980s, when Prime Minister Margaret Thatcher finally put an end to it.

The tradition-bound United Kingdom isn't the only realm where government can be slow to adapt. Peruse a typical phone bill, for instance, and you'll find lots of taxes – some of them hangovers from the early 20th Century. During that era, which also spawned the federal income tax, America was in the grip of a soak-the-rich tax mentality, and telephone service was widely perceived as affordable only for the very affluent and as typically available only in the richest neighborhoods. That perception changed, but the relatively high levels of taxation have persisted.

Many state governments – even Florida's – still maintain certain obsolete regulatory practices that no longer serve the public interest but, instead, actually work against it. In this paper, authors Hance Haney and George Gilder focus a spotlight on archaic regulations that they say impede job growth and discourage investment. In particular, they argue for an end to regulations left over from the days when strict price and service regulations were deemed necessary because "Ma Bell" and other phone companies operated as monopolies in their respective geographic domains.

This paper clearly describes the problems with the current system and recommends specific solutions. These recommendations reflect the viewpoints of the paper's authors, not necessarily those of The James Madison Institute, its staff, or its Board of Directors. Nonetheless, I firmly believe that this paper's recommendations are worthy of serious evaluation and careful consideration. Indeed, if Florida is to compete in a global economy and take full advantage of technological advances – especially those that involve the wider availability of broadband and other telecommunications services -- it must do what all smart businesses do: It must adapt.

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SUMMARY

Recognizing that the telecommunications industry has transitioned from monopoly to competition, the legislature has reformed legacy telecommunications regulation in Florida in several respects – including the Consumer Choice and Protection Act of 2009.¹ However, there remain significant vestiges of legacy regulation that are no longer necessary to protect consumers. Regulation is having the unintended effect of preventing full competition which is necessary to stimulate the deployment of new technologies. By advantaging some providers and disadvantaging others, legacy regulation acts as a restraint on competition. Ensuring that consumers reap the full benefits of competition will require the Legislature to revise Florida’s telecommunications law once again to remove these legacy restraints.

In Florida there remain several harmful vestiges of legacy regulation.

- Price regulation is an ineffective and unnecessary exercise in a competitive market – one which imposes pointless burdens on taxpayers and consumers.
- Filing requirements reduce competition by giving commercial rivals detailed information about competitive services and products. These requirements should be eliminated.
- Public Service Commission jurisdiction to act on consumer complaints involving only legacy phone companies – and not competitors who utilize other technologies for delivering voice communication services – is unnecessary since all commercial activity is subject to Florida’s Deceptive and Unfair Trade Practices Act, enforced by the Attorney General. PSC jurisdiction should be eliminated so all

providers of voice services are subject to the same consumer protection mandates.

- Service quality regulation applies only to legacy technology and results in unequal regulatory burden and skews incentives for investment. Service quality regulation – which is also largely ineffectual – should be eliminated.

Florida’s neighbors are taking important steps to update the regulatory climate. Alabama, South Carolina and Tennessee, for example, have all recently updated their telecom statutes similar to what is now required in Florida.

Only 25% of Florida voice connections were served by incumbent local exchange carriers subject to legacy utility regulation at the end of 2009.

Meanwhile, Florida’s telecommunications providers remain subject to unnecessary and anticompetitive regulation which depresses industry valuations and private investment.

By simple reforms of outdated laws, Florida can unleash a spiral of innovation and revival based on new technologies and services.

Gone is the traditional rationale for utility regulation – *i.e.*, that fixed landline telephone service is a natural monopoly. Only 25% of Florida voice connections were served by incumbent local exchange carriers subject to legacy utility regulation at the end of 2009, according to the Federal Communications Commission.²

Continued rulemaking by state public utility commissions is not only unnecessary but, by distorting

competition, harms consumers and limits deployment of new technologies. Even when pursued in the name of “competition,” legacy regulation restricts service strategy flexibility and creativity needed for real competition in the Internet age.

Broadband offers new opportunities to get a job or start a business. It is most valuable where other opportunities for wealth creation are least available, such as in disadvantaged communities and rural areas. Broadband is not yet ubiquitous, particularly in disadvantaged communities and remote areas. Yet every Florida resident should have access to broadband.

The state can open up new technological opportunities and economic efficiencies that promise a direct private market economic stimulus of \$7.5 billion annually from increased broadband availability and use – including an estimated 143,405 jobs created or saved per year throughout the state’s economy – according to a report by Connected Nation.³ Jobs are created or saved not only in the telecommunications equipment and services, but also in manufacturing and service industries (especially finance, education and health care). The jobs created or saved are not only in the telecommunications equipment and services, but also in manufacturing and service industries (especially finance, education and health care).

Telephone companies, cable operators, wireless providers and others are all competing to be the market leader in broadband, and each firm is anxious to invest whatever it takes. But first investors must provide the funding. They will decide which, if any, firms can buy the necessary equipment and employ the highly-skilled people who can make it all work.

From a state perspective, regulation is the most critical factor affecting private investment in broadband. By removing the statewide cobwebs of regulations that afflict telecom, Florida can eliminate the possibility that

investment will flow to another state with a lower risk profile.

TURBULENT COMPETITION IN TELECOM

Regulation of telephone utilities is premised on the fact these entities were once monopolies. Yet today, incumbent telecom providers face turbulent competition from Voice over Internet Protocol (VoIP) providers, from cable operators, from wireless providers and from other certificated wireline providers. Legacy regulation is incompatible with competition.

Cable phone service

Competitive local exchange carriers (CLECs) and Non-ILEC VoIP providers – a category dominated by cable operators providing competitive voice services, but also including other VoIP providers – were serving customers in 100% of Florida’s zip codes at the end of 2009, according to the FCC.⁴ There were 10 or more of these competitors in 85% of Florida’s zip codes.⁵

A well-known cable company, Comcast, has become the nation’s third largest phone services provider.⁶

Competition pushed down the rates for bundles of Internet, phone and TV service by up to 20% in 2008, to as low as \$80 per month, according to Consumer Reports.⁷ More recently, the magazine reported that shopping for Internet, home phone, and TV service is increasingly a “buyer’s market.”⁸

Although VoIP at one time was not comparable to wireline service in terms of sound quality, this is no longer the case. “It’s easy to take for granted the fact that Internet calls are now as clear as those on landlines,” according to a New York Times columnist.⁹

A 2007 study projected that over a five year period (2008-2012), Florida consumers of VoIP services will

save over \$1.1 billion in the aggregate based on an estimated cost savings of \$11.70 per residential subscription per month and over \$55 million in savings to small businesses over the same period (\$19.70 per customer per month).¹⁰ This is only the tip of the iceberg.

Competition from VoIP forced the incumbent telecom providers to cut their own prices, according to the study. In Florida, the projected total savings from competition in fixed-line voice services as a result of cable VoIP is in excess of \$7.3 billion over five years.¹¹

VoIP unleashed a chain of competitive events, which legacy telephone regulations are not designed to facilitate. These regulations limit the flexibility of incumbent telecom providers to compete. As a result, consumers could be deprived of additional savings.

Telecom providers are subject to legacy rules that do not apply to their competitors and which impose needless compliance costs. The providers' flexibility to embrace efficient new technologies and experiment with new business methods is compromised. The same legacy regulation that burdens incumbent telecom providers also creates unintended opportunities for their rivals.

For example, if service quality regulation forces telecom providers to maintain traditional telephone networks while rivals are free to deploy VoIP and wireless technologies, the telecom providers will incur additional costs relative to their rivals that must be recovered through higher prices.

Thus, legacy regulation acts like an umbrella for rivals, who merely have to set their own prices at or below the telecom provider's prices to attract customers. The prices consumers pay will therefore reflect the cost of maintaining a legacy telephone network, not the lower

costs of efficient new technologies that might otherwise render the traditional network obsolete in a free market. Reforming legacy regulation would solve this problem by offering less protection to competitors.

By creating artificial competitive advantages and disadvantages for providers, regulation jeopardizes genuine competition which leads to improved services and ultimately lower prices for consumers.

Wireless

Approximately 99.6% of the total U.S. population – and approximately 98.5% of the U.S. population living in rural census blocks – have one or more different operators offering mobile telephone service in the census blocks in which they live, according to the FCC.¹²

More than 29% of adults in the South lived in households with only wireless telephones.¹³

Nationally, 26.6% of households had only wireless telephones at the end of last year, according to a study conducted by the Centers for Disease Control of the U.S. Department of Health and Human Services.¹⁴ Another 16% of households received all or almost all calls on wireless telephones, even though they also had a landline phone.¹⁵ Adding these two categories together, almost 43% of the nation's households either don't have a landline phone at all, or they don't use their landline phone for most of their calls.

Another analysis by Citi Investment Research claims that the number of households that have "cut the cord" and are wireless-only reached 29.7% at the end of June and is increasing 5% per year.¹⁶

The *Economist* recently predicted that if consumers discontinue landline telephone service at the current rate, "the last cord will be cut sometime in 2025."¹⁷

Meanwhile, the subsidy required for landline service to remote locations and low-income customers will have to rise as more of the customers who generate those subsidies discontinue their own landline service, notes the article.¹⁸

*The danger, says [one analyst], is that regulators will introduce new taxes on wireless and broadband services. Revenues from new services would then be used to keep an obsolete infrastructure alive—a recipe for lower growth. At that point, he says, the “wireline problem” really will be everyone’s problem.*¹⁹

The cost of maintaining a network ready and able to provide service to any consumer upon request does not vary in direct proportion to the number of active subscribers. There are many fixed costs. One analyst estimated that the average annual cost of maintaining the legacy network rose from \$43 per line in 2003 to \$52 in 2009.²⁰ Faced with competition from wireless and VoIP services, incumbent telephone companies have little, if any, freedom to raise rates. As the number of subscribers dwindles, local phone companies

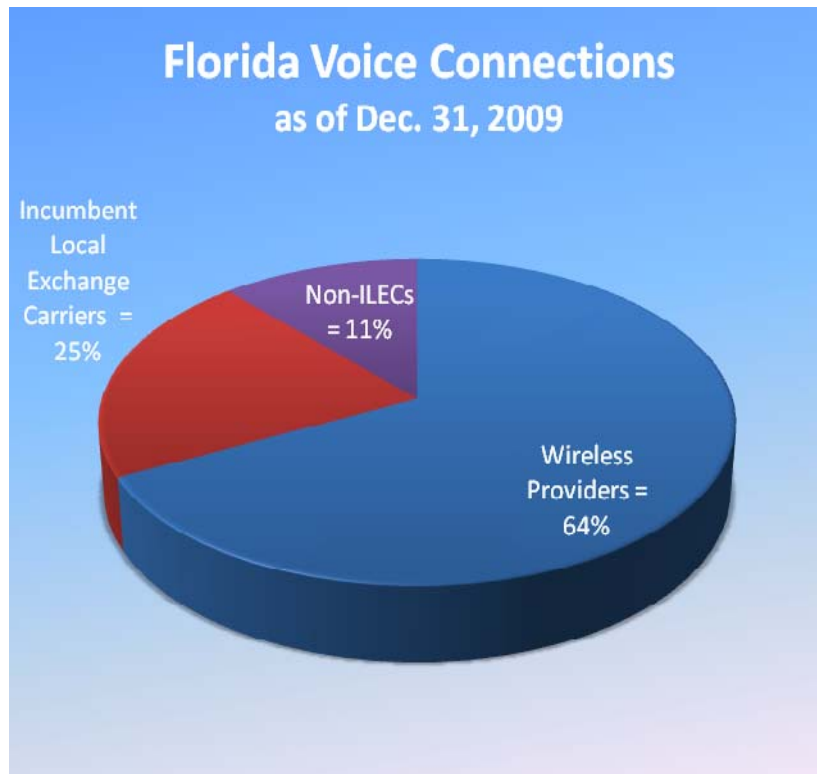
must find new efficiencies and new sources of revenue to sustain their businesses.

Verizon is giving up on the landline business, according to the *New York Times*.²¹ Verizon is aiming to convert

most of its landline operation to an unregulated fiber-based network capable of leveraging the decentralized structure of the unregulated Internet to cut costs sharply...²²

There is no basis for claiming that incumbent landline providers are dominant entities requiring close government scrutiny. In fact, only 25% of Florida voice connections were served by

incumbent local exchange carriers subject to legacy utility regulation at the end of 2009.²³ The remaining voice connections were served by wireless and VOIP providers, who operate largely free from regulation compared to traditional phone companies.



Source: FCC, *Local Telephone Competition: Status as of Dec. 31, 2009*

REGULATION NO LONGER BENEFITS CONSUMERS

The widespread availability of competitive alternatives to landline phone service limit the ability of incumbent telecommunications providers to dictate rates or terms or otherwise injure consumers. Nearly all of their

customers now have a choice of providers.

VoIP and wireless service offerings are thriving in the near absence of any regulation in Florida.²⁴ Comprehensive regulation legacy wireline services will actually do more harm than good by limiting the ability of incumbent telecommunications providers to improve their products and services and to adjust their pricing in response to competition.

It is a well-known fact that utility regulation can be harmful to competition. Professor Alfred E. Kahn, a former chairman of the New York Public Service Commission and top official in the Carter administration, says:

The industry is obviously no longer a natural monopoly, and wherever there is effective competition—typically and most powerfully, between competing platforms—land-line telephony, cable and wireless—regulation of the historical variety is both unnecessary and likely to be anticompetitive—in particular, to discourage the heavy investment in both the development and competitive offerings of new platforms, and to increase the capacity of the Internet to handle the likely astronomical increase in demands on it for such uses as on-line medical diagnoses and gaming.²⁵

For example, legacy utility regulation is pushing telecom providers to maintain single-purpose voice networks when multifunctional broadband platforms could deliver voice service at lower cost.²⁶ In a report for the FCC, Robert C. Atkinson and Ivy E. Schultz estimated that the major telephone companies invested approximately 52% of the \$28 billion they spent on capital expenditures in 2008 on legacy voice networks.²⁷

At this point, there is no compelling reason (other than preexisting regulation) for telecommunications providers to maintain two networks, a broadband Internet access network and a legacy telephone

network for voice service.

Ultimately, the way to ensure affordable voice service is to remove barriers to broadband investment. The alternative is either for incumbent providers to raise their rates – which defeats the goal of affordable phone service – or receive higher subsidies; which would force wireless and VoIP customers to pay higher prices, and slow the inevitable migration from legacy to new age communications networks.

Regulatory reform of landline phone service is lagging far behind wireless²⁸ and cable,²⁹ both of which were largely deregulated during the Clinton administration when they faced far less actual competition than the telecommunications providers have now.

Even in the absence of market share losses, preemption of state regulation of wireless services in 1993 came with the auctioning of additional spectrum because Congress reasonably assumed competitors would materialize. The average cost per minute of cell phone use has fallen from 47 cents in 1994 to 6 cents in 2007.³⁰

The elimination of cable rate regulation in 1996 occurred while cable operators still retained 91% of all subscribers, because Congress saw that new entrants such as Direct Broadcast Satellite service providers were attracting customers at a rapid rate.³¹ Video service offerings expanded as the result of a \$145 billion investment by the cable industry between 1996 and 2009 to build out a two-way interactive network with fiber optic technology.³² This investment was a direct result of regulatory reform and enabled the cable industry to become the leading provider of high-speed broadband service and pioneer combined full-scale broadband video, Internet and digital phone service packages.³³

NEEDED REFORMS

1. *Eliminate Price Regulation*

In a monopoly environment, price regulation prevents a service provider from charging excessive rates and creates opportunities for cross-subsidization. Price regulation is an ineffective and unnecessary exercise in a competitive market – one which imposes pointless burdens on taxpayers and consumers.

Telecom providers have market-based incentives to offer the lowest prices in order to increase sales. If a service provider unreasonably hikes rates, it will lose sales to a competitor.

Providers cannot be forced to average their rates so all consumers pay similar prices regardless of differences in cost, because that would permit and encourage competitors to target profitable customers while ignoring consumers in high cost areas.

Price regulation is unfair to taxpayers – who must cover the costs incurred by the PSC enforcing pointless mandates – and to consumers – who have to cover the compliance costs incurred by the regulated entities.

Telecommunications providers in Florida may adjust rates for basic local service on 30 days' notice once during any 12-month period in an amount not to exceed the change in inflation less 1 percent. The statute further provides that if a local exchange telecommunications company believes that the level of competition justifies the elimination of any form of price regulation, the company may petition the Legislature.³⁴ In our opinion, the level of competition does in fact justify the elimination of any form of price regulation.

Rates for nonbasic services may be increased on 1 day's notice to a maximum of 6 percent within any 12-month period, unless there is another provider providing local

service in an exchange area – in which case the price for any nonbasic service category may be increased in an amount not to exceed 10 percent within a 12-month period.³⁵ Providers are allowed to de-average rates for nonbasic services and to offer volume and term discounts, among other things.³⁶

As previously noted, legacy wireline voice services are losing market share (pp. 3-4), therefore it is highly unlikely they could sustain even the price increases allowed under current law. There is no reason telecom providers should not have full flexibility in setting rates. Allowing the market to set prices would generate new efficiencies for taxpayers and consumers.

2. *Eliminate Notice Requirements*

Telecom providers have historically filed tariffs with the PSC governing each of their service offerings. A given tariff included a specific description of a particular service offering, all applicable rates, benefits, terms, and conditions and, if applicable, beginning and ending dates. If the PSC was satisfied that the tariff was just and reasonable, it became binding on the carrier and its customers.

Telecom companies in Florida are still required to publish schedules of rates and terms for telecom services, although now they can choose whether to file with the PSC or through other reasonably publicly accessible means (such as a website).³⁷

Mandatory disclosure ensures that rivals receive detailed information about a competitor's new or improved products and services. For example, If a telecom company wants to run a sales promotion, it must file a new schedule in order to deviate temporarily from a preexisting schedule. The new schedule signals competitors precisely what the promotion will consist of, and alerts them as to where and when it will occur. Competitors will know precisely when the promotion will begin and when it must end.

A requirement to furnish commercial rivals with valuable competitive intelligence reduces the incentive for market contestants to continually strive to offer a superior value proposition as the best defense against competitive surprises which may cause a loss in sales.

The FCC concluded during the Clinton administration that it would be pro-competitive to neither require *nor allow* long-distance carriers to file tariffs. An absence of any tariffs would increase incentives for innovation, make it easier to offer discounts and customized service arrangements as a way of retaining lucrative customers – who contribute to the joint and common costs of maintaining the network for the benefit of all consumers – and reduce the possibility of tacit coordination in price-setting.³⁸

Tariffs or schedules – whether mandatory or voluntary, and in whatever form – have limited consumer value and are potentially anticompetitive. Accordingly, these notice requirements should be eliminated,

3. Consolidate Consumer Protection

Subject to PSC oversight, telephone utilities are required to promptly and fully investigate customer complaints and service requests, reply within 15 days and maintain these records for at least 6 months.³⁹ Although utility regulation and consumer protection are somewhat related, a utility commission's expertise in network architecture, utility cost allocation or the principles of common carriage doesn't make it better suited to protect consumers than a state attorney general or other consumer affairs watchdog.

The PSC does not oversee customer complaints or service requests relating to other providers of voice services. Communications activities that are not regulated by the PSC – such as VoIP, wireless and broadband – are subject to the state's generally applicable business regulation and deceptive trade practices and consumer protection laws, as enforced by

the appropriate state authority or through actions in the judicial system.⁴⁰

PSC jurisdiction for telephone utility consumer issues is redundant since the Attorney General already protects Florida consumers and businesses against fraud, deception, and unfair business practices. Divided or shared jurisdiction between multiple agencies can lead to inconsistent consumer protection enforcement according to the type of service or provider. This could have anticompetitive implications. Not to mention the fact that different sets of rules for different providers based on the different technology they use to deliver their services can lead to confusion for consumers.

PSC jurisdiction to act on consumer complaints should be eliminated and handled solely by the Attorney General, who enforces Florida's Deceptive and Unfair Trade Practices Act with respect to all commercial transactions.

4. Eliminate Service Quality Regulation

The PSC enforces service quality rules that are unnecessary as a result of the widespread competition that exists today in the age of fiber optics, cellphones and the Internet. Telecommunications companies in Florida are required to furnish and maintain the necessary plant, equipment and facilities to provide communications that comply with engineering specifications dating back to 1984,⁴¹ when new technologies were just beginning to transform telecommunications.

Service quality regulation designed around traditional landline service will force incumbent local exchange carriers to operate and maintain legacy equipment, restricting their ability to adopt efficient alternatives to remain competitive. Service quality regulation therefore has the potential to be anticompetitive and harmful to consumers.

Service quality regulation is largely ineffectual, in any event. For example, high numbers of consumers throughout the Midwest complained in 2000 of lengthy delays for new phone service or for repairs to existing service from Ameritech, a former Regional Bell Operating Company. Service quality regulation by the public utility commissions throughout Ameritech's service territory failed to prevent the deteriorating service quality. A "pro-competition" agenda undertaken by the FCC and the states pursuant to the federal Telecommunications Act of 1996, which – among other things – deregulated Ameritech's competitors but not Ameritech itself, undoubtedly contributed to underinvestment by Ameritech.

The market has changed dramatically since the year 2000. The reliability and sound quality of wireless and VoIP have steadily improved even though these services are not subject to any service quality regulation. If service quality regulation had been applied to these emerging technologies they may not have been able to attract sufficient investment for deployment.

Providers have every incentive to compete on price and quality in the fully competitive market that exists today, provided that regulation does not deny some vendors an equal opportunity to compete. Service quality regulation is unnecessary, if not counter-productive.

INVESTMENT LINKED TO REGULATORY REFORM

Broadband investment is vital to promote equal opportunity, create jobs in an uncertain economy as well as improve education and health care.

Experts foresee the need for continuing massive investment by network operators in current and next generation broadband capability. The overall investment needed to make broadband at the fastest

speeds (100+ MB) ubiquitous would be \$350 billion, according to FCC staff.⁴²

Historically, monopoly franchises ensured that investments in telephone and cable networks could be recovered. Today, with vibrant competition and rapidly evolving technology, there is no guarantee that investments in broadband will be profitable.

The investments necessary to build broadband infrastructure are "inherently risky by their very nature," according to Debra J. Aron and Robert W. Crandall, who caution that "[p]rojects with inherently significant risk, as these are, would be especially sensitive to regulatory risk."⁴³

Legacy regulation creates artificial competitive advantages and disadvantages, because communications providers are subject to different regulation depending on the technology they use and their history. Unequal regulation restricts service strategy flexibility and creativity needed to compete in the Internet era.

Regulatory uncertainty – that is, the risk that even well-intentioned regulation can have unintended consequences – is another obstacle to private investment in broadband. According to Robert W. Crandall, Robert E. Litan and William Lehr,

*The virtuous cycle of capacity investments leading to new services and competition which in turn helps drive increased demand and traffic which in turn leads to still more investment in facilities risks being derailed if the firms investing in such infrastructure cannot reasonably expect to recover their economic costs, including earning a fair, risk-adjusted return on investment.*⁴⁴

Larry Cohen of the Communications Workers of America has also said, "We depend on private capital to invest in next-generation wireless and wireless networks, and create and maintain jobs in the industry."⁴⁵ Citing the \$63 billion in investments made

by the top network providers in 2008, Cohen noted in reaction to proposed new regulation at the federal level that it is crucial that policymakers “support the right mix of incentives to sustain and enhance these investments that are so critical to America’s future.”

Regulatory reform is necessary for broadband providers to maintain stock valuations necessary to attract sufficient investment capital for broadband expansion.

Investors funded wireless expansion by the incumbent telecommunications providers on the strength of their landline business. Now telecommunications providers require competitive market returns from both their wireline and wireless operations so investors will back their broadband expansion. Investors will back broadband if they perceive it has the potential to make money, rather than be forced to subsidize local services.

CREATE AND MAINTAIN JOBS

The main reason policymakers should undertake regulatory reform is to attract new investment to the communications sector so consumers can receive the services they want at competitive prices. New investment in telecom is necessary to deliver this result, and the states that attract it will also reap the added rewards of job creation and economic growth.

The Communications Workers of America have calculated on the basis of a Department of Commerce model that \$5 billion invested in broadband infrastructure creates 100,000 new jobs in the telecommunications and information technology industries in the year in which the spending occurs.⁴⁶

Researchers at the Information Technology & Innovation Foundation project that \$10 billion of investment in one year in broadband networks will support an estimated 498,000 new or retained jobs throughout the entire U.S. economy for a year.⁴⁷ These

include direct jobs, such as technicians to deploy broadband cable and equipment; indirect jobs created to supply the materials; and induced jobs, such as jobs in restaurants and retail stores created as the newly employed or retained workers spend their paychecks.

A study by the Brookings Institution found that 300,000 private non-farm jobs are created throughout the entire economy for every one percentage point increase in broadband penetration.⁴⁸ The authors conclude that employment in both manufacturing and services industries (especially finance, education and health care) is positively related to broadband penetration.

A subsequent report by Connected Nation employs the findings of the Brookings Institution study to predict how many jobs would be created on the basis of a reasonably-achievable estimate of increased broadband penetration. Connected Nation concludes that a 7% increase in broadband adoption – similar to the higher household broadband adoption in Kentucky versus national growth that was achieved by addressing local supply and demand issues – would create or save 143,405 new jobs per year in Florida.⁴⁹

The Connected Nation study also projects the following additional benefits assuming a reasonably-achievable 7% increase in broadband in Florida:

- \$5,136,752,665 in direct annual income growth
- \$40,072,871 in average annual health care costs saved
- 227,020,858 in average annual hours saved
- \$1,954,649,591 in annual value of hours saved
- \$399,029,270 in average annual mileage costs saved
- 202,119,981 in average annual lbs. of CO2 emissions cut.⁵⁰

The total economic impact of accelerating broadband access and use in Florida exceeds \$7.5 billion, according Connected Nation.⁵¹

Regulatory reform alone can make most if not all of these benefits possible by stimulating private investment and creating competitive pressure for broadband providers to upgrade their services, reduce prices or both. Conversely, the absence of regulatory reform will make it harder to achieve these benefits through other means, such as public subsidies.

PROMOTE ECONOMIC DEVELOPMENT AND NEW EFFICIENCIES

Economists have found higher residential property values and more jobs and businesses in communities with broadband, particularly in smaller, more rural and economically distressed areas.⁵² Wage and salary jobs, as well as the number of proprietors, grew faster in counties with early broadband Internet access.⁵³

Predicted savings in health care are major and mounting as an effect of broadband diagnosis, monitoring and other services.⁵⁴ Broadband can be used in a variety of new ways, including the monitoring of elderly, infirm, or individuals with disabilities at their current residences or less expensive community health care centers, and the delivery of medical care directly through “telemedicine,” or two-way video communication between patients and health care providers. These benefits are estimated to accumulate to at least \$927 billion over 25 years (measured in 2005 dollars), which is equivalent to half of what the United States currently spends annually for medical care for all its citizens (\$1.8 trillion).⁵⁵

Estimates of the net consumer benefits from home broadband are on the order of \$32 billion per year.⁵⁶

Further deployment of broadband infrastructure is needed to ensure that all people of the United States have access to broadband capability. According to FCC

Chairman Julius Genachowski, roughly 14 million Americans and many small businesses do not have access to broadband.⁵⁷

According to the National Broadband Plan, there are eight Florida counties in which broadband is available to something less than 60% of homes. The counties are: Desoto, Gilchrist, Glades, Hamilton, Lafayette, Liberty, Madison and Union.⁵⁸

Genachowski also estimates that more than 100 million Americans do not have broadband either because they cannot afford, do not know how to use it, or are not aware of its potential benefits.⁵⁹

EMPOWER UNDERSERVED COMMUNITIES

A report by the U.S. Department of Commerce points out that broadband use at home varies significantly across demographic groups.

Persons with high incomes, those who are younger, Asians and Whites, the more highly-educated, married couples, and the employed tend to have higher rates of broadband use at home. Conversely, persons with low incomes, seniors, minorities, the less-educated, non-family households, and the non-employed tend to lag behind other groups in home broadband use.⁶⁰

A recent Pew Internet survey also finds demographic variances in broadband adoption.⁶¹ It shows that 63% of white households have broadband, compared to 52% black and 47% Hispanic (English- and Spanish-speaking) households.⁶² Meanwhile, it also reveals that those who have accessed the Internet wirelessly via their laptop or handheld device were 62% Hispanic (English- and Spanish-speaking) 59% black (non-Hispanic) and 52% white (non-Hispanic).⁶³

Demographics of Home Broadband Users

White, Non-Hispanic	63%
Black, Non-Hispanic	52%
Hispanic (English- and Spanish-speaking)	47%

The foregoing research tracks the findings of the National Center for Health Statistics concerning wireless substitution. It found that adults living in poverty (39.3%) and adults living near poverty (32.9%) were more likely than higher income adults (21.7%) to be living in households with only wireless telephones.⁶⁴ And Hispanic adults (34.7%) and non-Hispanic black adults (28.5%) were more likely than non-Hispanic white adults (22.7%) to be living in households with only wireless telephones.⁶⁵

The popularity of mobile Internet access among minority groups is helping to “close a looming digital divide stemming from the high cost of in-home Internet access, which can be prohibitive for some,” according to a *New York Times* report.⁶⁶

Another recent Pew survey found that from 2006 to 2008, internet use among Latino adults rose by 10 percentage points, from 54% to 64%. In comparison, the rates for whites rose four percentage points, and the rates for blacks rose only two percentage points during that time period. Though Latinos continue to lag behind whites, the gap in Internet use has shrunk considerably.⁶⁷

Access to broadband is becoming increasingly important for employment, education, news, health care and consumer welfare purposes, as FCC Commissioner Mignon Clyburn recently noted.

In today’s fast-changing world, broadband is not a luxury; but rather, it is a necessity, a must-

have. Need a job? You’ll have to go on-line for that. Want to manage your energy consumption at home? You’ll have to go on-line for that. Applying for government benefits? Before long, you will have to go exclusively on-line for that too.

* * * *

Broadband’s key promise for people of color in particular is economic empowerment. For the first time, there are no immediate and overwhelming barriers to entry for upstart businessmen and women or “cyberpreneurs.” Broadband has opened avenues never dreamed possible by those in challenged communities.⁶⁸

“We firmly believe that ubiquitous broadband access, adoption, and use, stand to be great equalizers in our society,” notes a joint policy statement of the National Asian-Pacific American Caucus of State Legislators, National Black Caucus of State Legislators, National Caucus of Native American State Legislators and the National Hispanic Caucus of State Legislators. “As such, we must ensure that Internet adoption and use via a broadband connection becomes engrained as a social, cultural norm in our communities.”⁶⁹

Every Florida resident should have access to broadband. Telephone companies, cable operators, wireless providers and others are all anxious to invest in broadband if investors will provide the funding. Investors will decide whether firms can buy the necessary equipment and employ the highly-skilled people who can make it all work.

Of all the calculations that affect private investment, regulation is the most critical from a state perspective. If legacy telephone regulation is not reformed and the possibility that other market participants could face similar regulation is not eliminated, the private investment needed to make broadband a practical reality for every household is at risk.

FLORIDA'S NEIGHBORS

Other states have made significant strides reforming outdated telecom regulation. Alabama, South Carolina and Tennessee, for example, have recently undertaken many of the reforms now required in Florida.⁷⁰

With the exception of stand-alone basic residential lines, products or services provided by local exchange companies are not subject to utility regulation in South Carolina and Tennessee. A stand-alone basic residential line is a single-line basic residential service that does not contain another service, feature or product of the local exchange company. Stand-alone basic residential lines are generally subject to minimal regulation which varies somewhat in the two states.

In Alabama, basic telephone service and optional telephone features were exempted altogether from state PSC jurisdiction, beginning Jan. 1st of this year.

CONCLUSION

By simple reforms of outmoded laws, Florida can unleash a spiral of innovation and revival based on new technologies and services.

Anticompetitive tariffs, pricing regulation, hidden cross subsidies and unequal consumer protection are not in the public interest. These things prevent telecommunications providers from offering competitive services and generating revenues for broadband expansion. They serve chiefly as obstacles to investment that reduce asset values of all telecom suppliers.

Legacy regulation restricts service strategy flexibility and creativity needed for real competition in the Internet age, even when pursued in the name of "competition."

By embracing regulatory reform, legislators will expand customer choice, decrease prices, and ignite the broadband expansion necessary to economic growth and technological progress. We recommend that state legislators give urgent consideration to the following specific regulatory reforms:

- Allow full pricing freedom so all providers can compete.
- Eliminate filing requirements that give rivals detailed information about a competitor's new or improved services or products.
- PSC jurisdiction to act on consumer complaints involving legacy phone companies should be eliminated and handled solely by the Attorney General so that all competitors of voice services are treated the same.
- Eliminate service quality regulation, which applies to some providers but not others is therefore anticompetitive and harmful to consumers.

These proposals all rest on the principle that all providers of voice services should be subject to minimum regulation which does not discriminate on the basis of technology or history, just like in any competitive market. These reforms aren't novel or unprecedented.

This is a golden opportunity for Florida to open up new technological opportunities and economic efficiencies that promise a direct private market economic stimulus of \$7.5 billion annually from increased broadband availability and use – including an estimated 143,405 jobs created or saved per year throughout the state's economy – according to Connected Nation. Jobs are created or saved not only in the telecommunications equipment and services, but also in manufacturing and

service industries (especially finance, education and health care).

Broadband will provide unprecedented opportunities for wealth creation in disadvantaged communities and

rural areas. Unfortunately broadband is not yet ubiquitous, particularly in disadvantaged communities and remote areas. Yet every Florida resident should have access to broadband.

AUTHORS

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The authors have previously assessed the state of competition and need for regulatory reform in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee, "Stimulate Broadband and Lower Utility Bills With Regulatory Reform," *Discovery Institute* (Feb. 2009) available at <http://www.discovery.org/a/9241>.

The views expressed herein are those of the authors and do not necessarily reflect the views of the Discovery Institute or its directors or staff.

NOTES

¹ Chap. 2009-226, Laws of Florida.

² “Local Telephone Competition: Status as of Dec. 31, 2009,” *Federal Communications Commission* (Jan. 2011) available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0111/DOC-304054A1.pdf (*Local Telephone Competition*) at 20, 29.

³ “The Economic Impact of Stimulating Broadband Nationally,” *Connected Nation* (Feb. 21, 2008) available at http://www.connectednation.com/research/economic_impact_study/index.php, at 8, 15-16. As explained on page 17 of the report, to estimate job creation Connected Nation employs methodology developed by economists at the Brookings Institution to measure the effects of broadband penetration on output and employment. The Brookings study found that “for every one percentage point increase in broadband penetration in a state, employment is projected to increase by 0.2 to 0.3 percent per year.” Assuming 7% growth in broadband adoption in Florida – which is equivalent to actual results achieved in Kentucky – the Connected Nation report concludes that 143,405 jobs could be created or saved in Florida.

⁴ *Local Telephone Competition*, at 31.

⁵ *Id.*

⁶ “Comcast Now the Third Largest Residential Phone Services Provider in the U.S.” *Comcast* (Mar. 11, 2009) available at <http://www.comcast.com/About/PressRelease/PressReleaseDetail.aspx?PRID=844>.

⁷ “Fiber-Optic Providers Are Leading Choices for Internet, Television, and Telephone Service,” *Consumer Reports* (Jan. 5, 2009) available at <http://pressroom.consumerreports.org/pressroom/2009/01/consumer-reports-fiber-optic-providers-are-leading-choices-for-internet-television-and-telephone-service.html> (“intense competition for cable and satellite customers between AT&T U-verse and Verizon FiOS high speed fiber providers has driven down rates for Internet, phone and TV service and is likely the reason that companies allow these savings to continue past the promotional period. In the past year, bundles of the three services have dropped in price by up to 20 percent, to as low as \$80 a month.”). See also: “Price War Erupts for High-Speed Internet Service,” by Vishesh Kumar, *Wall Street Journal* (Sept. 2, 2008) available at <http://online.wsj.com/article/SB122031009737388555.html>.

⁸ “Save a bundle: How to piece together a great deal for TV, phone, and Internet service,” *Consumer Reports* (Feb. 2010) available at <http://www.consumerreports.org/cro/magazine-archive/2010/february/electronics-and-computers/bundling/overview/bundling-ov.htm>.

⁹ Bob Tedeschi, “Better Calling for Less, by Skipping the Cell Network,” *New York Times* (Feb. 10, 2010) available at <http://www.nytimes.com/2010/02/11/technology/personaltech/11smart.html>; see also “Save a bundle: How to piece together a great deal for TV, phone, and Internet service,” note 18 (“The best Voice over Internet Protocol (VoIP) services, which came from providers of all types, rivaled fiber in offering the best phone service.”).

¹⁰ “Consumer Benefits from Cable-Telco Competition,” by Michael D. Pelcovits, Ph.D. and Daniel E. Haar (Nov. 2007) available at http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf at 29.

¹¹ *Id.*

¹² In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 09-66, *Fourteenth Report* (rel. May 20, 2010) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-81A1.pdf, at 7, 18.

¹³ Stephen J. Blumberg and Julian V. Luke, “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2010 (Dec. 21, 2010) available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.htm>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Dan Frommer, “CHART OF THE DAY: Almost A Third of U.S. Households Have Cut The Landline Cord (T, VZ, S),” *San Francisco Chronicle* (Aug. 18, 2010) available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2010/08/18/businessinsider-chart-of-the-day-almost-a-third-of-us-households-have-cut-the-landline-cord-2010-8.DTL>.

¹⁷ “Cutting the cord,” *The Economist* (Aug. 13, 2009) available at http://www.economist.com/opinion/displaystory.cfm?story_id=14214847.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Saul Hansell, “Will the Phone Industry Need a Bailout, Too?” *New York Times* (May 8, 2009) available at <http://bits.blogs.nytimes.com/2009/05/08/will-the-phone-industry-need-a-bailout-too/>.

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²² *Id.*

²³ *See note 2.*

²⁴ Fla. Stat. §364.011.

²⁵ Remarks of Alfred E. Kahn before the Federal Trade Commission (Feb. 13, 2007) <http://www.ftc.gov/opp/workshops/broadband/presentations/kahn.pdf>. Kahn is the Robert Julius Thorne Professor of Political Economy (Emeritus) at Cornell University who has also served as chairman of the New York Public Service Commission, chairman of the Civil Aeronautics Board, Advisor to the President (Carter) on Inflation, and chairman of the Council on Wage and Price Stability.

²⁶ Connecting America: The National Broadband Plan, *Federal Communications Commission* (Mar. 16, 2010) available at <http://download.broadband.gov/plan/national-broadband-plan.pdf>, e.g., at 138, 141 and 150.

²⁷ Robert C. Atkinson and Ivy E. Schultz, Broadband in America – Where It Is and Where It Is Going (According to Broadband Service Providers), *Columbia Institute for Tele-Information* (Nov. 11, 2009) available at http://www.broadband.gov/docs/Broadband_in_America.pdf, at 30.

²⁸ Hundt, Reed E. *You Say You Want a Revolution: A Story of Information Age Politics* (Yale Univ. 2000) at 15 (“in the Omnibus Budget Reconciliation Act, passed by Al Gore’s tie-breaking Senate vote, the Democratic Congress gave the FCC authority to dissolve this oligopoly by auctioning new licenses”) and 98 (“by auctioning spectrum with no rules attached and preempting all state regulation, we had totally deregulated the wireless industry.”)

²⁹ Hundt at 170 (“Our intent was to communicate our great support for cable’s investment in renovating its systems. The 1996 law had repealed rate regulation, effective in two years. That topic was behind us. Now cable had to take on the telephone industry.”).

³⁰ Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Federal Communications Commission* (rel. Jan. 16, 2009) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf at 8.

³¹ “Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (Second Annual Report),” *Federal Communications Commission* (Dec. 11, 1995) (“We conclude that cable television systems remain the primary distributors of multichannel video programming services and continue to enjoy market power in local markets, although some progress has begun toward a competitive marketplace for the distribution of video programming. In the last year, DBS systems have attracted many subscribers to newly available services ... In sum, while subscribership for distributors using alternative technologies has generally increased over the last year, overall subscribership for all distributors using alternative technologies is just 9% of total multichannel video programming distributor (“MVPD”) subscribership, whereas cable systems account for 91% of the total.”).

³² In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (MB Docket No. 07-260), *Comments of the National Cable & Telecommunications Association* (May 20, 2009) available at <http://www.ncta.com/DocumentBinary.aspx?id=827> at 17.

³³ *Id.*

³⁴ Fla. Stat. §364.051(3).

³⁵ Fla. Stat. §364.051(5)(a).

³⁶ Fla. Stat. §364.051(5)(a).

³⁷ Fla. Stat. §364.04(1) and (2).

³⁸ “In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace,” *Second Report and Order*, (rel. Oct. 31, 1996) available at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1996/fcc96424.txt at paragraph 53 (“The record in this proceeding supports our tentative conclusion that not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services will promote competition in the market for such services. Even under existing streamlined tariff filing procedures, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services impedes vigorous competition in the market for such services by: (1) removing incentives for competitive price discounting; (2) reducing or taking away carriers’ ability to make rapid, efficient responses to changes in demand and cost; (3) imposing costs on carriers that attempt to make new offerings; and (4) preventing consumers from seeking out or obtaining service arrangements specifically tailored to their needs. Moreover, we believe that tacit coordination of prices for interstate, domestic, interexchange services, to the extent it exists, will be more difficult if we eliminate tariffs, because price and service information about such services provided by nondominant interexchange carriers would no longer be collected and available in one central location.”)

³⁹ Fla. Admin. Code 25-4.022 and 25-4.111.

⁴⁰ Fla. Stat. §364.01(3).

⁴¹ Fla. Admin. Code 25-4.072.

⁴² Commission Open Meeting Presentation on the Status of the Commission’s Processes for Development of a National Broadband Plan, *Federal Communications Commission* (Sept. 29, 2009) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-293742A1.pdf.

⁴³ Robert W. Crandall and Debra J. Aron, Investment in Next Generation Networks and Wholesale Telecommunications Regulation (Nov. 03, 2008) available at <http://ssrn.com/abstract=1294910> at 27.

⁴⁴ “The Effects of Broadband Deployment on Output and Employment: A Cross-Sectional Analysis of U.S. Data,” *see note 5* at 14-15.

⁴⁵ Letter from Larry Cohen, President, Communications Workers of America to The Honorable Julius Genachowski, Chairman, Federal Communications Commission (Oct. 15, 2009) *available at* <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020142161>; *see also* Prepared Remarks of Commissioner Mignon L. Clyburn, *note 42* (“While some government money is and will be available to help defray the cost of broadband and to support creative adoption programs, it is evident that we cannot do it all on our own.”).

⁴⁶ National Broadband Strategy Call to Action, *Communications Workers of America* (Dec. 1, 2008) *available at* http://www.cwa-union.org/news/entry/national_broadband_strategy_call_to_action.

⁴⁷ Robert D. Atkinson, Daniel Castro and Stephen J. Ezell “The Digital Road to Recovery: A Stimulus Plan to Create Jobs, Boost Productivity and Revitalize America,” *Information Technology & Innovation Foundation* (Jan. 2009) *available at* <http://www.itif.org/files/roadtorecovery.pdf>.

⁴⁸ Robert W. Crandall, Robert E. Litan and William Lehr, “The Effects of Broadband Deployment on Output and Employment: A Cross-sectional Analysis of U.S. Data,” *Brookings Institution* (Jun. 2007) *available at* http://www.brookings.edu/papers/2007/06labor_crandall.aspx.

⁴⁹ *See note 3.*

⁵⁰ *Id.*, at 7.

⁵¹ “The Economic Impact of Stimulating Broadband Nationally,” *Connected Nation* (Feb. 2008) *available at* http://www.connectednation.com/research/economic_impact_study/.

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⁵⁵ *Id.*

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⁵⁷ Julius Genachowski, “Broadband: Our Enduring Engine for Prosperity and Opportunity,” Federal Communications Commission (Feb. 16, 2009) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296262A1.pdf.

⁵⁸ *See note 27*, at Chap. 3, p. 19.

⁵⁹ *See note 58.*

⁶⁰ “Exploring the Digital Nation: Home Broadband Internet Adoption in the United States,” *U.S. Dept. of Commerce* (Nov. 2010) *available at* http://www.ntia.doc.gov/reports/2010/ESA_NTIA_US_Broadband_Adoption_Report_11082010.pdf, at 5.

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⁶² *Id.*, at 4.

⁶³ *Id.*, at 6.

⁶⁴ *Note 18.*

⁶⁵ *Id.*

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⁶⁹ "Towards Access, Adoption and Inclusion: A Call for Digital Equality and Broadband Opportunity," *National Asian Pacific American Caucus of State Legislators, National Black Caucus of State Legislators, National Caucus of Native American State Legislators, and National Hispanic Caucus of State Legislators* (Dec. 2009) available at http://thehispanicinstitute.net/files/u2/TAAI_MultiCaucus_Statement.pdf.

⁷⁰ In Alabama, Senate Bill 373 was signed by Gov. Bob Riley on May 8, 2009. In North Carolina, House Bill 1180 was signed by Gov. Beverly E. Purdue on June 30, 2009. In South Carolina, Gov. Mark Sanford signed H*3299 into law on May 6, 2009. In Tennessee, Senate Bill 1954 was signed by Gov. Phil Bredesen on May 21, 2009.