THE CONTROVERSY OVER TELECOMMUNICATION POLICY IN INDIANA: THE CASE AGAINST SENATE BILL 245 AND HOUSE BILL 1279

SUBMITTED BY HOOSIERS FOR AFFORDABLE TELEPHONE SERVICE

JANUARY 11, 2006

HOOSIERS FOR AFFORDABLE TELEPHONE SERVICE

Hoosiers for Affordable Telephone Service (HATS) is a coalition of consumer groups organizing to maintain affordable basic telephone service in Indiana. Specifically, HATS opposes the provisions of Senate Bill 245 and House Bill 1279 that would lead to higher phone rates and lower quality of service.

Groups currently signed onto the fight against SB 245 are:
AARP
Citizens Action Coalition
Indiana Chapter of the Alliance for Community Media
Indiana Coalition on Housing and Homeless Issues
Indiana Community Action Association
Indiana Media Action Coalition
Public Access Indiana
United Senior Action

TABLE OF CONTENTS

EXECUTIVE SUMMARY **4**

INTRODUCTION **9**

SENATE BILL 245 AND HOUSE BILL 1279 ARE BAD FOR RESIDENTIAL AND BUSINESS RATEPAYERS **10**

SENATE BILL 245 IS NOT NEEDED INDIANA LAW ALREADY PROVIDES FOR REGULATORY FLEXIBILITY **12**

CONTINUED REGULATION OF BASIC LOCAL SERVICE DOES NOT IMPEDE BROADBAND DEVELOPMENT **14**

A FAVORABLE REGULATORY CLIMATE FOR SBC/AT&T CAUTIONS AGAINST FURTHER DEREGULATION **16**

LOCAL SERVICE **17**

BROADBAND **17**

SBC/AT&T AND VERIZON/MCI MERGERS **18**

SBC/AT&T'S MARKET DOMINANCE CAUTIONS AGAINST DEREGULATION **19**

LOCAL TELEPHONE SERVICE **20**

THE BUSINESS MARKET AND LOCAL SERVICE **21**

WIRELESS SERVICE **21**

LONG DISTANCE SERVICE **21**

INTERNET SERVICE **22**

SBC/AT&T'S ANTI-COMPETITIVE BEHAVIOR CAUTIONS AGAINST DEREGULATION **23**

THERE IS NO COMPARABLE REPLACEMENT FOR BASIC LOCAL SERVICE **24**

SB 245 AND HB 1279 WOULD ONLY SERVE TO FURTHER CEMENT SBC/AT&T'S MONOPOLY STATUS IN ITS INDIANA TERRITORY **26**

THERE ARE MORE EQUITABLE WAYS TO ENCOURAGE BROADBAND DEPLOYMENT **27**

CONCLUSIONS **26**

EXECUTIVE SUMMARY

SENATE BILL 245 AND HB 1279 ARE BAD FOR RATEPAYERS AND NOT NEEDED TO ENSURE BROADBAND DEPLOYMENT

Senate Bill (SB) 245 and House Bill (HB) 1279 are not needed to ensure that broadband technology is deployed throughout Indiana and will lead to unwarranted rate increases and poor quality of service for ratepayers. The bills effectively eliminate Indiana Utility Regulatory Commission (IURC) jurisdiction over rates and quality of service for local calling. SB 245 also eliminates the IURC's ability to stop anti-competitive practices, such as offering services below cost in emerging markets. Given the incumbents' overwhelming financial strength, no non-incumbent competitor could compete under these circumstances in practically any facet of telecommunications service.

To provide a context for further discussion, it is necessary to describe why these proposals are bad for residential and small business ratepayers. In the short term, ratepayers would be faced with unjustified automatic rate increases. In the long term, SBC/AT&T could set its own rates and service quality standards. Specifically,

- SB 245 allows telephone companies to incrementally increase the rates consumers pay for basic telephone service every year, from 2006 through 2009. Beginning in 2009, the IURC would no longer be able to place any limits on the rates telephone companies charge for basic local phone service. Not only would rates increase, but telephone companies could eliminate flat monthly rates for unlimited local calling and instead charge by the minute.

- HB 1279 similarly allows for price deregulation of basic telephone service, but would do in July, 2006 without a transition period. While HB 1279 provides some protections for flat monthly service, those protections apply only to customers whose service falls within a very narrow definition of "basic local service."

- Price increases for basic local phone service could be as high as 30 percent in some areas, according to Logan Jordan, associate dean of the Krannert School of Management at Purdue University.[1]

- Consumers in rural areas are particularly likely to see the price of their basic telephone service increase due to a present lack of competition in those areas.

- According to the Indiana Office of Utility Consumer Counselor's (OUCC) 2005 report, the recent SBC/AT&T and Verizon/MCI mergers are changing the competitive landscape, such that these incumbent providers will now control roughly 93 percent of the telephone access lines in Indiana.[2] With such lack of competition for basic phone service, there will be no pressure to drive those prices down.

- Under SB 245, after 2009, the IURC would no longer be able to regulate telecommunications service

[1] Indianapolis Star, Jan. 5, 2006

[2] "Telecommunications in Indiana 2005: Where We Are, How We Got Here, and Where Should We Go? The 2005 Report." Susan Macey, Indiana Utility Consumer Counselor. Office of the Utility Consumer Counselor, September 12, 2005.

quality. Under HB 1279, the IURC's service quality authority would be severely curtailed beginning in 2006. This would render the IURC powerless in situations like the SBC service-quality melt-down of 2000 in Indiana and the Midwest.[3]

- SB 245's tax abatement provisions, designed to encourage competition in broadband investment, unfairly benefit monopoly telephone companies (i.e., SBC/AT&T and Verizon/MCI), who will receive automatic rate increases as well as tax abatements. Their broadband investments would be subsidized by ratepayer and taxpayer dollars, running contrary to the stated goals of leveling the playing field for competitors in the broadband market.

Reason Number 1 for Not Passing SB 245 and HB 1279:
INDIANA LAW ALREADY PROVIDES FOR REGULATORY FLEXIBILITY

Proponents of SB 245 assert that the last Indiana telecommunications law was adopted 20 years ago and that Indiana law has not responded to changes in technology and competitive forces. This claim ignores the significant regulatory flexibility afforded the IURC under Indiana's alternative regulation statute.[4] Under this statutory framework, the IURC has closely monitored telecommunications markets and made rulings based on extended negotiations between the OUCC, incumbent telephone companies, and interested parties for the past 11 years. Rulings of the IURC have the force of new law. Furthermore, these proceedings have resulted in pricing flexibility for a number of services provided by incumbent telephone companies like SBC/AT&T. OUCC noted in 2005 that Indiana's alternative regulation statute has been successful in allowing for regulatory flexibility in a changing environment.[5]

Reason Number 2 for Not Passing SB 245 and HB 1279:
CONTINUED REGULATION OF BASIC LOCAL SERVICE DOES NOT IMPEDE BROADBAND DEVELOPMENT

The assertion put forth by proponents of SB 245 that regulation of Basic Local Service (BLS) is somehow inhibiting investment in advanced telecommunications technology is patently false. Various providers are currently systematically expanding broadband access in Indiana, including the incumbent telephone companies, as a result of negotiated settlements under the alternative regulation statute.[6] Others investing in broadband include the Indiana Fiber Network (a consortium of smaller telephone companies), municipalities, and universities. Regulation of BLS has not impeded broadband deployment in Indiana. Furthermore, a 2005 Federal Communications Commission's study found that broadband lines increased 53% in Indiana from 2003 to the end

---

[3]In 2000, a serious meltdown in SBC/Ameritech service quality occurred across the board. People waited long periods of time to receive phone service or for repairs to be completed. Businesses lost untold amounts of revenue due to the problem. The meltdown precipitated an investigation by the IURC that resulted in a settlement whereby SBC/Ameritech was mandated to answer customer calls, exact repairs and provide phone service in specific timeframes.

[4] IC 8-1-2.6-1 et. seq.

[5] OUCC, The 2005 Report.

[6] Ibid.

of December 2004.[7]

Reason Number 3 for Not Passing SB 245 and HB 1279:
A FAVORABLE REGULATORY CLIMATE FOR SBC/AT&T CAUTIONS AGAINST FURTHER DEREGULATION

Clearly, SBC/AT&T enjoys a very favorable regulatory climate. The federal courts have eliminated the incumbents' obligation to lease their network elements at favorable rates to competitors.[8] Likewise, regulators have relaxed or eliminated similar leasing requirements with respect to broadband.[9] These actions have solidified SBC/AT&T's control of local calling and aided in its expansion into the broadband market. Similarly, despite its dominant market position, SBC/AT&T has convinced the IURC to force its competitors to comply with the same regulations required of incumbents in key areas.[10] Nevertheless, the IURC still understands that it must continue to play a regulatory role in the telecommunications industry.[11] The Indiana Utility Regulatory Commission is not convinced that the telecommunications market in Indiana is mature enough for deregulation across-the-board, as is envisioned in SB 245 and HB 1279.

Reason Number 4 for Not Passing SB 245 and HB 1279:
SBC/AT&T'S MARKET DOMINANCE CAUTIONS AGAINST DEREGULATION

Clearly, regulations and competition have not hampered SBC/AT&T from gaining market dominance in its territory, nor constrained the company in its geographic scope with respect to telecommunications services. SBC/AT&T is the dominant force in its former-Bell territories in terms of local (for both residential and business customers) and long distance service.[12] It is the dominant force nationwide in terms of wireless and DSL service.[13] The company is poised, through SBC's acquisition of AT&T, to further expand into the business market segment both at home and abroad.[14] The dominant position of AT&T with respect to both long distance and Internet services does not bode well for any non-incumbent competitor, whom the company dwarfs in terms of financial strength.[15] Moreover, it is evident that the trend in the industry is not

---

[7] High-Speed Services for Internet Access: Status as of December 31, 2004. Industry Analysis and Technology Division Wireline Competition Bureau of the Federal Communications Commission, July 2005.

[8] IURC, Report to the Regulatory Flexibility Committee, 2004.

[9] SBC 2004 Annual Report.

[10] In the Matter of the Indiana Utility Regulatory Commission's Investigation of Matters Related to Competition in the Telecommunications Industry in the State of Indiana pursuant to Ind. Code 8-1-2 et seq., Cause 42530 Approved December 9, 2005.

[11] Ibid.

[12] OUCC, The 2005 Report. Also, Mark Cooper, "Broken Promises and Strangled Competition: The Record of Baby Bell Merger and Market Opening Behavior." Consumer Federation of America, Consumers Union, USPIRG, June 2005. Also, IURC, Cause 4230.

[13] SBC 2204 Annual Report.

[14] Ibid.
[15] Consumers Union, et al., 2005.

toward greater competition, rather it is toward greater consolidation. A merger between incumbent provider Verizon and MCI was approved by the FCC in October, 2005 and was finalized on January 6, 2006.

Reason Number 5 for Not Passing SB 245 and HB 1279:
SBC/AT&T'S ANTI-COMPETITIVE BEHAVIOR CAUTIONS AGAINST DEREGULATION

It would appear that SBC/AT&T has worked incessantly at protecting its dominance over its captive customer base. Consumer groups have identified strong evidence that it attempted to thwart the Telecommunications Act of 1996 (TA '96) implementation strategy at every turn, and incurred steep fines as a result.[16] The company now is engaged in anti-competitive practices, such as offering DSL service only if it is bundled with local service, to effectively eliminate any chance of competition for local service customers in its 13-state region.[17]

The fact that SBC/AT&T still controls over 90 percent of telephone access lines in its territory, and evidence of its growing market share after initial losses due to TA '96, further corroborate the company's anti-competitive behavior in recent years.

Reason Number 6 for Not Passing SB 245 and HB 1279:
THERE IS NO COMPARABLE REPLACEMENT FOR BASIC LOCAL SERVICE (BLS)

The proponents of SB 245 premise their need for deregulation on the argument that wireless and voice over Internet protocol (VoIP) service are viable substitutes for BLS on a technological, competitive and availability basis. This argument is widely discredited.[18] BLS is cheaper and more reliable than the newer technologies, and unlike them, it continues to operate during power failures and ensures 911 service. Indeed, in a recent decision the IURC has reaffirmed its position that wireless is not a viable alternative and is skeptical for technological and competitive reasons about VoIP.[19] Furthermore, SBC/AT&T's dominance in the DSL and local markets makes the viability of serious competitive challenges questionable at this time.

Reason Number 7 for Not Passing SB 245 and HB 1279:
WOULD ONLY SERVE TO CEMENT SBC/AT&T'S MONOPOLY STATUS IN ITS INDIANA TERRITORY

In essence, these proposals are not designed to encourage broadband investment per se. Instead, they are designed to ensure that incumbent telephone companies are the leaders in broadband investment in the state - thereby providing them with the legal mechanism to retain and expand their market power within their respective territories. No other telecommunications companies would have the financial wherewithal to rival them, and, particularly under SB 245, no state-level regulatory body would have the authority to prohibit anti-competitive practices, such as using revenues from captive basic local service customers to subsidize offering services in emerging markets below cost.

---

[16] Ibid.

[17] Ibid. Also, SBC 2004 Annual Report.

[18] National Association of State Regulatory Advocates, April 2005.

[19] IURC Cause 42530.

Reason Number 8 for Not Passing SB 245 and HB 1279:
THERE ARE MORE EQUITABLE WAYS TO ENCOURAGE BROADBAND DEPLOYMENT

Last year, Indiana State Senator David Ford introduced Senate Bill 381[20] in an effort to begin the process of systematically providing broadband service to the rest of the state. It envisioned a coordinated effort between the Intelenet Commission, higher education, and other entities to accomplish a true public benefit. There were no provisions included that dealt with deregulation of incumbent telephone companies. Perhaps the legislation should be revisited, in lieu of a scheme that appears ultimately to only serve the business interests of incumbent telephone companies.

Conclusions

There is no good reason to pass SB 245 or HB 1279, and many good reasons not to. Contrary to proponents' assertions, there is strong evidence that the bill would severely curtail competitive forces in the telecommunications sector even more than they already are and lead to unwarranted rate increases and poor quality of service for ratepayers.

There is also strong evidence that the bills are specifically designed as an extension of SBC/AT&T's business strategy of gaining a dominant market position with respect to telecommunications services across the board. As such, the bills are contrary to the mainstay of historical state utility policy, affordable and reliable telephone service.

> As previously alluded to, the federal court decision with respect to Unbundled Network Elements-Platform (UNE-P) has allowed incumbent telephone companies to effectively freeze out additional competition in local calling areas. The number of competitors has dropped significantly, and the number of lines controlled by competitors is shrinking. Indeed, SBC acknowledged in its 2004 annual report that the UNE-P decision furthered its business interests in local calling areas.
>
> This is also the result of SBC taking over its most significant competitor, AT&T. Arguably, although not in the scope of this report, anti-trust enforcement policy in the United States has resulted in substantial consolidation in both the electric and telecommunications industries. There does not appear to be any question that unprecedented consolidation in each industry is leading to fewer companies competing in these economic sectors. However, the direct takeover of AT&T by SBC has helped to increase SBC/AT&T's market share of local lines in Indiana by an estimated 5 to 6 percent, from approximately 88 to 93 percent.

[20]See www.in.gov.legislative/bills/2005/IN/IN0381.1.html

INTRODUCTION

Affordable utility services are paramount to modern quality of life. For decades, the public policy philosophy that formed the basis of electric, gas and phone service has been universal service (service for everyone) at just and reasonable rates. These concepts still exist in Indiana law, but are under threat today by the trend toward weakened regulatory oversight of monopoly utility companies.

A large part of the problem facing residential and small business utility customers is consolidation of these industries into mega-companies that work feverishly at the federal and state level to undermine regulatory scrutiny while using revenues from their captive-customer base to expand their respective empires. This is particularly true in the case of the telecommunications industry.

The breakup of AT&T and the introduction of competitive forces foreseen by the Telecommunications Act of 1996 (TA '96) has failed. Indiana Bell was swallowed up by Ameritech, a Midwest regional company consisting of a number of "Baby Bells." Ameritech was, in turn, swallowed by SBC, a regional Bell company from Texas, operating in 13 states as a result of the merger. Meanwhile, SBC expanded into the long distance, wireless and Internet markets through regulatory approvals, acquisitions, and mergers. Indeed, SBC recently purchased its former parent company, AT&T, and renamed itself AT&T. The reconstitution of the AT&T empire was accomplished by means of captive ratepayer dollars from the former Bell subsidiaries in conjunction with a strategy to brush aside any regulatory impediments.

The initial state franchise monopoly status granted to these companies became the catalyst that provided mega-incumbent, telecommunications companies with the unassailable financial position they now enjoy with respect to local, long-distance, DSL and other Internet services in their respective territories.

Senate Bill (SB) 245 and House Bill (HB) 1279 are merely the continuation of an ongoing strategy to monopolize the entire array of telecommunications services. Emboldened by its recent successes to expand without federal resistance and secure market dominance in the local telephone, wireless, long distance and Internet markets, SBC/AT&T is now backing legislation in the Indiana General Assembly to completely eliminate regulatory oversight by the Indiana Utility Regulatory Commission (IURC) over basic local service and service quality.

If SB 245 or HB 1279 passes, SBC/AT&T will be able to set its own local phone rates and establish its own standards for service quality. SBC/AT&T will have become an unregulated monopoly. The passage of SB 245 or HB 1279 would mean higher basic local service phone rates (the rates for the traditional telephone service), higher rates for other services, such as call waiting, and poorer service quality, with no comparable alternatives in sight. As such, the legislation would eliminate the long-held principle of universal service at just and reasonable rates. Particularly under SB 245, SBC/AT&T would be able to hike rates on captive basic local service customers, and use the revenue to offer services below cost in emerging markets such as broadband, driving all competitors out of those new markets. The elimination of IURC oversight, other provisions of these legislative proposals, and recent regulatory rollbacks at the federal level would provide SBC/AT&T and Verizon/MCI the pricing and financial leverage to dissuade or eliminate any potential competitors in their monopoly franchise territories.

The proponents of SB 245 and HB 1279 claim that the purpose of the bills is to ensure that broadband (DSL) service is properly deployed in all areas of the state and that the only way to accomplish this is to

eliminate outmoded regulations that are inhibiting such investment and the necessary "competitive" forces to bring this new technology to Indiana.

However, as this report will demonstrate, maintaining regulation over basic local service while deploying broadband, or DSL, service are compatible strategies. Moreover, this report will demonstrate that DSL is being deployed in Indiana by a number entities, including SBC/AT&T, slowly but surely across the state. The report will show that SB 245 and HB 1279 are not needed because:

1. Indiana law already provides for regulatory flexibility;

2. Continued regulation of Basic Local Service does not impede broadband development;

3. A favorable regulatory climate for SBC/AT&T cautions against further deregulation;

4. SBC/AT&T's market dominance cautions against deregulation;

5. SBC/AT&T's anti-competitive behavior cautions against deregulation;

6. There is no comparable replacement for Basic Local Service;

7. SB 245 and HB 1279 would only serve to cement SBC/AT&T's monopoly status in its Indiana territory;

8. There are more equitable ways to encourage broadband deployment.

SENATE BILL 245 AND HOUSE BILL 1279 ARE BAD FOR RESIDENTIAL AND BUSINESS RATEPAYERS

To provide a context for further discussion, it is necessary to describe why these proposals are bad for residential and small business ratepayers. In the short term, ratepayers would be faced with unjustified automatic rate increases. In the long term, SBC/AT&T could set its own rates and service quality standards. Specifically,

- SB 245 allows telephone companies to incrementally increase the rates consumers pay for basic telephone service every year, from 2006 through 2009. Beginning in 2009, the IURC would no longer be able to place any limits on the rates telephone companies charge for basic local phone service. Not only would rates increase, but telephone companies could eliminate flat monthly rates for unlimited local calling and instead charge by the minute.

- HB 1279 similarly allows for price deregulation of basic telephone service, but would do in July, 2006 without a transition period. While HB 1279 provides some protections for flat monthly service, those protections apply only to customers whose service falls within a very narrow definition of "basic local service."

- Price increases for basic local phone service could be as high as 30 percent in some areas,

according to Logan Jordan, associate dean of the Krannert School of Management at Purdue University.[21]

- Consumers in rural areas are particularly likely to see the price of their basic telephone service increase due to a present lack of competition in those areas.

- According to the Indiana Office of Utility Consumer Counselor's (OUCC) 2005 report, the recent SBC/AT&T and Verizon/MCI mergers are changing the competitive landscape, such that these incumbent providers will now control roughly 93 percent of the telephone access lines in Indiana.[22] With such lack of competition for basic phone service, there will be no pressure to drive those prices down.

- Under SB 245, after 2009, the IURC would no longer be able to regulate telecommunications service quality. Under HB 1279, the IURC's service quality authority would be severely curtailed beginning in 2006. This would render the IURC powerless in situations like the SBC service-quality melt-down of 2000 in Indiana and the Midwest.[23]

- SB 245's tax abatement provisions, designed to encourage competition in broadband investment, unfairly benefit monopoly telephone companies (i.e., SBC/AT&T and Verizon/MCI), who will receive automatic rate increases as well as tax abatements. Their broadband investments would be subsidized by ratepayer <u>and</u> taxpayer dollars, running contrary to the stated goals of leveling the playing field for competitors in the broadband market.

On their face, the proposals are blatantly anti-consumer from a rate and quality of service perspective. In addition, the rationale for SB 245 and HB 1279 is fundamentally flawed. The next section of the report explains why there is no need to deregulate Indiana's monopoly telephone companies. It also demonstrates that the real intent of the bill is to eliminate competition for SBC/AT&T completely in SBC/AT&T's Indiana territory and to allow SBC/AT&T to set prices for services any way it pleases, not to promote competition and deployment of DSL.

---

[21] Indianapolis Star, Jan. 5, 2006

[22] "Telecommunications in Indiana 2005: Where We Are, How We Got Here, and Where Should We Go? The 2005 Report." Susan Macey, Indiana Utility Consumer Counselor. Office of the Utility Consumer Counselor, September 12, 2005.

[23]In 2000, a serious meltdown in SBC/Ameritech service quality occurred across the board. People waited long periods of time to receive phone service or for repairs to be completed. Businesses lost untold amounts of revenue due to the problem. The meltdown precipitated an investigation by the IURC that resulted in a settlement whereby SBC/Ameritech was mandated to answer customer calls, exact repairs and provide phone service in specific timeframes.

SENATE BILL 245 AND HOUSE BILL 1279 ARE NOT NEEDED
Reason Number 1 for Not Passing SB 245 and HB 1279:
INDIANA LAW ALREADY PROVIDES FOR REGULATORY FLEXIBILITY

Proponents of SB 245 assert that Indiana's telecommunications laws were "last updated in 1985" and SB 245 is needed to "remove cumbersome regulations from phone, video and broadband industries."[24]

Contrary to this statement, however, Indiana's most recent law adopted for the telecommunications industry was in December of 2005.[25] The 1985 law referred to in Senator Hershman's news release gave the Indiana Utility Regulatory Commission (IURC) authority to periodically update rules governing regulated telecommunications companies with the aim to make them more flexible – to reduce regulatory oversight in areas that the Commission felt needed less or no regulation. It is referred to as the alternative regulation statute under Indiana Code 8-1-2.6. As any order that the IURC adopts has the force of law, Indiana's telecommunications laws have actually evolved since 1994 when the first Alternative Regulatory Plan (ARP) for Ameritech was adopted by the Commission.

As described by the Indiana Office of Utility Consumer Counselor (OUCC):

> In recent years, the Alt Reg statute has been used to craft Alternative Regulatory Plans (ARPs) for Indiana's largest Incumbent Local Exchange Carriers (ILECs) - including three for Ameritech/SBC - permitting those carriers to enjoy increasingly relaxed regulation in Indiana since 1994. Sprint has enjoyed reduced regulation under two consecutive ARPs beginning in the year 2000. Verizon recently sought and received approval by the IURC for its first ARP in 2004. **These negotiated ARPs brought real value to both consumers and the utilities - 94.6% of Indiana's consumers with wireline service have continued to receive Basic Local Service (BLS) without a significant increase for more than a decade, while Indiana's largest telecommunications providers have increased the number of non-regulated services and acquired pricing flexibility for those services as well as some of the most popular "non-BLS" services** (operator assisted calls, local or long distance information service, call waiting, voice mail, caller ID, etc.), without the need for cost support or IURC approval. The same is true for any new service

[24]News Release from the office of State Senator Brandt Hershman: "Hershman Releases Telecommunications Bill - Reform expected to bring jobs, competition to Indiana." January 4, 2006.

[25]In the Matter of the Indiana Utility Regulatory Commission's Investigation of Matters Related to Competition in the Telecommunications Industry in the State of Indiana Pursuant to Ind. Code 8-1-2 et seq., Cause 42530 Approved December 9, 2005

> offerings, including bundles or packages including BLS.[26] (emphasis added).

Although the trend toward true competitive markets appears to have been stymied, if not reversed, by mergers and recent regulatory decisions at the federal level, the OUCC concludes that Indiana's alternative regulation statute has been successful in creating flexibility of regulation:

> Today, the competitive and regulatory environment is much different than it was in 1985. The 1985 law has done its job, creating an environment where competitive providers can come into Indiana and offer innovative services and packages of services to most of Indiana's consumers.[27]

Moreover, in its 2004 annual report, SBC/AT&T discussed alternative regulatory plans and alluded to the flexibility in regulations afforded by Alt Reg statutes:

> [A]ll of our wireline subsidiaries operate under state-specific elective "price cap regulation" for retail services (also referred to as "alternative regulation") that was either legislatively enacted or authorized by the appropriate state regulatory commission.
>
> **Price cap rates may be subject to or be eligible for deregulation or greater pricing flexibility if the associated service is deemed competitive under some state regulatory commission rules.**[28] (emphasis added).

Indeed, forty-one other states have some form of price cap legislation or approach.[29]

Therefore, the first assertion put forth by proponents of SB 245 that the last Indiana telecommunications law was adopted 20 years ago and Indiana law has not responded to changes in technology and competitive forces is not true. The IURC has closely monitored telecommunications markets and made rulings based on extended negotiations between the OUCC, incumbent telephone companies, and interested parties for the past 11 years. These rulings have the force of new law. Furthermore, these proceedings have resulted in pricing flexibility for a number of services provided by incumbent telephone companies like SBC/AT&T.

---

[26]Telecommunications in Indiana 2005: Where We Are, How We Got Here, and Where Should We Go? The 2005 Report. Susan Macey, Indiana Utility Consumer Counselor. Office of the Utility Consumer Counselor, September 12, 2005, pg. 9.

[27]Ibid., pg. 57.

[28]SBC Communications Inc.: 2004 Annual Report, February 25, 2005, pg 28.

[29]OUCC, Attachment 2: Summary of Deregulation Efforts in Other States.

Reason Number 2 for Not Passing SB 245 and HB 1279:
CONTINUED REGULATION OF BASIC LOCAL SERVICE DOES NOT IMPEDE BROADBAND DEVELOPMENT

Another assertion by proponents of SB 245 is that "a loosening of price and other regulations on local phone service would send AT&T the message that Indiana is friendly for such new [telecommunications] investments."[30] This statement assumes there is no investment occurring or planned in advanced telecommunications services, such as broadband, Internet-based TV, or voice over Internet protocol (VoIP). However, this is not the case.

To begin with, the incumbent telephone companies in Indiana are investing in DSL. Not only are they investing in DSL, the investments are the result of regulatory oversight in negotiated settlements under the alternative regulation statute.

The OUCC describes DSL investment by Indiana-based incumbent telephone companies as follows:

> The three most recent, Commission-approved, negotiated ARPs further broadband deployment in the state and brought additional value to consumers. SBC has promised to deploy high speed services to at least 77% of its "living units" by June 30, 2008, with at least 30% of the newly deployed infrastructure placed in rural areas. Verizon's agreement included 73% coverage by December 31, 2007 with a minimum of 40% rural deployment, coupled with a promise that 100% of those high-speed lines will be able to provide "stand-alone" or "naked" DSL - high speed service without requiring customers to also purchase Verizon basic local service. The Sprint ARP commits the company to providing high-speed services over 70% of their access lines by December 31, 2008. In addition, Indiana consumers are not limited to services provided by traditional telephone providers.[31]

These investments are not limited to incumbent telephone companies. The OUCC states, "Depending on availability, customers can receive broadband through DSL, Cable, Wi-Fi, Satellite, and Broadband-Over-Powerlines."[32]

A unique entity pioneering broadband deployment in rural Indiana is the Indiana Fiber Network. IFN describes itself "as a consortium of 19 independent telephone companies." The purpose of IFN is "to provide advanced telecommunications services throughout the state." It boasts "a 1300+ miles of fiber optic network that connects rural Indiana with the larger cities around the state."[33]

---

[30]Keith Benman, "AT&T, local phone providers mount deregulation push." Northwest Indiana Times, November 30, 2005.

[31]OUCC, 2005, pg. vii.

[32]Ibid., pg. vii

[33]www.indianafiber.net

The regulation of local phone service has certainly not stopped SBC/AT&T from expanding aggressively into the DSL market and will not thwart plans for incursion into the VoIP nor the Internet-based TV markets. Although the company expresses consternation about potential local franchise fees, it nonetheless has stated its intention to forge ahead with an expansive advanced high-speed Internet network.

SBC/AT&T has already made significant investments in DSL. SBC, prior to its merger with AT&T, declared that it was "the clear industry leader in DSL." At the same time, SBC, perhaps in anticipation of the merger, announced Project Lightspeed (a network to provide IP video, super-high-speed broadband and VoIP services), the company's plan to "deploy 38,800 miles of fiber" and "reach 18 million customers" by mid-2008.[34]

Despite the company fearing that existing "state and local regulation… could have a materially adverse effect on our deployment plans,"[35] the combined company nonetheless reiterated its intention to implement Project Lightspeed in a December 2005 press release.[36]

Currently, SBC/AT&T boasts being the world's largest DSL provider.[37] However, prior to the merger, SBC's DSL investment had already reached 77% of its wireline customers.[38] These investments occurred despite any concern with potential or actual regulatory oversight.

The current regulatory climate has not prevented the company from investing in VoIP, either. SBC (pre-merger) provided VoIP to business customers. In 2004, the company "won contracts for several large-business VoIP deployments, including a contract to create and manage VoIP network for 50,000 Ford employees located at 100 different facilities."[39]

Indeed SBC states: "Over the next few years we expect an increasing percentage of our revenues to come from: (1) data, through existing services, new services to be provided by our Project

---

[34]SBC, 2004 annual report, pgs. 3 and 22.

[35]Ibid., pg. 22.

[36]AT&T Selects 2Wire Residential Gateway for AT&T U-verse: Wireless gateway enables IP-enabled services to be used throughout the home, San Antonio, Texas, December 9, 2005. Source: AT&T Web site. Specifically: "Project Lightspeed is the initiative to expand the fiber-optics network deeper into neighborhoods to deliver AT&T U-verse TV, high-speed Internet access and, eventually, Voice over IP services. AT&T companies expect to reach approximately 18 million households by the first half of 2008 as part of initial deployment, using fiber-to-the-node (FTTN) and fiber-to-the-premises technologies."

[37]Recent AT&T commercial that aired during College Bowl games.

[38]SBC annual report, pg. 22.

[39]SBC annual report, pg. 3.

Lightspeed initiative, and upon the closing of our pending acquisition of AT&T..."[40]

Moreover, although SBC/AT&T anticipates competition from other companies in the race for voice over Internet protocol market share, it also sees the sector as a "growth opportunity... both within and outside our 13-state area."[41]
Finally, a 2005 Federal Communications Commission report demonstrates broadband line deployment in Indiana increased 53% from 2003 to December 31, 2005.[42] Furthermore, the report shows that most lines were installed by incumbent telephone companies.[43]

Therefore, the assertion put forth by proponents of SB 245 that regulation of Basic Local Service (BLS) somehow inhibits investment in advanced telecommunications technology is patently false. Various providers are currently systematically expanding broadband access in Indiana, including the incumbent telephone companies, as a result of negotiated settlements under the alternative regulation statute. It appears also that the technological resources AT&T brings to SBC will make the implementation of "Project Lightspeed" much easier.[44] Others investing in broadband include the Indiana Fiber Network (a consortium of smaller telephone companies), municipalities, and universities. Regulation of BLS has not impeded broadband deployment in Indiana.

Reason Number 3 for Not Passing SB 245and HB 1279:
A FAVORABLE REGULATORY CLIMATE FOR SBC/AT&T CAUTIONS AGAINST FURTHER DEREGULATION

A series of recent decisions by the Federal Communications Commission (FCC) and federal courts have solidified incumbent telephone companies' stranglehold on local and broadband services in Indiana.

---

[40]SBC annual report, pg. 22.

[41]Ibid., pg. 25

[42] High-Speed Services for Internet Access: Status as of December 31, 2004. Industry Analysis and Technology Division Wireline Competition Bureau of the Federal Communications Commission, July 2005, Table 8: High-Speed Lines by State. Specifically, the report contains the following data with respect to broadband line deployment in Indiana: 1999 – 20,059 lines; 2000 – 60,494 lines; 2001 – 123,704 lines; 2002 – 205,946 lines; 2003 – 419,131 lines; 2004 – 641,607 lines.

[43] Ibid, Table 7: High-Speed Lines by Technology as of December 31, 2004. Specifically, the report shows the following number of lines by technology: cable – 239,454; ADSL* - 364,887; other (wireless, fiber, satellite) – 37,266. * ADSL is "Asymmetric" DSL -- is a form of DSL, a data communications technology that enables faster data transmission over copper telephone lines than a conventional modem can provide.

[44]SBC annual report, pg. 3. Specifically: "Looking to next year and beyond, the assets and capabilities that AT&T will bring to our company will enable SBC to fundamentally change our cost structure. In fact, the net present value of the expected cost synergies of the merger exceeds $15 billion, which equals the value of the stock portion of the transaction. This combination will also allow us to forego expensive capital development costs in a number of areas in the coming years."

Moreover, the Dec. 9, 2005 IURC Order favors the large incumbent telephone companies in important ways.

LOCAL SERVICE

The Telecommunications Act of 1996 (TA '96) was designed to force local telephone companies to lease out portions of their local network to competitors to spur competition in the local telephone market. This portion of the phone system is called UNE-P, unbundled network element platform. This was the major conduit for competitors to compete on the local level. However, as a result of a 2004 federal court ruling, this conduit is no longer available to competitors.

The OUCC wrote in 2004: "As indicated above, UNE-P has been the driving force behind the increase in competition and is the most popular form of CLEC [Competitive Local Exchange Carrier] entry today. Action earlier in 2004 by the federal DC Circuit Court... effectively ends that method of competition."[45]

The National Association of State Utility Consumer Advocates (NASUCA), of which OUCC is a member, expressed a similar opinion last year: "The Telecommunications Act of 1996 was intended as a means to curb incumbent local exchange carrier dominance of local phone service... Instead, what has resulted nine years later is the enfeeblement of even the largest long distance providers and the refortification of the local bottleneck..."[46]

Moreover, the IURC recently chimed in with equal concern: "[W]e are concerned about the effects on competition of the elimination of UNE-P..."[47]

SBC recognized its advantage in the wake of the federal court decision with respect to UNE-P as well: "December 2004 FCC Unbundling Rules: The FCC's decision provides significant relief from unbundling by, among other things, eliminating our obligation to provide the UNE-P for mass market customers."[48]

BROADBAND

Broadband regulation has also been rolled back, to the incumbents' advantage. SBC gleefully reported in 2005: "Because of opportunities made available by the FCC rulings discussed above on broadband, we expect that our capital expenditures in 2005 will increase to a target range of between $5.4 and $5.7 billion."[49]

---

[45]IURC, Report to the Regulatory Flexibility Committee, 2004

[46]Lee L. Selwyn, Helen E. Golding, Hillary A. Thompson, "Confronting Telecom Industry Consolidation: A Regulatory Agenda for Dealing with the Implosion of Competition," prepare for NASUCA by Economics and Technology, Inc., April 2005.

[47]IURC, Cause 42530, pg. 10.

[48]SBC 2005 annual report, pg. 23.

[49]Ibid., pg. 22. Specifically:

> "Broadband FTTH (fiber-to-home) loops are fiber-optic loops that connect directly form our network to

SBC/AT&T AND VERIZON/MCI MERGERS

The IURC expressed concern in its most recent order of the impact the "mega-mergers" could have on competition, and announced plans to conduct further formal investigation into the status of competition in Indiana.[50]

Others, such as the Consumer Federation of America, Consumers Union, and USPIRG, believe that the mega-mergers will ultimately kill competition in the telecommunications industry:

> The wave of proposed mergers in the telecommunications industry - SBC attempting to gobble up AT&T, and Verizon trying to swallow MCI - mark the ultimate demise of any hope for consumers getting more choices and lower prices for local, long distance, wireless, and the new Internet-based services exploding on the market.[51]

In the 2005 legislative session, SBC complained that its competitors needed to subject to the same regulations as incumbents like SBC. This approach of conforming regulations for both incumbents and competitors is known as "parity." In the IURC's December 2005 order, the Commission addressed parity and moved in SBC/AT&T's direction. The Commission stated: "The ILEC's [the incumbent telephone companies'] position that we extend the approach taken in the ILEC's Alternative Regulatory Plans to all certified CLECs [the competitors], is consistent with the parity goals which underpin this proceeding, at the current level of competition..."[52]

In Cause 42530, the Commission then addressed a number of specific issues and made rulings on those issues to mandate compliance of both ILECs and CLECs with the current Alternative Regulatory Plans of the ILECs, with slight variations.[53]

> customers' premises. Under the [FCC] Triennial Review Order, packet-switching and FTTH loops are not subject to unbundling; therefore, we are not required to sell them to competitors at below-cost UNE prices...
>
> "Under a previous FCC order, we were required to share, on a unbundled basis, the high-frequency portion of local telephone lines, which is used primarily to provide DSL service, with competitors. Under the [FCC] Triennial Review Order, this high-frequency portion of the telephone line was no longer considered UNE…
>
> "In October 2004, the FCC approved three orders regarding the unbundling rules applicable to broadband. Each of these orders favorably limits our unbundling obligations. The FCC limited our obligation to unbundle fiber facilities to multiple dwelling units, such as apartment buildings. The FCC also limited our unbundling obligations as to fiber facilities deployed in fiber-to-the-curb arrangements. Finally the FCC rejected the CLEC arguments that these fiber facilities should be unbundled under another statutory provision."

[50]IURC, Cause 42530, pg. 10.

[51]Mark Cooper, "Broken Promises and Strangled Competition: The Record of Baby Bell Merger and Market Opening Behavior." Consumer Federation of America, Consumers Union, USPIRG, June 2005, pg. 1.

[52]IURC, Cause 42530, pg.12.

[53]The IURC addressed the following in Cause 42530:

Despite the Commission decision on parity, the Commission stated that it is not convinced that further deregulation is warranted and believes that further study is necessary. In its December 2005 order, it concluded:

> Finally, there are additional areas of Commission oversight that are still essential to sustain an orderly transition for the emergent market. The Commission must continue its historic role of balancing the interests of a vibrant telecommunications industry with the continuing interests of the consumers it serves. This new investigation will review information including but not limited to the specific areas and market segments of the state where the competition exists, the classes of service to which competitors are offering service, the types of services offered by competitors, and the strategies appropriate to ensure consumer awareness of existing choices.[54]

Finally, although SBC/AT&T has vocally declared the existence of competition in the industry in its call for complete deregulation of phone service in Indiana, the company stated in 2005 in the context of wireline service: "At this time, we are unable to quantify the effect of competition on the industry as a whole, or financially, on us...."[55]

Clearly, SBC/AT&T enjoys a very favorable regulatory climate. The federal courts have eliminated incumbents' obligation to lease their network elements at favorable rates to competitors. Likewise, regulators have relaxed or eliminated similar leasing requirements with respect to broadband. These actions have solidified SBC/AT&T's control of local calling and aided in its expansion into the broadband market. Similarly, despite its dominant market position, it has convinced the IURC to force its competitors to comply with the same regulations as the incumbent providers in key areas. Nevertheless, the IURC still understands that it must continue to play a regulatory role in the telecommunications industry. The Commission is not convinced that the telecommunications market in Indiana is mature enough for deregulation across the board, as is envisioned in SB 245 and HB 1279. SBC/AT&T does not seem to fully understand the implications of competition, either.

As the report will demonstrate, these kinds of decisions and other acquisitions have positioned SBC/AT&T to be the dominant player in its territory across the entire spectrum of telecommunications services. Moreover, the acquisition of AT&T allows the company to expand

---

1. CSOs (customer service offerings/offerings tailored to the individual customer) - Discussion and Findings, pg. 19
2. Bundles and Packages - Discussions and Findings, pg. 28
3. Promotions and Winbacks (The time period to winback a customer lost to another service provider was reduced from 17 to 7 days) - Discussion and Findings, pg. 39

[54]IURC, Cause 42530, pg. 49.

[55]SBC 2004 annual report, pg. 28

beyond regulated utility territories.

Reason Number 4 for Not Passing SB 245 and HB 1279:
SBC/AT&T'S MARKET DOMINANCE CAUTIONS AGAINST DEREGULATION

Curiously, SBC/AT&T officials in Indiana argue that they need legislative changes, such as in SB 245 and HB 1279, "to compete with wireless, cable and Internet providers who continue to grab market share."[56] However, SBC/AT&T is, or is quickly becoming, the dominant player nationally in these areas. Moreover, SBC/AT&T firmly controls local telephone service in its territory. In addition, the financial resources of a merged SBC/AT&T and Verizon/MCI are far superior to any one competitor or any combination of competitors. Finally, the breadth of the AT&T and MCI long distance and Internet networks could effectively drive competitors out of business.

LOCAL TELEPHONE SERVICE
The SBC/AT&T merger will actually extend the merged company's control over local exchange service, thereby further cementing its monopoly control of that service. The UNE-P decision also appears to have stymied competition for local exchange service.

As Consumers Union points out, AT&T was SBC's major competitor, just as MCI was Verizon's major competitor in terms of local service.[57] If the Verizon/MCI merger is approved, the "over 250,000 of the 582,000 CLEC [competitor] lines [wirelines] belonging to AT&T and MCI would give the ILECS [SBC and Verizon] control of 93%" of wirelines in Indiana.[58]

The D.C. Circuit Court decision with respect to UNE-P seems to have had a negative impact on the number of competitors in Indiana, as well. The OUCC reports: "Since [2000], the number of CLECs providing service has dropped dramatically."[59]

The IURC perceives a similar trend: "Our own 2004 competition data [prior to the mergers of SBC/ATT&T and Verizon/MCI] shows that overall ILEC-to-CLEC competition appears to be leveling off and in contrast to previous years, CLEC penetration for residential lines decreased."[60]

In terms of competitor-owned local facilities (switches), the market dominance of SBC and Verizon and the dampening impact on competition of the local market as a result of the mergers is further illustrated:

---

[56]Northwest Indiana Times, November 2005.

[57]Consumers Union et al, pg. 9

[58]OUCC, pg. 1.

[59]Ibid., pg. vi.

[60]IURC, Cause 42530, pg. 8.

> By the Bells' own count, 85 to 90 percent of the wire centers in the nation do not have even one competitor with a switch collocated in the central office. Although competitors tend to bunch in the central offices in the downtowns of major metropolitan areas, AT&T and MCI were the largest owners of switches by far.[61]

THE BUSINESS MARKET AND LOCAL SERVICE

There is a perception that competition is vibrant in the big business sector. However, this does not appear to be the case and the mergers will most likely have a detrimental effect on competition in this area, as well. Again SBC seems to corroborate Consumers Union's analysis of the situation.

Consumers Union describes business sector competition in a very negative light:

> On average, SBC and Verizon have about a 75 percent market share for medium and large business customers. These two proposed mergers, if allowed to go through, will increase the in-region market share substantially to about 80 percent, since AT&T and MCI are such large players in the market and because of the geographic pattern of competition. These regional fortresses would also anchor their dominance over national corporate accounts.[62]

SBC seemed to have been equally aware of its expansion opportunities into the business market and the merger's implications prior to its merger with AT&T:

> ...[T]he acquisition of AT&T will dramatically accelerate our expansion in this important segment [large enterprise customers]... **It will increase our ability to serve business customers not only in the United States but in countries around the world over a network that is unmatched anywhere.** AT&T serves virtually every company in the Fortune 1000.[63] (emphasis added.)

WIRELESS SERVICE

SBC makes its market dominance over the wireless market very clear in its 2004 annual report. SBC owns 60% of Cingular. Cingular acquired AT&T Wireless that year, declaring Cingular the "largest provider of mobile wireless voice and data communications services in the United States."[64] The company is also positioned, through "access to licenses," to reach "290 million customers... in all 100 of the largest U.S. metropolitan areas . . . approximately 98% of the U.S. population."[65]

---

[61]Consumers Union et al, pg. 22

[62]Consumers Union et al, pg. 11.

[63]SBC 2004 annual report, pg. 3.

[64]Ibid., pg. 15.

[65]Ibid., pg. 20

LONG DISTANCE SERVICE

It also appears that, at least in its own territories, SBC/AT&T will be the dominant long distance carrier by far, particularly, it would appear, in the Midwest.

SBC is "the number one long distance carrier.... in most of its markets. AT&T [was] the largest unaffiliated long distance company."[66]

In fact, SBC (pre-merger) experienced a 28.7% increase in "long-distance voice revenues" in 2004. This was due to "increased sales of combined long-distance and local calling fixed-fee offerings [referred to as bundling] . . . with most significant success . . . in the Midwest region..."[67]

Consumers Union sees the situation in a much more grave light. The AT&T and MCI long distance network, in Consumers Union's opinion, will allow the merged companies to freeze out the competition.[68]

INTERNET SERVICE

As stated, SBC/AT&T is the largest DSL provider in the world. AT&T's telecommunications network could also present significant hurdles for competitors, as well.

SBC and Verizon are purchasers of Internet services. AT&T and MCI have been providers of Internet services. (They own interstate, long distance lines, including fiber-optic cable, over which Internet data is transferred, known as the Internet backbone.) The combined companies will be the largest Internet providers in the country and could force Internet provider competitors to pay for access to their networks for purposes of data transport. Prior to the mergers, none of the Internet service providers had a large enough network to charge another provider for access to their various networks. Consumers Union asserts that the mergers will tip the balance enough to allow SBC/AT&T and Verizon/MCI to exert market control over the Internet "backbone."[69]

---

[66]Consumers Union et al, pg. 3.

[67]SBC 2004 annual report, pg. 12.

[68]Consumers Union et al, pg. 27 Specifically: "The market for wholesale inputs with which to build unaffiliated competing services will disappear. SBC and Verizon must purchase services when they go outside their regions to deliver long distance calls, for example. They buy these from CLECs. This market will disappear, as it is pulled inside the mega-firms. At the same time, AT&T and MCI not only have the largest holding of CLEC facilities, they also have the size to purchase services at discounts from ILECs, which they then resell to other CLECs. In other words they are large wholesale suppliers to the CLEC sector. This will disappear as well."

[69]Ibid., pg. 19. Specifically: "...AT&T and MCI are large providers of Internet and interstate transport (backbone). As independent companies, their interest is in maximizing traffic. SBC and Verizon are large purchasers of Internet and interstate backbone services. Because of their near-monopoly in "last mile" service, they transport Internet content to their customers.

Finally, the financial resources of the combined companies (SBC/AT&T and Verizon/MCI) will most likely exert unprecedented pressure on competitors and enable the merged giants to dominate every facet of the telecommunications industry. "The two [companies] are 20 to 30 times the size of their largest rivals."[70]

Clearly, regulations and competition have not hampered SBC/AT&T from gaining market dominance in its territory, nor constrained the company in its geographic scope with respect to telecommunications services. SBC/AT&T is the dominant force in its former-Bell territories in terms of local (for both residential and business customers) and long distance service. It is the dominant force nationwide in terms of wireless and DSL service. The company is poised, through SBC's acquisition of AT&T, to further expand into the business market segment both at home and abroad. The dominant position of AT&T with respect to both long distance and Internet services does not bode well for any non-incumbent competitor, whom the company dwarfs in terms of financial strength. Moreover, it is evident that the trend in the industry is not toward greater competition, rather it is toward greater consolidation. A merger between incumbent provider Verizon and MCI was approved by the FCC in October, 2005 and finalized on January 6, 2006.

Reason Number 5 for Not Passing SB 245 and HB 1279:
SBC/AT&T'S ANTI-COMPETITIVE BEHAVIOR CAUTIONS AGAINST DEREGULATION

SBC and Verizon have a history of violating the Telecommunications Act of 1996 (TA '96). SBC/AT&T, in particular, is engaged in anti-competitive behavior now to lock out competition from its local calling areas.

Consumers Union asserts it has documented "over a billion dollars in fines" and "dozens of violations" [of TA '96] levied on SBC and Verizon by the FCC. The fines related to their failure to open their networks to local competition. They included "complaints of selling long distance before they were authorized, withholding information about the availability of collocation space availability, mishandling of competitors order of service, failure to make service available for collocation, and to provide interconnection on nondiscriminatory terms."[71]

As mentioned, SBC's long distance revenue increased substantially in 2004. However, bundling local and long-distance service may have broader implications for competitors seeking to compete for local exchange customers.

"As unaffiliated buyers, they make up a large portion of the market. From a competition standpoint, it is important to keep SBC and Verizon, which need internet and interstate backbone services as inputs, separate from AT&T and MCI, which provide this critical input. Otherwise, SBC's and Verizon's competitors will have difficulty gaining this input and are more likely to go out of business."

[70]Ibid., pg. 14.

[71]Consumers Union et al, pg. 25.

Although the last IURC alternative regulatory settlement with Verizon included selling DSL on a stand-alone basis, Consumers Union claims that SBC/AT&T is using a bundling strategy: selling DSL only in conjunction with local telephone service, so "that VoIP can never effectively compete with their basic local voice services."[72] If Indiana deregulates under SB 245 and HB 1279, the Commission will be unable to require SBC to provide stand-alone DSL the way Verizon has been required to do.

SBC does refer to this strategy in its 2004 annual report. The bundling strategy was implemented based on a perception that competition from other companies providing VoIP could threaten market share at the local level.[73]

It would appear that SBC/AT&T has worked incessantly at protecting its dominance over its captive customer base. Consumer groups have identified strong evidence that it attempted to thwart the TA '96 implementation strategy at every turn, and incurred steep fines. The company now is engaged in anti-competitive practices to effectively eliminate any chance of competition for local service customers in its 13-state region. The fact that SBC/AT&T still controls more than 90 percent of telephone access lines in its territory, and its growing market share after initial losses due to TA '96, further corroborate the company's anti-competitive behavior in recent years.

Reason Number 6 for Not Passing SB 245 and HB 1279:
THERE IS NO COMPARABLE REPLACEMENT FOR BASIC LOCAL SERVICE

Proponents for SB 245 argue that VoIP and wireless communications are viable competitors/alternatives to traditional Basic Local Service. Regulators' responses vary between skepticism and outright rejection. Consumer analysts reject the notion out of hand.

NASUCA completely disagreed with the assertion that wireless or VoIP technologies are viable competitors with basic local service in a statement made in 2005: "**[T]he RBOCs'[regional Bell operating companies] portrayal of the potential competitive impact of these alternatives [wireless or VoIP] upon RBOC market power for local exchange and exchange access services is overstated and inaccurate**." [74] (emphasis added.)

---

[72]Ibid., pg. 7.

[73]SBC 2004 annual report, pg. 28. Specifically: "In response to the multiple competitive pressures discussed above [loss of local exchange market share], we launched in late 2002, our bundling strategy that rewards customers who consolidate their services (e.g. local and long-distance telephone, DSL, wireless and video) with us. In 2004, we continued to focus on bundling wireline and wireless services, including combined packages of minutes, and added our bundled offerings a video service through an agreement with EchoStar."

[74]NASUCA, April 2005. Specifically: "In the absence of sustainable competition for traditional wireline services, the RBOCs (regional Bell operating companies) have begun to look to so-called "intermodal" competition from cable TV and wireless providers, along with the emergence of Voice over Internet Protocol service (VoIP), as purportedly challenging the RBOC wireline monopoly. **However, the**

The IURC does not view "wireless communication" as "a substitute for wireline telecommunications for the overwhelming majority of both business and residential customers at this time."[75] The Commission also notes that SBC's own statistics "show that only 6 percent of customers are wireless only."[76]

In terms of VoIP, the Commission indicates that it does not have enough statistical data and delineates a number of shortfalls with the technology that, in its view, may not make VoIP a viable alternative for both technological and competitive reasons.[77]

Consumers Union comments that the vast majority of households "don't have broadband service" and that "VoIP is not yet an effective competitor to the traditional wired phone service" for a variety of reasons, including 911 access and that the technology is inoperable during power failures.[78] In terms of wireless service, Consumers Union considers cost and reliability the two major factors that make wireless service an inadequate substitute for traditional land line services.[79]

It is also important to point out that given SBC/AT&T's dominance in the DSL market and its maintenance of its captive customer base in local exchanges through, among other avenues, bundling services, the assumption of a viable, thriving VoIP market is still very much in question.

The proponents of SB 245 premise their need for deregulation on the argument that wireless and voice over Internet protocol service are viable substitutes for Basic Local Service on a technological,

---

RBOCs' portrayal of the potential competitive impact of these alternatives upon RBOC market power for local exchange and exchange access services is overstated and inaccurate." (emphasis added.)

[75]IURC, Cause 42530, pg. 8

[76]Ibid., pg. 8.

[77]Ibid., pg. 8 Specifically: "When discussing the role of VOIP as a competitor, the ILECs included general statements on VOIP, but no statistics. We also are concerned that ILECs did not distinguish between VOIP on a private network versus VOIP using the "public internet" which companies like Skype and Vonage use. Clearly, reliability, security, latency, and other measures of service quality of VOIP services delivered over the "public internet" are inferior, and in some cases, decidedly inferior, to the service quality available on a private or managed IP network, or on the public switched telephone network ("PSTN")."

[78]Consumers Union et al, pg. 7. Specifically: "SBC and Verizon often point to new technologies, such as VoIP as the source of the supposedly great level of competition, but these are actually quite limited. Given that 70 percent of households don't have broadband service and, therefore, cannot take advantage of VoIP calling, VoIP is not yet an effective competitor to the traditional wired phone service. VoIP has other problems. The FCC has only recently ordered VoIP providers to offer 911 access and it is not clear whether a reliable solution will be found or what impact the order will have on competition from VoIP providers. It does not work when the power goes out. Even worse, some broadband providers have blocked VoIP providers' access to ports."

[79]Ibid., pg. 8.

competitive and availability basis. This argument is widely discredited. Basic Local Service is cheaper and more reliable than the newer technologies, and unlike them, it continues to operate during power failures and ensures 911 service. Indeed, in a recent decision the IURC has reaffirmed its position that wireless is not a viable alternative and is skeptical for technological and competitive reasons about VoIP. Furthermore, SBC/AT&T's dominance in the DSL and local markets makes the viability of serious competitive challenges questionable at this time.

Reason Number 7 for Not Passing SB 245 and HB 1279:
SB 245 AND HB 1279 WOULD ONLY SERVE TO CEMENT SBC/AT&T'S MONOPOLY STATUS IN ITS INDIANA TERRITORY

SB 245 and HB 1279 will, in the near term, allow SBC/AT&T to set its rates for captive customers in the local exchange where the company's market domination is complete and will remain intact into the foreseeable future. As stated, no wireless or Internet-based technology is considered a viable alternative at the moment and SBC/AT&T's dominant position in the DSL was proclaimed by the company itself. In other words, no competitive force will be a deterrent to how or to what degree the company sets its rates. The additional revenue will be available for any purpose, including suppressing any idea of competitor designs on SBC/AT&T territory. (It should be noted that HB 1279 includes provisions that appear intended to prevent such predatory pricing.)

Secondly, the bills stymie public investment in broadband technology. SB 245 removes the franchise fee authority from municipal governments, some of whom have begun investments in order to create a broadband platform in their areas, and allows for municipal investment only when private investment dollars are not available. At the same time, SB 245 allows for public dollars, in the form of tax incentives, to be used for private purposes in broadband investment. The aim obviously is to eliminate another potential competitor with arguably significant local resources or bonding authority – government -- in broadband deployment.

Third, under SB 245, total elimination of IURC oversight would allow incumbent telephone companies to initially underprice any service to eliminate the competition, something the IURC is very concerned with and emphasized in its December proceeding.[80]

In essence, the proposals are not designed to encourage broadband investment per se. They are instead designed to ensure that incumbent telephone companies are the leaders in broadband investment in the state -- thereby providing them with the legal mechanism to retain and expand their market power within their respective territories. No other telecommunications companies would have the financial wherewithal to rival them, and under SB 245, no state-level regulatory body would have the authority to prohibit anti-competitive practices, such as using revenues from captive basic local service customers to subsidize offering services in emerging markets below cost.

[80]See generally Part 6 "Specific Issues", pg. 13 et. seq. of IURC Cause 42530.

Reason Number 8 for Not Passing SB 245 and HB 1279:
THERE ARE MORE EQUITABLE WAYS TO ENCOURAGE BROADBAND DEPLOYMENT

Last year, Indiana State Senator David Ford introduced Senate Bill 381[81] in an effort to begin the process of systematically providing broadband service to the rest of the state. It envisioned a coordinated effort between the Intelenet Commission, higher education, and other entities to accomplish a true public benefit. There were no provisions included that dealt with deregulation of monopoly local telephone company. Perhaps the legislation should be revisited, in lieu of a scheme that appears ultimately to only serve the business interests of incumbent telephone companies.

Conclusions

There is no good reason to pass SB 245 or HB 1279, and many good reasons not to. Contrary to proponents' assertions, there is strong evidence that the bills would severely curtail competitive forces in the telecommunications sector even more than they already are and lead to unwarranted rate increases and poor quality of service for ratepayers. There is also strong evidence that the bill is specifically designed as an extension of SBC/AT&T's business strategy of gaining a dominant market position with respect to telecommunications services across-the-board. As such, the legislation is contrary to the mainstay of historical state utility policy, affordable and reliable telephone service.

Clearly, the argument that elimination of Basic Local Service is necessary to further broadband deployment in Indiana is patently false. Broadband expansion throughout the state is occurring as a result of regulatory leverage over incumbent telephone companies that forces them to deploy DSL technology. Others deploying broadband technology include a consortium of local, smaller phone companies, and municipalities. The state has also encouraged and supported broadband deployment within the university and school systems, and the federal government estimated a 53% increase in broadband line deployment from 2003 to the end of 2005. Obviously, then, elimination of Basic Local Service is not a prerequisite for broadband deployment. Regulation of BLS does not impede broadband deployment.

It is broadly recognized that there are no viable alternatives to Basic Local Service for most ratepayers, and that SBC/AT&T and Verizon are in firm control of their local calling areas. There is virtually no competition for residential ratepayers at this time and the competitive nature of the business segment appears to be overstated.

The argument that the last telecommunications law in Indiana was passed twenty years ago is erroneous. In December of 2005, as just the most recent example, the IURC issued an order that changed Indiana law with respect to regulatory parity among telecommunication providers. Indeed, the Indiana General Assembly, rejecting similar proposals by SBC in the past, has cited the key role the Commission plays in telecommunications policy and competition in the state. Of particular note has been the recognition by the General Assembly that the IURC is uniquely positioned to deal with these issues due to its experience, expertise, and the complexity of the issues themselves. As the OUCC has said, the 1985 alternative regulation law has provided for the systematic review of the state of telecommunications competition in Indiana in a series of negotiated settlements that are revisited on a periodic basis.

[81]See www.in.gov.legislative/bills/2005/IN/IN0381.1.html

There is also strong evidence that SB 245 and HB 1279 are a continuation of the SBC business strategy to dominate every facet of telecommunications service in the territories of its monopoly subsidiaries across the country and beyond. The company has a history of inhibiting competition and working to roll back regulations that tend to support competition on a consistent basis. Moreover, instead of competing, the company has systematically bought the competition to enter into the long-distance, wireless, DSL, and other Internet markets; and, expanded its umbrella over captive ratepayers by purchasing local, monopoly telephone companies on the West coast and Midwest.

In its monopoly territories and, arguably beyond, SBC/AT&T has either an overwhelming advantage or will soon have an overwhelming financial advantage in every form of telecommunications service. It is the dominant local exchange and long-distance carrier in its territories. It is the largest provider of wireless service in the country. It is the largest DSL provider in the world. Its acquisition of AT&T gives it access to the business of every Fortune 1000 company and to the Internet and long-distance networks of AT&T. Its financial resources dwarf those of the nearest non-incumbent competitor by orders of magnitude.

Therefore, the only conceivable reason for the legislation is to further expand incumbent telephone company control of telecommunications services in Indiana, with devastating consequences for the Indiana ratepayers who rely on the General Assembly and the IURC to ensure real choices and affordable telecommunications service in order to stay connected and safe.