

Executive Summary

BUILDING A BROADBAND AMERICA: THE COMPETITIVE KEYS TO THE FUTURE OF THE INTERNET

1. COMPETITION: THE LINCHPIN OF US TELECOM POLICY

Competition, not appeasement of RBOC demands, is the only way to assure widespread mass market development of broadband connectivity in all parts of the country.

For the past 30 years, competition has been the foundation of US telecommunications policy. This country has rightly recognized that market forces, not government-protected monopolies, deliver the highest quality services, stimulate innovation and bring the newest developments rapidly to market, and produce the lowest prices to consumers everywhere. In fact, the US telecommunications policy commitment, most recently codified in the landmark *Telecommunications Act of 1996*, has forged a path for other countries to follow, paving the road to a global information infrastructure with strong US leadership. Despite these remarkable advances, the Regional Bell Operating Companies (RBOCs) refuse to keep in step with the rest of the world, and persist in their efforts to undo laws and policies that were intended to assure that broadband services are delivered to all Americans.

The RBOCs are threatening not to make the investments they claim are required to deploy broadband services to rural and underserved areas unless they are permitted to escape the key pro-competitive provisions of the *Telecommunications Act* - the Section 271 prohibition against carrying traffic across LATA boundaries, and the Sections 251/252 requirements to make their networks available to competitors. Moreover, while the RBOCs' threat is directed specifically at rural America, the exemptions they seek would apply *in rural and non-rural areas alike* and to *voice as well as data communications* that utilize advanced facilities. If policymakers choose that road, the quick and devastating result will ironically be the very opposite of vibrant broadband deployment, and worse still, it will foreclose competition in many other telecommunications services as well.

These companies have packaged their requests in a "Digital Divide" campaign where they themselves are portrayed as the only solution to a misrepresented problem. Their goal

is to coerce the nation not to trust competition as Congress has intended, but to pursue an industrial policy that will pre-determine the outcome of the US telecommunications market in return for vague promises of social good. The acceptance of this agenda would do nothing short of reversing 30 years of pro-competitive advances, policies that have catalyzed economic development, particularly in rural America, and that have brought consumers enormous benefits that include a 93% drop in the real price of long distance calls, significantly cheaper and better mobile services, and the commercial development of the Internet itself.

In this study, we explore the factual bases for the RBOCs' attempts to link their willingness to build out broadband facilities in rural areas with the specific relief they are seeking, and demonstrate that these demands are in each instance either unsubstantiated by the facts and/or are lacking in credibility in light of prior RBOC behavior. We conclude that competition — in which the RBOCs are free to participate without being permitted to exploit their incumbency to the disadvantage of other entrants — not appeasement of RBOC demands, is the only way to *assure* widespread mass market development of broadband connectivity in all parts of the country.

The factual premises upon which the RBOC/GTE political agenda is based are demonstrably false.

Underlying the RBOC legislative agenda are the notions that (1) there is (or will be) a critical shortage of broadband services/Internet backbone facilities in rural America; (2) only RBOCs, and not competitors and smaller ILECs, have the capability to bring broadband to rural areas; (3) the RBOCs will not invest in rural areas unless they are given the specific relief that they seek with respect to *all* areas, urban *and* rural; and (4) if they obtain this sought-after relief, they will then deploy broadband facilities and make advanced services available to rural communities. These notions simply underscore the fact that the RBOCs are trying to bootstrap a fictitious rural broadband story into comprehensive nationwide relief. All of these propositions must be shown to be valid for the RBOCs' policy agenda to have merit even with respect to rural regulatory relief; however, as we demonstrate in this study, *none of them are*. The validity of the RBOCs' policy position thus requires that a number of specific factual and policy questions be addressed and resolved:

Are critical shortages of broadband services/Internet backbone facilities likely to exist in rural America?

This study shows there is no critical shortage of broadband services/Internet backbone facilities in rural America.

- The notion that there is some sort of "digital divide" is a fiction being perpetrated by the RBOCs and GTE as the centerpiece of a public relations

campaign aimed at reversing three decades of competitive US telecom policy and extending these monopolies' historic dominance of local telephone services into adjacent long distance and Internet services.

- 96% of all Americans are now able to reach at least four Internet Service Providers on a local call basis, and the competition that is developing for local telephone services, along with the intense competition that already exists for Internet services, is pushing that coverage close to the 100% mark.
- The RBOCs' campaign must be recognized for what it is — a transparent attempt to defeat competition through the political process rather than in the marketplace.

If RBOCs are given the regulatory relief they seek, will they in fact make the investments in rural broadband facilities that they have promised?

This study shows that the RBOCs are unlikely to deploy broadband facilities in rural areas because:

- RBOCs do not even serve most rural areas and those that do have been and are continuing to sell off their rural exchanges;
- the RBOCs themselves have acknowledged problems with their own capabilities to deploy broadband facilities in rural areas; and
- the RBOCs have a decades-long legacy of broken promises, protracted litigation, and slow compliance with specific regulatory/legislative mandates.

There is simply no assurance that further appeasement of all RBOC demands would incent these companies to deploy infrastructure in areas that they have avoided in the past. Competition – not regulatory relief – is the best incentive for long-term investment, and the RBOCs don't yet face sufficient competition in the few rural areas they do serve to prod them to respond. *The answer is not to eliminate — but rather to assure — the chance for competition to develop.*

Will cable systems, smaller ILECs, and other competitive providers be capable of bringing broadband data and other advanced telecom capabilities in rural areas?

Evidence provided in this study demonstrates that non-RBOC providers are actually better able and more likely to bring advanced telecommunications to rural communities than the RBOCs, *provided that the competitive safeguards in the Act are fully enforced.*

Will RBOCs nevertheless invest in and offer broadband services even if the regulatory concessions they demand are not granted?

- RBOC investment in broadband network resources is driven by competitive concerns and the potentially explosive demand for such services in the coming years.
- RBOCs are facing increasing competition for high-speed Internet access, and are responding to this competition wherever it is taking place.
- Adopting measures that could limit or frustrate competitive entry would actually work to reduce RBOC interest in broadband, eliminating their incentives to deploy, to price competitively, and to respond to consumer needs with respect to speed, quality and availability.

Competitive entry, not unilateral RBOC investment, is driving the deployment of advanced telecommunications services in all parts of the country.

Competitive service providers and smaller local exchange carriers, not RBOCs, are leading the way toward the ubiquitous availability of broadband services both in urban as well as in rural areas. In fact, there is compelling evidence that RBOC investment has been geographically targeted specifically in areas in which *some other competitor* has already initiated the roll-out of advanced services. These initiatives are being made without any regulatory *quid pro quo*, yet where competition is not present, the RBOCs are generally *not* pursuing broadband deployment.

Appeasement of RBOC demands for waivers and forbearance will discourage entry and work to delay competitive development of advanced telecom services, and will fundamentally undermine national efforts to achieve a competitive local telecommunications market.

Competition for broadband services is finally starting to take hold, and can be expected to flourish if the market rules established pursuant to the *Telecommunications Act* are enforced and given a chance to work. Some of those competitive initiatives are, however, heavily dependent upon access to RBOC network elements. Thus, efforts by RBOCs to have policymakers overturn key conditions of the *Act* will work to delay or deny availability of advanced services to consumers and increase the potential for RBOC dominance of the Internet as well as the existing local telecommunications distribution infrastructure.

Measures that work to discourage CLEC entry into advanced services may have the additional result of discouraging entry into local voice telephony.

If entrants are foreclosed from using RBOC facilities to provide broadband services and the value-added services based thereon (e.g., Internet services), their interest and financial ability to offer basic local voice telephone services may also be undermined. RBOCs will be offering their customers a platform of services that will include voice dial tone and broadband access to the Internet via ADSL, and entrants will be unable to compete with similarly broad service packages. Moreover, allowing the RBOCs to escape compliance with Sections 251/252 and 271 removes the only incentive they have to open their voice markets or to pay any attention to the Act *at all*. The development of serious competitive alternatives to basic RBOC local exchange service lies at the heart of the 1996 federal legislation, and its absence hurts consumers by permitting the RBOC monopoly to remain unchallenged at its most fundamental level.

2. FACT VS. FICTION: AN ANALYSIS OF RBOC CONTENTIONS

Contention #1: *RBOC acquisition of ADSL technology represents the best chance of broadband deployment in rural areas.*

Facts: *RBOCs historically have had little or no interest in serving rural America.*

The notion that only RBOCs can be counted upon to build broadband-capable networks in what they seek to portray as underserved or even unserved communities is belied by two critically important *facts* that the RBOCs conveniently ignore:

- These companies have no history of commitment to serving rural areas, and indeed have in recent years been working diligently to off-load their serving areas in many of these communities.
- Broadband services have in fact been finding their way into rural communities without the involvement of and investment by the RBOCs, and without the requirement to modify national telecommunications policies and goals to appease the RBOCs' demands.

Thus, there is simply no factual basis for the claim that rural communities will be left out of the digital age unless the RBOCs' demands are met.

Contention #2: *RBOCs have not deployed xDSL technology more extensively solely because of regulatory restrictions.*

Facts: ***Many factors — totally unrelated to any existing regulatory restrictions on the RBOCs — explain the real reasons why these companies have been slow to deploy DSL technology; moreover, the RBOCs are now proceeding with broad roll-outs of DSL.***

Although broadband telecommunications technology has been around for more than a decade, it is only within the past year or so that the RBOCs have displayed any real interest in providing digital services to residential and small business customers; indeed, the enormous advances in personal computer technology and the commercial development of the Internet itself were accomplished in intensely competitive markets and not only without RBOC participation, but often in spite of their failure to keep pace with these other developments. This past lack of interest can be directly attributed to the utter lack of competition in the local telephone market and to a technology environment that was — and remains — better left to competitive, entrepreneurial activity than to government-protected monopolies and, in any event, were distinctly *not* the result of any regulatory conditions that the RBOCs now seek to eliminate. In recent months, increased broadband competition from cable modem service providers and other CLECs primarily related to Internet access has catapulted ADSL into the RBOCs' technology of choice, supplanting previous HFC and SDV forays. It is well recognized in the financial community that the RBOCs' roll-out of DSL is a direct response to the build-out of and plans for broadband by cable companies, CLECs, and providers of wireless/satellite services, and there is compelling evidence that the geographic areas being targeted by the RBOCs are generally those in which other providers have initiated plans to offer these services.

Contention #3: ***Only RBOCs possess the financial and technological capacity necessary to support widescale deployment of xDSL and other advanced services.***

Fact: ***Not only is there no shortage of broadband backbone even in rural areas, the construction of such facilities nationwide is exploding! Even if the shortages being portrayed by the RBOCs were real, investment from nonregulated competitive segments of the industry would be far more likely to achieve the desired outcome than adoption of specific industrial policy favoring the RBOCs' DSL deployment.***

There is currently intense development of the broadband backbone by non-RBOC players; there is no substance to the "shortage" that the RBOCs have fantasized. Moreover, the RBOCs have not historically led the way in technological/market innovation and/or infrastructure modernization. Rather, most new RBOC capital investments over the past fifteen years have been in non-ILEC business ventures — many of which have been directed overseas — and more recently in horizontal mergers, rather than in *domestic* infrastructure development and modernization. Indeed, it is the smaller local exchange carriers, CLECs and other competitors that have led the way in broadband deployment.

Contention #4: *If given the regulatory incentives they are seeking, RBOCs can be counted upon to deploy ADSL-capable services nationwide and to make these services accessible to other competitors.*

Fact: *RBOCs have a history of broken promises in connection with infrastructure programs and other regulatory bargains, and there is no reason to expect this latest "commitment" to be any different.*

These latest RBOC promises to embark upon a network infrastructure modernization program in exchange for regulatory relief are by no means anything new, and parallel similar promises made over a decade ago as part of an ultimately successful campaign to lift the MFJ's information services restriction. The RBOCs contended, at that time, that allowing them into information services was essential in order for our country to keep up with competitor nations in Europe and the Pacific Rim, and promised, among other things, to develop a ubiquitous fiber-to-the-home infrastructure that would support important social objectives like tele-medicine and distance learning. After the line-of-business ban was lifted, the RBOCs made only feeble and ultimately failed attempts to introduce on-line services, made no substantial strides in the widespread deployment of high-speed digital facilities, and tentatively pursued, only to eventually abandon, video services. At the state level, any number of regulatory "bargains" — in which the RBOC obtained price and earnings flexibility in exchange for network modernization commitments — remain unfulfilled to this day, with the character of basic local telephone service remaining unchanged since before these bargains were struck. This track record of consistently broken promises certainly does not justify any particular confidence in current RBOC *quid pro quo* proposals.

3. THE BROADBAND ROAD TO RURAL AMERICA

The RBOCs' contention that their involvement in the provision of broadband services to rural areas is essential presupposes that (1) the RBOCs actually serve these areas; (2) that the specific technology of choice for the RBOCs — xDSL — is the most efficient means of providing broadband services to rural communities; and (3) that no competitive or other alternatives to RBOC deployment are possible. *All of these contentions are demonstrably false.* The study identifies and explores the technological alternatives that are available for the provision of broadband digital services generally and in rural areas in particular, and concludes that if entrants are permitted to compete for these services, competitive market forces will bring the benefits of the information age to all parts of the country. Although announcements concerning RBOC broadband deployment via ADSL technology have been increasing in their frequency in recent months, this fact should not be interpreted as suggesting that the RBOCs are somehow leading the broadbandwagon in most geographic markets. To the contrary, service availability data conclusively demonstrates that RBOC deployment was in most cases triggered by prior broadband initiatives from cable television operators (via cable modem services) and CLECs (predominantly via ADSL and wireless

technologies). The RBOC announcements do, however, *prove* that competition is working and also *prove* that the RBOCs do not require the regulatory deal that they contend to so desperately need.

4. TRUSTING COMPETITION

If and to the extent that *any* of the RBOCs' claims as to a requirement to link their ability to furnish xDSL and their right to transport traffic across LATA boundaries have merit, which they do not, the solution is for the RBOCs to satisfy the Section 251/252 and 271 requirements, not to be allowed to evade them. If the RBOCs are correct that without their own investment in broadband these services will simply not be offered to rural customers at all, then one is compelled to conclude that such services, at least when furnished in areas that would otherwise be unserved, are essential monopoly bottleneck services and must be treated as such. Absent the Section 251/252 unbundling, interconnection, co-location and resale requirements, the RBOCs would clearly be capable of extending this monopoly into the adjacent Internet backbone and ISP markets. Indeed, current RBOC ADSL pricing practices, which are designed to incent ADSL customers to use the RBOCs' ISP services, confirm and underscore this concern.

Section 271 was designed to provide some balance, to assure that non-RBOC local service providers would have the potential to enter the local market, to constrain monopolistic practices of the RBOCs, precisely to limit the RBOCs' ability to remonopolize the interLATA market. There are no separate voice and data networks, and the Act correctly makes no distinction between voice and data because technology makes no distinction between voice and data. Elimination of regulatory safeguards solely with respect to data is thus tantamount to eliminating these safeguards altogether. Indeed, one of the main reasons that DSL is so attractive to competitors and ILECs alike is that it uses the *existing* voice network copper plant and requires relatively little incremental investment. This fundamental policy precept is no less valid or applicable to data services and the Internet than it is with respect to local and long distance voice telephony. The solution, if one is needed, is for the RBOCs to *obey the law*, and not for them to demand that the law be changed or waived solely for their own parochial benefit.

The adoption of an industrial policy specifically favoring one particular type of competitor or technology such as that being sought by the RBOCs is fundamentally incompatible with the dynamic and fast-moving character of telecommunications as well as the competitive market outcome that forms the cornerstone of American economic policy. Given the growing importance of telecommunications to our national economic development, adherence to this rule is even more crucial now than it was in the past. Only through the twin engines of competition and innovation can consumers — in urban and rural areas alike — realize the specific goals of the *Telecommunications Act* — lower prices and increased choice.