BEFORE THE SENATE COMMITTEE ON

COMMERCE, SCIENCE, AND TRANSPORTATION

TESTIMONY OF EARL W. COMSTOCK

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Mr. Chairman and members of the Committee, my name is Earl Comstock. I am the President and CEO of COMPTEL, the communications association of choice, which represents all types of competitive communications providers. COMPTEL has more than 180 members and is celebrating its 25th year representing competitors in the communications marketplace.

COMPTEL thanks the Committee for holding this hearing on S. 2686, the Communications, Consumer Choice, and Broadband Deployment Act of 2006. The introduction of this bill has helped to focus the debate on communications reform, and the bill provides a good starting point for further deliberations and action by this Committee to enact legislation this year.

COMPTEL would also like to commend the Committee for the process through which it considering communications reform. The numerous hearings held earlier this year helped provide a foundation for this bill, and these hearings on the bill, as well as another hearing that is already announced that will be held on a revised draft of the bill that will be issued shortly, all provide a sound record on which the Committee can base its deliberations at mark-up. By not rushing the process, the Committee is ensuring that the public will have an opportunity to comment, and COMPTEL applauds that process.

S. 2686 contains numerous provisions that are needed to promote competition and protect consumers, including universal service reform, competitive access to programming, and implementation of the transition to digital television, and COMPTEL supports those provisions. The bill also contains provisions, for example video franchise reform and restrictions on municipal broadband, that are sought by certain players to enhance their competitive position, and it is in this area that the Committee should focus its efforts on ensuring the playing field does not become tilted in favor of one industry segment over the others. COMPTEL is concerned that the bill as introduced is skewed heavily in favor of one industry segment, namely the incumbent Bell Operating Companies, at the expense of many other players. It is neither fair nor good public policy for the Committee to include changes in law sought by the Bells to improve their ability to compete in new markets without also including provisions to ensure that others can enter and compete in the Bells' core markets. It is to rectify this imbalance that COMPTEL suggests the following changes or additions to the bill.

The three areas that my testimony will focus on are the need for 1) reinstatement of interconnection requirements and local competition rules, 2) special access reform, and 3) strong, enforceable Net neutrality rules. The bill already includes provisions on Net neutrality and interconnection, and COMPTEL proposes to significantly strengthen those provisions. The bill does not currently include language on special access reform, and COMPTEL urges the Committee to add language to address this issue.

Reinstatement of Interconnection and Local Competition Rules

S. 2686 currently includes a provision, section 214, that would extend to "IP-enabled voice service" providers the same "rights, duties, and obligations" as a requesting telecommunications carrier under section 251 and 252 of the Communications Act. COMPTEL is pleased that the sponsors of the bill recognized that VoIP service providers are experiencing interconnection problems; however, the provision does not go nearly far enough. First and foremost, the FCC has nearly eliminated the rights that Congress granted to requesting telecommunications carriers in sections 251 and 252 through a series of decisions over the past several years that have virtually gutted the effectiveness of those provisions. As a result, it is not clear that IP-enabled voice service providers, any more than requesting telecommunications carriers, will be able to get the interconnection and collocation that the bill seems to intend.

Second, COMPTEL is concerned that by defining "IP-enabled voice services" and treating them separately from voice services delivered using other technologies, Congress would be further balkanizing the legal regime that applies to communications services. Does Congress intend, for example, that cable operators should be given more favorable rates for the use of poles, ducts, conduits that other competitive carriers offering IP-enabled or any other voice services – because that would be one of the effects of separating out IP-enabled voice service from all other voice telecommunications. Likewise, does Congress intend that IP-enabled voice services will not be subject to the customer privacy rules of section 222 of the Communications Act – because that would be another likely effect of classifying IP-enabled voice services separately.

The reality is that all competitors – CLECs, cable operators, wireless carriers, and even rural carriers who adjoin the service territories of larger incumbent carriers – all depend on specific provisions of law in the Communications Act for their interconnection to incumbent carriers. COMPTEL recommends that the Committee adopt a broader interconnection section that would reinstate the pro-competitive requirements that Congress has adopted and reaffirmed numerous times in the 70 plus years since the Communications Act was adopted.

Attached in the appendix is COMPTEL's recommended language to restore interconnection and other requirements needed to ensure a competitive communications marketplace. It would ensure that existing provisions of the Communications Act continue to apply to the Bell companies and other incumbent local exchange carriers, and also that incumbent cable operators are treated as CLECs when they chose to enter the voice or data communications markets.

Congress adopted the Telecommunications Act of 1996 after nearly four years of hearings and debate over how best to promote competition in the provision of voice, video, and data services. In particular, Congress spent considerable time and effort on crafting rules to open the local markets controlled by incumbent local exchange carriers, and in particular the Bells, to competition. They also crafted rules to promote competition in the video marketplace, in the full expectation that the Bells would enter video and the cable companies would enter the local phone and data markets. Congress enacted the 1996 Act because promoting competition is the least regulatory, and most effective, way to force consumer prices down. The alternative is retail price regulation,

something that has been tried before in both the telephone and cable markets with unsatisfactory results.

Ten years later, many consumers and businesses are still waiting for the competitive benefits promised by the 1996 Act. Despite numerous public statements and commitments to both State legislatures and the FCC, the Bells did not enter the video market to any significant degree, and also made no effort to compete outside their established service territories. Cable did enter the residential data marketplace by offering cable modem service, and is now finally starting to offer competitive residential voice services on a large scale. And competitors entered the local market to provide competing voice and data services to both business and residential consumers, which allowed the Bell companies to enter the long distance market. For a brief period, many consumers actually started to get competitive choices in local voice and Internet access services, but then the FCC started removing the rules that had made the competition possible. And now Congressional action is once again needed to ensure that consumers do not lose what they started to gain under the 1996 Act.

Today, four facts dictate the options Congress has to promote competition and bring down consumer prices for all communications services. The first fact is that the incumbent telephone companies are the only entities with a wireline network that reaches all business and residential customers in any given area. The second is that the incumbent cable operators have the only wireline alternative network that reaches nearly all of the residential consumers in a particular area, though that same network reaches very few business customers. The third, and perhaps most important, fact is that both the incumbent telephone companies and the incumbent cable operators were each allowed to

build their network over the course of a decade or more while protected from competition, with the assurance that they would get all of the customers that chose to purchase their respective phone or cable service in that area. Finally, it is clear both here and elsewhere in the world that wireless services are a higher priced complement to, and not a substitute for, wireline network data services. As a result, incumbent telephone companies and incumbent cable operators retain at least 70 percent market share in their core service more than 10 years after passage of the 1996 Act.

The reality is that, in both the residential and business markets, the construction of additional ubiquitous wireline networks will not occur. No competitor can get the financing for such an undertaking, and consumers do not want to pay for yet another network. Even in the wireless marketplace, where incumbent cellular operators had much less of a head start, there is consolidation and dominance by the two incumbents.

In light of these facts, which preclude the FCC's model of "inter-modal" competition (i.e. each competitor can reach the end user by building its own wired or wireless network), Congress needs to adopt rules which require network operators, and in particular the two wireline network operators that were allowed to build their networks and establish a customer base while protected from competition, to provide reasonable and non-discriminatory access to those networks. The scarce resource in communications markets is the transmission network. By requiring network operators to allow everyone to use these essential facilities to reach consumers, consumers will receive the benefits of competition -- lower prices, better service, and greater innovation.

The key measures needed to ensure reasonable and non-discriminatory access by competitors include 1) access to elements of the network so that competitors can create

their own services; 2) interconnection at any technically feasible point; 3) the ability to collocate equipment; 4) the ability to attach devices to the network; 5) the right to resell transmission between or among points on the network as part of their own voice, video, and data offerings to consumers; 6) the right to use any technology and offer any service that does not harm the network; 7) non-discriminatory allocation of all transmission capacity on the network (i.e., elimination of cable rules that allow network operators to reserve capacity for their exclusive use); 8) reasonable terms and conditions for each of these measures; 9) a neutral arbitrator to resolve disputes, and 10) efficient enforcement mechanisms to execute these rights. All of these provisions were included in the requirements Congress adopted in the 1996 Act, and Congress needs to re-instate those requirements now if it wants to ensure competition for voice, video, and data services.

Special Access

Special access is a dedicated transmission link between two places. It is provided, almost exclusively, by the Bell companies and other local exchange carriers (LECs) as a critical input for wireless, long distance, and internet services providers for “last mile” voice and data connections. Wireless carriers depend on special access service to connect thousands of cell sites to their switching centers that carry millions of calls and messages. Special access differs from “switched access”, which is the per-minute fee charged by LECs for use of their facilities to switch and transmit ordinary voice traffic. Switched access also connects two different carrier networks, rather than two points on the same carrier network as special access does.

In 2004 the Bell companies received more than $15 billion in special access fees from wireless, long distance, internet, and other communication’s carriers. By charging

exorbitant special access fees, or "last mile connection" fees, the largest three RBOCs earned returns of 32% (Verizon), 67% (AT&T) and 82% (BellSouth) on these special access connections. The largest three Bell companies (which will become two if the AT&T BellSouth merger is approved) control 82.9% of the special access revenue in the U.S.

Because the incumbent LECs own the only wireline facilities that reach the vast majority of businesses in the country (cable companies do not serve most business customers), competitive carriers have no choice but to purchase special access service from the incumbents. Prior to their acquisition by the Bell companies, AT&T and MCI offered the nationwide alternative to incumbent LEC special access services, but those alternatives disappeared as soon as SBC and Verizon bought these two competitive giants. Because they own and control the connections to almost all business customers in their respective business territories, the Bell companies in particular are now able to raise wholesale rates for special access services sold to competing carriers, as well as retail special access rates sold directly to business customers, resulting in price increases for those customers.

Special access rates impact not only competitive LECs, but also wireless carriers and cable companies as well. In the absence of access to these special access services, for example, wireless companies cannot interconnect their services with the wireline network. Competitive providers of broadband services, including cable companies and competitive data providers, that depend on special access lines to connect their facilities to the Internet backbone will also be adversely affected. Special access services are vital inputs to many of the services that COMPTEL members offer to consumers and small

and medium sized businesses. As a result, price increases in special access service are passed on directly to consumers, increasing the cost for all services.

To address this problem, COMPTEL proposes that the Committee include language to prohibit anti-competitive provisions in special access contracts and reinstate the FCC's rules that ensured that special access services are not sold at prohibitive, monopoly rates. We are currently finalizing language with other interested parties, and will submit that language to the Committee shortly.

Net Neutrality

COMPTEL testified previously on the importance of including strong Net neutrality safeguards, and we are pleased to see that Title IX of the bill is devoted to Net neutrality. However, a reporting requirement alone will not address the problems that COMPTEL and many others have outlined at length. Since S. 2686 was introduced, Senators Snowe and Dorgan, along with several other Senators, have introduced S. 2917 to address Net neutrality concerns. COMPTEL supports the inclusion of S. 2917 in S. 2686, hopes the Committee will act expeditiously to include it.

Conclusion

Taken together, the addition of the three amendments COMPTEL proposes will significantly improve the bill and will correct the competitive imbalance created by some of the current provisions in the bill. COMPTEL looks forward to working with the members of this Committee as you continue your deliberations on S. 2686, and I would be happy to answer any questions.

Appendix

Title I of the Communications Act of 1934 (47 U.S.C. 151-161) is amended by adding at the end of such Title the following new subsection:

“**SEC. 12. CONTINUED INTEROPERABILITY OF COMMUNICATIONS.**

“(a) IN GENERAL.—In order to ensure the continued interoperability of the Nation’s communications networks for emergency communications and enable the competitive provision of wireline and wireless telecommunications services and information services, any entity that was or is an incumbent local exchange carrier, and any affiliate of such carrier, shall be treated as a common carrier, telecommunications carrier, local exchange carrier, and incumbent local exchange carrier with respect to all wire communications facilities owned or controlled by such carrier or affiliate, regardless of the–

“(1) classification of the services offered by such carrier or affiliate using such facilities,

“(2) transmission and switching technology used, or

“(3) physical composition of such facilities,

and such carrier or affiliate shall comply with the requirements of sections 201, 202, 224, 332(c)(1)(B), 251, 252, 259, and 271 with respect to any request by a telecommunications carrier for access to such wire communications facilities, or for transmission provided using such facilities, for the provision of any telecommunications, telecommunications service, video programming, or information service, regardless of the transmission or switching technology used by such requesting telecommunications carrier to provide such services. A Bell Operating Company and any affiliate of such company shall provide transmission capacity between or among points on its wire communications facilities to any requesting telecommunications carrier at cost-based rates.

"(b) INCUMBENT CABLE OPERATORS.—In order to ensure the continued interoperability of the Nation's communications networks for emergency communications and enable the competitive provision of wireline and wireless telecommunications services and information services, any entity that is an incumbent cable operator that provides information services, telecommunications, or telecommunications services to subscribers using the facilities of its cable system, and any affiliate of such operator, shall be treated as a common carrier, telecommunications carrier, and local exchange carrier, with respect to all wire communications facilities owned or controlled by such operator or affiliate, regardless of the–

"(1) classification of the services offered by such operator or affiliate using such facilities,

"(2) transmission and switching technology used, or

"(3) physical composition of such facilities,

and such operator or affiliate shall comply with the requirements of sections 201, 202, 224, 332(c)(1)(B), 251, and 252 with respect to any request by a telecommunications carrier for access to such wire communications facilities, or for transmission provided using such facilities, for the provision of any telecommunications, telecommunications service, video programming, or information service, regardless of the transmission or switching technology used by such requesting telecommunications carrier to provide such services.

"(c) WAIVER OF SECTION 10 FORBEARANCE.—The requirements of subsection (a) shall apply to a Bell operating company and any affiliate notwithstanding any prior or

future forbearance decision by the Commission under section 10 with respect to any such company or affiliate or any service provided by such company or affiliate.

"(d) DEFINITIONS.—For the purposes of this section—

"(1) INCUMBENT LOCAL EXCHANGE CARRIER.—The term 'incumbent local exchange carrier' shall have the same meaning as that term has in section 251(h).

"(2) INCUMBENT CABLE OPERATOR.—The term 'incumbent cable operator' means, with respect to an area, the cable operator that—

"(A) on the date of enactment of the Telecommunications Act of 1996, provided cable service in such area; or

"(B) is the successor or assign of the cable operator described in subparagraph (A).

"(3) CABLE OPERATOR, CABLE SYSTEM, AND VIDEO PROGRAMMING.—The terms 'cable operator,' 'cable system,' and 'video programming' shall have the same meaning as those terms are given in section 602."