LAWRENCE SPIWAK: Well, let’s get started real quick. We’re waiting for a couple more people but Washington traffic be it as it may . . . my name is Larry Spiwak and I’m the President of the Phoenix Center. I would like to thank every one of you for coming out in this incredibly freezing cold weather to participate in today’s roundtable.

Let me tell you what we’re all going to try and do today. This is unlike our telecom symposium where people come up and sit on a panel and give their Power Point presentations, so forth and so on. But what we’re going to try to do today is engage in some Socratic discourse among everybody about the topic. We are doing some research on this issue and by hopefully developing a record here today, we can use that as a foundation for some papers and research then we are contemplating.

Let me give you all the topic and sort of tell you why we’re approaching the issue this way. For those of you familiar, at least, with my work, I always try to boil down complex issues that effect people’s day-to-day lives and why it’s important.

As we all know being relatively familiar with the telecoms industry, there is some rule makings going on at the FCC which will have a tremendous impact on the economy. One of the things that sort of has struck me over the last couple months in watching the debate is that it’s talked about at sort of a 10,000 foot level, but instead of being talked about in a more practical level. Most notably, I’m not concerned about your large corporations who can have their own fiber lines, but rather the small businesses. Myself being one of them. My wife having one. My friends having several.

One of the things that always amazed me all my years in the telephone business is that people, you’ve probably heard me say this, but people will complain about a $1.70 for a gallon of gasoline, but pay $3.95 for a latte, but they won’t think about any increase in their phone bill until they sort of look down and go, “hey, what’s this $25.00 Universal Service Charge?”

So it does affect them and I think that it’s important to bring this issue to the forefront so that we have an educated and informed public. So that’s what we’re going to be talking about today. As you see by this page, which hopefully you all have, what we’re going to do is sort of, as you see by the agenda, is we’re going to start off the user orientation and objectives and then we’ll, what I would like to do is go around the table and have everybody sort of introduce themselves.
And then we’ll start on the various discussion topics that we have there. Again, I’m really delighted that everybody was able to come, especially those people who were able to pinch-hit at the last minute. What I try to do is provide a balanced and an informed group here and hopefully we can get some good results.

So why don’t we, just as a starting matter, working clockwise, go around the table, introduce yourself, and tell us a little bit about what you do and the groups that you’re from. Jack, why don’t you start?

JACK GOLDBERG:  I’m Jack Goldberg and I’m associated with InfoHighway Communications Corporation, which is a small business. We provide telephone service on the East Coast in the Verizon footprint. Our customers are all other small businesses. We’ve been able to differentiate ourselves very successfully from the incumbent by providing our small business customers with the kind of service and attention and customization that only the very largest of the customers of the Bell Company get. And we’ve been able to do that for them and lower their bill at the same time. So we have a fairly successful and we think that it’s important that there be a pretty good understanding within the small business community.

The benefits of the existence of the kind of competition that we bring to (SOUNDS LIKE: HEALTH) communication and also the very, very serious threat that currently exists to the continued availability in that competitive environment. And we’ll be happy to talk about that some here this morning.

JOE GREGORIE:  I’m Joe Gregorie. I’m the CEO of InfoHighway Communications and as Jack articulated, and I won’t repeat the overview, our primary focus today is servicing the needs of the small to medium size business customers and to kind of frame that, the average line size of a customer that we serve, is between five and 15 lines. That can be everything from the local real estate broker to smaller accounting firms, and businesses that notoriously in the past have not received the service level and that they were satisfied. Largely because they didn’t have choice. Given the fact that I feel this today clearly is still the land of the monopoly who are driving price, service level and customer expectation, there is a very clear need for alternate service providers and ultimately, at the end of the day, this is all about providing service.

Service differentiates products, markets and ultimately, it’s the consumer, the small business, the decision makers that will have an influence and want to decide who their service provider is. I think what we’ve seen in the last couple of years is that there is, at last, some meaningful opportunity to deliver some serious competition. And what brings us here today is to talk about the service levels that we’re providing and why we would like to see that opportunity continue and not be hampered. It’s just starting. Thank you.

LARA CHAMBERLAIN:  Hi. I’m Lara Chamberlain and I work at the National Federation of Independent Business. We represent approximately 600,000 businesses
across the country in different industry groups. And I’m a policy analyst in the research foundation and I handle predominantly technology issues.

**KEVIN HASSETT:** Hi. I’m Kevin Hassett of the American Enterprise Institute and I spent most of my academic career studying how tax policy and things effects what goes on in businesses and in the last year or two, I’ve become increasingly interested in telecom, because it’s so hard and the problems are so hard. And I’ve been thinking a lot lately about telecom policy and what effect it has on things and why it’s such a mess.

And also just like the basic question, “what should a conservative view of telecom policy be?” Why is it that we would bother ever going after monopolies if we’re laissez faire, and then so on. And then under what circumstances might we be willing to and do the real world circumstances look like that, and so on. And that’s the kind of stuff that I hope to talk about today.

**SUE ASHDOWN:** I’m Sue Ashdown. And I’m the Executive Director of the American Internet Service Providers Association and we are based here in Washington, D.C. We about 1600 member internet service providers across the country and we’ve been around for almost three years and the purpose of our existence really is to help the small internet service provider gain a voice at discussions such as this one, some of the discussions that happen around Washington, but also help them participate in policy discussions in their own state, before their regulatory authorities there, and before their legislature. So thank you for inviting me.

**ERIN FULLER:** Good morning. I’m Erin Fuller. The Executive Director of the National Association of Women Business Owners, or NAWBO. NAWBO represents 6.2 million-women-owned businesses in the U.S. And basically, what I hope to get out of today is assisting my members in really understanding the impact that a lot of obscure policy really, how it impacts the bottom line of their business. And that’s really what our members need to see in order to take policy decisions and regulatory actions to heart.

It’s interesting to hear from the gentlemen from InfoHighway, I can tell you that on average, NAWBO members have about ten to 15 lines going into their businesses, so very much the scope of what you express that you’re serving as well. This will be an interesting session.

**JOHN MAYO:** I’m John Mayo. I’m the Dean of Georgetown University’s McDonough School of Business. And it is especially nice to be here today, I think, for maybe three reasons. Number one, I have been a student of regulatory policy and deregulatory policy and the emergence of competition in regulated industries for about 20 years now. And it seems to me that we are at perhaps a unique and flexion point of the history of the telecommunications industry, so it’s great to be able to convene and advance the discussions to date.

Secondly, in a former incarnation, I was the Chief of Commerce for the Senate Small Business Committee and I followed small business and the critical role that small
businesses have played in this economy for a long time. And I think this is a way of looking at telecommunications policy that is particularly apt at this particular time. I’m looking forward to the remarks of the various experts around the table to advance that discussion.

And finally, I find myself this year as the new Dean of the McDonough School in the role of being CEO of what might be thought of as a small business and I have begun to think about telecommunications from the perspective of a consumer as a small business, not owner, but leader and responsible for some decisions that are perhaps a bit unique and give me some novel thoughts at this particular juncture.

Let me, if I can, just take this moment to, at the outset, to suggest two things. I have prefatory remarks. One is that I left a copy of a very recent working paper entitled, “Is It the Long Run Yet?” out on the table for those of you who are economists, you will probably realize that that’s a reference to some work by John Maynard Keynes.

And the FCC thing I want to announce is that on February 21, the McDonough School will host another telecommunications conference, a major telecommunications conference, on “Integration, Investment and Innovation; The Future Directions of the Telecommunications Industry.” And I’m hoping that your organizations will be able to participate. This will pull together people in a good, neutral forum from industry, from the state policy arena, from the Federal policy arena, from technology, and from academia. We’re looking forward to doing something that springboard’s off of discussions like this and to advance the discussion. Thank you for letting me be here.

BRAD RAMSAY: I’m Brad Ramsay, I’m the General Counsel of the National Association of Regulatory Utility Commissioners. We’ve only been around about 113 years and one key issue and what the FCC is getting ready to do with local competition is the role that the states will play. The first question that should pop to my mind, in the last two weeks before the FCC could close off the debate on this, I actually think they may end up missing the agenda meeting, I want to thank Larry for having this particular conference, because it helps highlight the debate and bring the issues to the press into other players that possibly need to be talking to the FCC sometime before next Thursday.

Obviously, how it impacts small business and every other user, what the FCC does is of intense interest to my constituency. And I can tell you what the conservative view would be and maybe we’ll get into that, what the conservative view ought to be, (INAUDIBLE) out to be in this context and in the context of this debate. Thank you Larry for inviting us to the table.

DAN PYTHYON: Hi, I’m Dan Pythyon, I’m with the United States Telecom Association. In various incarnations, we’ve been around not quite as long as Brad’s group, but more than 100 years. I think for purposes of today’s discussion, our membership primarily would be the incumbent local exchange carriers, large, medium, and small. I think a lot of our members would fall into the categories of small business,
they don’t necessarily call themselves that. I think they call themselves more your two percent carriers or rural exchange carriers, from the standpoint of the regulatory and legislative framework. But a lot of them are, in fact, small businesses themselves.

Just to open up sort of my thoughts for this morning, you’re certainly not going to hear me on behalf of incumbent carriers say that competition is bad. We couldn’t turn back the clock even if we wanted to. Competition is good. We have it. I think we have it in ways, in part, that Congress and the FCC didn’t fully anticipate when the ’96 act was passed and implemented.

So the issue is not is competition good or bad from my stand point, it’s really, what type of competition do you have? What’s the regulatory frame work that governs it? What is a framework that really promotes investment by all types of carriers? And promotes the growth of new technologies and also regulatory framework that is responsive to the other part of the act, the goal of the act, which is not just to promote competition but reduce regulation.

So I’ll be interested in that participating. I thank you for the opportunity and I look forward to some interesting conversation this morning.

CAROL FLEMING WILLIAMS: Good morning. My name is Carolyn Fleming Williams and I’m the Director of the Office of Communications Business Opportunities at the FCC. Thank you for the invitation and I’m happy to be here also.

Our office is attached with advocating policies that support small, minority and women-owned communication businesses implementing the regulatory flexibility, that’s Lexis, as it’s affectionately known, the small business regulatory fairness act and other statutes that support small business.

One of our major projects this year is our tri-annual report to Congress, which we are asked to identify and to eliminate barriers to entries to small businesses. So I’m very happy to be here and participate in discussions as we start that process and actually try to identify and learn more about what the actual barriers are, outside of the obvious ones, in terms of entering the small business.

LARRY SPIWAK: I can tell you that having been at the FCC when we had to do the red flex analysis for section 251 order, you have no idea how difficult that was. How will this impact small businesses? And when we look, alright, pick a number. But anyway, Barry.

BARRY PINELES: I’m Barry Pineles, I’m the Regulatory Counsel for the House Small Business Committee. Since this is being recorded, and I assume that there is press here, the views that express today may not necessarily reflect the views of the Chairman or any other members of the House Small Business Committee.

I’ve been involved in sort of issues related to telecommunications regulation for about 15 years and I have spent much of it worrying about how the Federal
Communications Commission regulatory flexibility act, an issue that I still concern myself with at the House Small Business Committee.

LARRY SPIWAK: Alright. Well I thank you all very much for coming once again. The opening topic on our agenda is experiences to date, positive and negative. I think a good starting point today is to hear everybody’s experiences, from the carrier side, what is it like to sell the small business, what do you see? From the small business’s side, what you’re experiences have been? Can you relate them on whether or not your constituents have had a positive or a negative experience?

So why do we just go around the table and just get some general thoughts now that we’ve done the introduction. Let’s go around the table.

JACK GOLDBERG: Yes. Let’s talk about our experience. In fact, we can view this as a direct (INAUDIBLE) . . . well, we’re a small business. We have about 100 employees. We’re growing very, very rapidly. The way to illustrate that is last year our annual revenues will reach about $40 million. And that’s all made up of providing telephone services to small and medium size business customers.

As Joe said, we serve customers who generally fall in the five to ten line category and if you think about that, if you know anything about telephone stuff, that’s a customer class or size class that will generally not be economic for someone to build facilities. Other than the facilities the incumbent has already created to that small business.

So when we appear, we’re generally the first alternative for the supply of telephone service that this customer has ever seen. Especially one who’s actually approached them proactively as opposed to trying to sell them something when they call up because they have a problem. And that’s very, very much appreciated by our customers. And generally, the value proposition that we have found to be very, very successful in the market and the major factor in our rate of growth is we provide a lot more service, a lot more proactive customized service at a lower price. And as you can imagine, for a small business, that’s a pretty winning formula because it flows benefits right to the bottom line.

We currently serve about 10,000 customers, primarily in New York, Massachusetts and New Jersey. We are completely responsible for their telecommunications service. We happen to use somebody else’s network facilities to do that, but we’re the one the customer deals with. We’re the one who provides them with a bill, we’re the one that they call when they have a problem and we’re the ones who call them when we think we have something more to offer them. Some way to improve what they’ve got. Some way to reduce their costs and give them a better product. And, again, for these kinds of customers, that’s a unique and very positive experience.

One way to think about the significant value added here is in the telecom supply world of the incumbents, the kinds of customers who get dedicated account teams,
personalized service, tailored service, their own 800 number, to call when they’ve got a problem, are customers of the size of the CitiBank or General Motors.

Now we provide that kind of service on a proactive basis to customers with five to ten lines.

**LARRY SPIWAK:** What would you say is your typical type of customer?

**JACK GOLDBERG:** Our typical customer, it could be a legal office, a real estate office, a retailer, someone who’s located in a two or three-story building, in urban areas. I think that’s another misunderstanding that has been caused to exist.

I think people kind of get hung up between this rural, urban split and competition will never come to rural areas unless certain things are done. Well, you know, a lot of our customers, most of our customers are in urban areas and haven’t even been to Queens in New York, or Brooklyn, New York or the Bronx. You know, those are urban areas, but they’re not areas where someone is going to run fiber to three story buildings to provide an alternative to the incumbent. We serve those customers. We go after them proactively. And treat them pretty well.

**LARRY SPIWAK:** And what kind of, just to put it in context, what type of customized services, you had mentioned that. If I’m a travel agency, for example, what would typically I be looking for?

**JACK GOLDBERG:** Well, some of the key things that you would be looking of, first off, you would find it very, very helpful to have a single source of supply for your voice conference and voicemail type services, internet access, long distance, and have it all bundled together and priced as a package. So that’s the first point, the product bundle.

The second part that’s very important to many small businesses is having an ability to tailor the bills that they get. You know, you may have a number of different clients you want to be able to disaggregate your telecommunications costs among them. Or different offices, you maybe have four locations. So we offer a very significant flexibility for our customers in what kind of a bill, in what kind of accounting they get with how much they’re spending and what they’re spending it on.

But the degree of customization, you know, most of the incumbents even have difficulty offering to the very largest customers. So that’s a significant value to add to many businesses. We also provide these services at a lower price generally.

And then finally, we provide a level of individuality of service to the customer. There’s always a face they know and a number they can call and they don’t have to navigate their way through 30 voice prompts on the phone to get somebody. So it’s a high personalized, customized type of service at a lower cost (INAUDIBLE). Very attractive.

**LARRY SPIWAK:** Okay, Joe?
JOE GREGORIE: Thank you Jack, you did a pretty good job and I certainly won’t chew up all the time adding to that. But I would just like to make a couple kind of broader comments with respect to, there’s a lot of buzz today about facilities mandating particular solutions to these various regulatory issues. And I’m a big free market believer. I think if we, today, take a position that reinforces choices, let the market decide what are the right avenues of competition, economics, at its very simplest level, will ultimately prevail.

Those folks who provide good service, in a value proposition to an end user customer, providing them not only today’s solutions, but new innovative technologies coming down the pike, those folks will survive and flourish. Will bring additional value.

Competition today in my mind, very simply, we should encourage it. We shouldn’t be looking today at any regulatory arena to close down particular aspects. It’s just beginning. And I’ll look back and say, okay, 100 years, we had the local telephone companies, why would we, any posture, any thought, think about limiting those accesses and not allowing the customer, the end user, to make some real choices while there is still the opportunity of choice.

I’m a big believer in that. Ultimately, I think you get all the network development that one could possibly ask, but first let’s give competition a chance. That’s kind of why I side up on this. Thanks.

LARA CHAMBERLAIN: We haven’t done any formal survey of our membership to find out exactly what type of telephone services they have, so from that standpoint, I really can’t comment positively or negatively on this issue regarding (SOUNDS LIKE: SELEX) and whether small business owners have found a value to them.

But that being said, considering our membership is across all states and we often service small offices and small businesses, we do act in the assumption that these issues will affect our membership and we are looking for ways to promote competition for small business in general.

KEVIN HASSETT: I won’t take much time on the experience front because I think it’s much more interesting to listen to folks on the front line of that.

I think that the big picture interesting point about experience, as an economist, is that, and I’ve run some numbers and sort of been surprised by what I find, but I think that the start of the increase in foot print for the little guys is looking sort of like you might expect, in the sense that, I’ve always been surprised when I look at models of this, at what a big effect on profitability of the incumbents it can have. They start to have incumbents for example.

Because if you’re in a world where there is any reason to have regulation, then in that world the incumbents start out with basically a monopoly where they have lots and lots of profits. And then when you have entry, then what happens is the market gets sort
of broken up and the price goes down. And both effects lower the returns on the incumbents. And so I think that in part, one could say that that might help color the sort of the gravity of the debate, because of the amount of money at stake. That it’s easy to come up with simulations where, if there really is a local competition, it can go to an equilibrium where a lot of little guys enter. That the profits of the incumbents decline by more than 50 percent.

And so that’s something that I think we’re beginning to see a little bit of in the data and I think it helps explain a little bit about sort of what’s going on. But it’s definitely true that while for consumers, it’s not a zero sum game. And it’s never a really a zero sum game. The fact is that there are sort of stakeholders and non-stakeholders and when you introduce new regulations, then there starts a feeding frenzy for the position. And the person who had everything to begin with is going to be worse off, for sure. And I think that that kind of Frank discussion is something that don’t usually see in a debate, but from my perspective, I think that’s one of the important observations that economic theory would apply that suggests that what’s going on now is looking like kind of what you might expect.

JACK GOLDBERG: Of course, this wasn’t set up as a zero sum, fixed sum gain. The way this was structured was that in return, the incumbents were given both an upside opportunity and a downside responsibility, (INAUDIBLE) saying it. It was in return for participating in creating competition in the local market, the incumbents were given the opportunity to reach into long distance, which they didn’t have at the time.

So it was not designed as a fixed sum gain. There was a very, very definite upside put on the table.

KEVIN HASSETT: Can I respond? Jack, that’s a good point. And I think the interesting thing though is that if I guess if we try to think of a product outside of telecom where somebody has lots of monopoly rent, but suppose that you have a drug that’s patented and it’s the only thing that cures some type of cancer, and so you can charge lots of money for it and make lots of profit on it. And then we would tell you what we were going to, we’re going to let entrants come and sell the same drug but the benefit to you of letting them do that is that we’ll let you make a clone of some other drug and compete in a generic market.

Then what you would do is you would say, well, that’s not really a good feel from the point of view of the person who has the drug to begin with because they’re going to be trying to recapture the lost monopoly profits in a competitive market.

Now make no mistake, I’m not trying to say that I think that what’s going on has been bad. I’m just trying to say what I think it would do and saying that it confirms my views.

LARRY SPIWAK: Well, I could just add something. I tend to take, I get asked by the press about this question. I always use the exact opposite analogy, everyone says, why is everyone fighting telecom? As you said, huge margins. Contrast that with being
a lawyer, being an economist, where there are no margins to protect, so I know when I took the bar 12 years ago, 7,000 kids sat and took it, and there were not 7,000 law jobs. It was like, “you want to come in, knock yourself on out.”

And that’s the difference, I think, between this business and other businesses. Those huge margins that are enough for people to fight in political arena for it. Sue?

SUE ASHDOWN: Yeah. I would like to get back to talking about some of the positive and negative aspects of this as far as the Internet services providers are concerned.

One of the very positive things for Internet service providers was that they were some of the early beneficiaries of the competition introduced by the 1996 Telecom Act. They buy hundreds, thousands of phone lines and so it’s no surprise, I think, to anyone that they were among the first customers to be approached by the new competitive phone companies and internet service providers enjoyed, for the first time, the ability to negotiate a contract with their provider. And I’m not just talking about better prices. I’m talking about better terms of service. More responsive service. And those kind of things they were able to pass along to their own customers in terms of lower internet access fees, the independent internet service providers were the first to offer flat rate, unlimited access, really pioneering the way so that American Online and some of the other larger internet service providers had to follow their lead on that.

So competition, I think, was that the benefits of competition were very early realized by the Internet service providers and something that they wanted to see their customers, the small businesses and the consumers that chose them for Internet access, see those benefits as well.

Some of the negative things that have happened to the Internet service providers, though, since competition arrived is the lack of competition in the DSL market. The high speed broadband internet access that is the competitor to cable. And DSL has been around for a long time. It was not something that the incumbents were generally willing to offer until they felt that they could no longer continue to ignore it, meaning that they were starting to see competition from cable.

They were able to price the DSL access to the Internet service providers. In other words, the internet service provider to bring DSL to their customers has to connect into the network, very similarly to the way that the competitive phone carriers have to connect into the network and the price that they were given was so high in comparison to what the retail price was for consumers, that a lot of internet service providers either couldn’t make a go of it or were forced to charge prices that were way above what the incumbent was charging and therefore, they got a very small market share and continue to be really restricted to, what I call, the narrow band ghetto.

Just yesterday I got a call from a reporter in Memphis asking me, he said, “here in Memphis, we really basically have two choices. We’ve got Time Warner for cable and we’ve got Bell South for DSL and consumers are starting to complain about the shifty
nature of DSL. How it goes up and down and it’s not really reliable and is it time for some sort of self regulation in this industry?” And I said, what it’s time for in this industry is some competition in the industry and there’s not going to be competition until you have fair pricing.

So if Internet service providers are very sympathetic to the issues that some of the competitive carriers are facing with their attempts to get fair pricing at the network access level. Because we see the same thing in DSL and if you can’t get a fair wholesale price, there’s no way that you can compete on the retail level and the consumer is worse off for it.

So I think those are two of the experiences that I wanted to share. I also wanted to say that some of the things that I’ve seen Internet service providers be able to do with their customers are very innovative. And further regulation of things like voice over IP would be detrimental at this point in time for those burgeoning services. And because it’s the independent Internet service providers that are starting to push these new services out to competitors, I think it’s absolutely crucial that we allow that industry to develop without further regulation on it.

ERIN FULLER: Because so many of NAWBO’s members are small businesses, they certainly echo Lara’s statements about being very interested in seeing opportunities for open market place for competition. I think in terms of our members, a couple of things come to mind.

One is that it’s very difficult for small business owners to look at their phone bill expenses coming in and compare apples to apples anymore. Because we now have over the past three, five, ten years added an increasing number of communication tools that are all appearing on that bill. We have fax machines, we now have our DSL or Internet service included in that, which have voice mail services, a lot of services which weren’t available and so it’s very difficult, I think, especially for a small business owner to really figure out how to view those expenses over time, because it’s difficult to make comparison.

I also would say that small business owners generally refer to the most of your markets in the urban environment, I would say that a lot of small business centers, especially micro businesses have one or two in place, tend to operate in a suburb environment certainly. And that would be from probably the spare bedroom. And so that’s something to consider as well. That an increasing number of businesses are operated from the home and therefore, you can’t just look at lower serving the urban environment adequately. Because what’s happening, maybe not in a rural environment, although certainly increasing number of small businesses have found that they can operate pretty much anywhere, assuming that they have adequate services. But certainly, in less populated areas.

The third thing is that I think that small business owners and entrepreneurs have always traditionally been very creative in adapting to alternative means of
communication. Certainly I see that all the time with my members. They’re looking for the cheapest and most efficient way to communicate and ways to communicate that certainly don’t showcase them as small businesses. So if that means having efax software on their computer so they don’t have to have the other phone line, they’ll do it. If it means that they’re experimenting more with voice over systems, they’re doing it. And I think that in some ways, small businesses have been viewed to lag behind larger businesses but I do think that in this area, because they are nimble and because adaptation means one person making the decision to adapt, you really are seeing them voting with their feet or their modems in terms of where they’re using their communication services.

LARRY SPIWAK: I think it’s a really actually interesting point. They don’t want to appear small. I think that’s a really interesting point. And I think that, especially just to reiterate because this is an issue that cuts close to home, you’re right. People aren’t putting metro or fiber rings out in Bethesda. It just isn’t going to happen. At least for right now. Thank you. That was very informative.

JOHN MAYO: I think in terms of positive and negative experiences, it’s really sort of important to step back and just listen as I was trying to listen to the comments that preceded mine. And as an economist, it is remarkable for me to see that you’ve got people like Jack (Goldberg) and Joe (Gregorie) and Sue (Ashdown) from a supplier’s side and on the demander’s side, Erin (Fuller) and Lara (Chamberlain) and now I’m in the demander’s side too as a purchaser of services.

The tremendous amount of energy and desire to provide positive experiences for your customers to serve those customers in very innovate ways, to bring positive pricing to the market and from the demander’s side, there certainly is a demand for that. I was reminded of a comment one of my strategy professors frequently makes and that is, “hope is not a strategy.” And on the supplier’s side, it is going to take certainly more, I think, than hope to be able to supply this market efficiently. It’s going to, I think, be necessary for policy makers to engage and adopt, instead of competition, enabling policies that really will determine whether or not consumers do have a positive experience or a negative experience as we go forward.

And it is particularly, I would say, critical at this juncture, because my sense is that we’re going to get as a society, one bite of the competition apple. Consumers, whether it’s Lara’s membership or Erin’s, are going to be willing, I believe, to try competitive alternatives to the incumbent carriers. But if that experience is not a positive one, then they simply do not have time, nor do I again as in my capacity as a consumer, to fiddle with alternatives. It simply is not going to be in a consumer’s interest to continue to go back and say, we’ll let’s give them one more try.

As I think Jack mentioned, made a statement that I thought was very important, he said, “I’m the one the call when something goes wrong.” And it’s important to understand that this is not a hot dog vending industry that we’re talking about, where people wheel up carts and wheel them away at the end of the day. This is an industry
with a huge amount of capital that is sunk in the ground and fixed and in the short run, suppliers simply will need to rely on the facilities of incumbent and it is very, very critical that we adopt a competition enabling (INAUDIBLE) policies or else that hope that we see in the tremendous amount of good will and energy to serve this

    JOE GREGORIE:  Let me just respond to something that I heard because it’s absolutely critical. It’s at the heart of the argument about competition. At the end of the day, you will continue to hear me harp on this over and over, because I preach it to everyone. Most importantly, all of our employees. It’s the customer’s experience that rules the day. And we’re focused on that. As long as we’re going to be a successful company and any one who’s going to be a competitor is going to be successful, must understand the needs of the customer, what’s the experience like. And it’s not simply about delivering a lower price.

    This is a critical service we’re talking about, delivering to small, medium size business, to everyone. We’ve grown up in an environment where telephone service, communication services are deemed to be critically important. When you pick up the phone, you have an expectation it’s going to work. Not sometimes, maybe. Those same standards are beginning now to apply to internet and high speed data services to this same market.

    We once received, we do a lot of communications with our customers, we ask them all the time. It’s expensive, but we do lots of surveys, we want feedback. Because I don’t believe anything about my business other than what my customers tell me at the end of the day.

    We had one experience once that’s really the hallmark, it’s an “I only wish you folks sold automobiles, refrigerators, all types of appliances, ‘cause you’re a pleasure to do business with.” And if I could, in a nutshell, codify your comments in terms of what it means to me as a small business provider, it’s the customer experience at the end of the day that will weigh in on who are the successful players in this market place. And there are some really critical hurdles to get over initially, and that’s the infrastructure. Thanks.

    LARRY SPIWAK:  Yeah, I think, I know that when the question we go back to, especially for small businesses, is that, you know, do people care? Oh, you know, I don’t really care about the phone bill, but they do when all of a sudden they think about it. And I’ve long argued for what I call, we need a constituency for competition. Unless people believe in it, then the status quo will just keep rolling along.

    The genre is something really interesting that I think goes to something that Kevin had mentioned about how a conservative should look at it. And one of the things, I wrote an op ed six months ago entitled, “Ideology or Economics?” And being a free market person, one of the things that I found so dismaying over current FCC policy is was that it actually sort of betrays their Nobel Prize winning history. And indeed, Freiderich Von Hayek, the father of conservative libertarian economics, had a great line.
He says, you know, if you allow all this reconcentration, what’s going to happen is people will actually not like competition. They’ll be betrayed, as John says, that given a chance, it won’t work and they’ll just get so mad about it because it will never work, they’ll end up having the return of these industries back to the state or heavily, heavily regulated. So in a way, you might end having a self-defeating exercise that one bite is squandered, sort of speak.

JOHN MAYO: Larry, and to let me just highlight, the inflection point nature of where we are, I think if you look back, if you contrast the current situation that we’re in, I think the ability of local exchange telephone competitions is still very much in doubt. And very much dependent upon a set of policies that either will or will not be adopted in the relatively near future.

If you look backwards at the experience that we gain from the emergence of competition long distance industry, we have a very positive story. Consumers there saw prices prior to divestiture of 55 cents a minute for a coast to coast, daytime call. Today, or at least yesterday, flying on the plane on the way home from south of here, which is a good place to be right now since it’s so cold here, I saw rates for 5 cents a minute.

You know, certainly not all of that decline was due to emergence of competition but certainly part of it has been. A good part of it. And the amount of innovation that we saw in long distance industry, we do have success stories out there. And so I would, I guess, urge those people who are thinking about this particular set of issues that face us in terms of local exchange competition, to not only think about where we are today, but the lessons that we might have learned from the positive experiences from the past. From the emergence of competition long distance arena, it did drive considerable benefits very quickly, actually, to small business owners in both urban and rural areas. So we certainly have some examples of some very successful competition enabling policies.

BRAD RAMSAY: Yeah, just following up on that and the at least in the long distance market, there were a little bit of facilities in the beginning that they, MCI started out with its out wire towers between two towns. But it grew by re-selling AT&T service at a fairly substantial discount. Certainly not the same discount you get off of re-sale under the act.

It’s hard for me to comment specifically on this, and NARUC actually is a small business also and we have resold the sale service and the interesting thing for me was people actually came in and tried to sell us service which was a new experience. They drew me into it because we’re such a small business (LAUGHTER) that they assumed that I would know enough about the contracts that I should be involved. But that’s really the limit of my experience with one on one with resold, with competition in DSL service.

We haven’t had anybody come in for local or toll. So generally have to take a step back and take a more general view. And I think what’s at the heart of this is what’s the
right regulatory policy? How do we know and how do we get there? And I don’t think anybody knows, we know what’s happening right now. We don’t know what will happen if there are dramatic changes or restrictions to access to the UNE platform. We don’t know that for sure.

I will tell you that among my members, there is diversity of opinions and views, as you might expect, on when and where the platform should be removed and transitioned away from. Who should not be able to keep it and where it should be. But there is no disparity of use among my members on where that decision should occur. And for people who would like to see a good result, you know if you look at the history of regulation in this country, a lot of the regulatory innovations, and I would probably say all, but most of the regulatory innovations had started at the state level. It’s an interesting commentary that five years ago, the incumbent local exchange carriers stopped at the states were right. Now, the collects think we’re right. We, like our FCC colleagues, always think we’re right.

Everybody around this table knows that’s not true. The benefit and the proper policy choice, from my perspective anyway to take, and this is my personal view, not necessarily NARUC’s is, let the states experiment.

One flaw of the ’96 Act is it did restrict state experimentation a little bit. If you look at the use of regulation, and I’ll use price caps as an example, and some people like price caps, certainly it was a pull back from regular return regulation, allowed for increased return for the carriers, price cap regulations started at the state level and now they’re 46 states that have imposed that on their major (SOUNDS LIKE: ILAX). And the FCC picked it up somewhere along the way and used it on the Federal side in the long distance market.

If the FCC provides sufficient flexibility in whatever they put into this order, there will be some states that will migrate away from the platform more rapidly than others. And one type of competition that does not go away is the competition between states. States care. It doesn’t even really have to work. It has to look like it’s working. And the thing is, but over time you discover if it was a mistake and the benefit there too, is, let’s say that the FCC gets very restrictive in its order, or any Federal agency gets very restrictive in its orders, which is imposed on the entire country. If they did it wrong, you may never even know if they got it wrong. Because you’re not going to be able to compare to anything else and the United States is the cutting edge in this area.

So I genuinely believe giving the states maximum flexibility is the best way to go. The other reason why pushing it down to the state isn’t better is because the feedback mechanisms in place work better. Photo agencies are responsive basically to Congress. I respectfully suggest that my good friend, Mike Powell, speaks to non-lobbyists that are actually ratepayers rarely, if ever. Every one of the people that I represent, I can’t talk to one of them without them telling me, they’ve heard from the average person on the street about something that the average person in the street cares about. They hear from their small businesses. So that feedback mechanism is there.
The other reason why going to the state level, if you’re just a pure purist, the state level records constrict somewhat the choices that are available to the state regulators. That is simply not true at the FCC. At the state level, if I call an economist on the stand and I think that he’s not exactly telling the truth, I as a lawyer, can get up there and make him impeach himself.

Now when I go to a court, any court, if he’s basically said, this paper is white and then we got up there and talked about (LAUGHTER) an analysis of this paper and he said, well, you know, maybe it is black or white, if he’s impeached himself, I, as the commission, don’t have the same flexibility to accept his original testimony. As the FCC does in his paper hearings where you say one thing, you say another thing, and I go, hmmm, I believe him. And the court doesn’t have any way of choosing.

At the state level, I’m constricted. I can’t choose him if a good lawyer came in and made him impeach himself. And that’s possible at the state level and (OVERLAPPING COMMENTS)

LARRY SPIWAK: Well, let me ask you a quick question, because this is, telecom is such a political business, I’m shocked (LAUGHTER), and Tip O’Neill’s “all politics is local” is true, and this is something I’ve seen, (especially in developing nations), how do you your members feel? Do they kind of view themselves tacitly or certainly in the back of their minds, that they have a responsibility to the local economy? That the governor’s going to get on the phone and it’s, this really, they view themselves as the guardian and promoter of the local economy? How big a factor is that?

BRAD RAMSAY: You know, I’ve been at NARUC for almost 13 years now and there is a range of opinions. There’s some commissioners that are essentially consumer advocates. You know, I would characterize them as consumer advocates. I do not think that this is the build of the NARUC. I genuinely believe that the majority of the commissioners that are there, and you know, as with any organization, there are people that are very, very, very political but again, I think those are in the minority.

The majority of the people there believe in the notion of the public interest. What Cunard called the Holy Grail type agencies. But it is. It’s the public interest and part of that is I’ve got to worry about what the impact is on the state. And you know, one thing that for the long serving commissioners more so than the guys who just come in, they have to worry about using the service. And I don’t know if anybody ever thinks about this, but I do all the time. If competition doesn’t work, the state commissioners are basically in serious trouble.

Competition, the one good thing I guess, if you’re a person who believes that competition is going to work in this industry, is that the 1996 Act opened the door. No exclusive franchising. And there were people edging into the places where regulatory arbitrage in the easiest to do. And regulatory arbitrage undermines your state wide average rates.
So you’ve either got to come up with a universal service mechanism that’s outside of or expensive to the way rates are set completely. Like a life line link up type of approach, which we’re still kind of hooked into this high cost fund approach, which politically is not going away at the Federal level. So politically it won’t go away at the state level, because you can’t mismatch that type of policy.

I’m not sure personally, and of course, half my members would kill me and half of my members would love me, but I’m not sure personally (OVERLAPPING REMARKS) of having a Federal high cost fund is going to get us where we want to go on the national thing. Because the high cost fund, not universal service, the high cost fund, that approach sets us up to regulatory arbitrage on that. And you’ve got Western Wireless is doing it in a different kind of way.

So, the state’s to me have the biggest stake because they’re the ones, if this whole thing crumbled, they’re the people that pay the price. When the FCC puts additional surcharges on, it’s the state regulators that pay the price. And even Powell mentioned that in his (INAUDIBLE).

KEVIN HASSETT: As a person who’s been watching this debate forever, it seems to me that forget about telecom policy, across all policy, it’s generally true that competition in terms of states is a good idea. Like Roberta Romano wrote a whole book about even like with law. It’s important to have state, new competition across the states for corporate law.

And so it would almost be like if we were going to stipulate, what are sort of “Hayekian” principles of how we should do these things and it seems liked one of them that ought to be not even contested by anyone would be that you would have state, to the extent that you have regulation, you have state competition. You allow the states to experiment.

And so I just wonder, if we were to present that argument to say the most rabid, pro get rid of unbundling economists here in town who’s very right wing, would that person agree? Or would that person say, no. In fact, (OVERLAPPING REMARKS).

LARRY SPIWAK: It depends on who’s paying them (LAUGHTER). I have found that most free market people, I mean, the Federalists issues are really the key thing and I think as Brad had delicately tiptoed around, all of his members (OVERLAPPING REMARKS) I mean, that’s a really, like, at our Phoenix Center Teleconference Symposium in November, we were very privileged that NARUC gave a major announcement there and they announced the letter, and it was signed by, what was it, 80 commissioners, Brad?

BRAD RAMSAY: Tentative. Let me just caveat all that. For people that don’t know. Typically, when I try to get commissioners to sign a letter, number one, you gum it down enormously and even then I am excited if I get the NARUC leadership, which is about 10 people, plus maybe five or six more. In my wildest dreams, I thought I might
have gotten 30 people to sign that. And that would have been working extremely hard, but commissioners help me.

As it worked out, in three business days, I got 80 commissioners to sign. Which for NARUC, I mean, they only have 230-something commissioners. That’s a phenomenal amount of amount of commissioners.

Across the political and economic theory spectrum, people that would like to tomorrow, take it out of the business markets in urban areas and migrate away from it in other parts of the state, to the people that think we really need to have some kind of transition here in the high-concentrated urban markets where the business guys are having a problem. (OVERLAPPING REMARKS)

LARRY SPIWAK: So I think the problem with the ’96 Act too is that it blended everything together. I think what you had is between a legal and an economic thing. On one thing you had the legal concern, which is the constitutional issue of Federalism. On the economic issues, you have what constitutes – and how do you get to – good economic market performance?

And very often those lines get unfortunately improperly blurred. And I was going to say about the letter that NARUC released, regardless of what they all said in terms of how do you get there from here, they all agreed that the states have that right.

So that’s sort of one thing over. I think the issue in terms of the economics is, do you believe in this inner mobile competition and that if you release all forms of prophylactic regulation, that the invisible handle will come down and slap Ivan Seidenberg [current CEO of Verizon] upside the head. You won’t have a market power problem.

Or rather that you take, I think, my own personal view, is I think the view of increasing more conservatives, is that competition is competition. I’ll tell you an interesting story. I had a piece that came out in the Detroit Free Press, I think Tuesday, this week, and I don’t know if you guys remember, but Dick Notebaert who’s the Chairman of Qwest, formerly of Ameritech, had made a public statement saying, “I’m not going to compete in any body else’s service territory using unbundling network elements because it would be wrong.” Sort of like violating some bizarre code of ethics or something. And I got a phone call from a very high politician, I don’t want to say who on the record right now, and who’s a Republican in an SBC/Ameritech state going, “you’ve got to be kidding me.”

This is naked [Sherman Act] section one, horizontal market allocation which has been a per se violation all the way back to Addyston Pipe.

So I think most conservatives understand that. The flip side and I think which has been one of the problems with the previous administration is that if you are somebody who hates regulation, the previous administration gave you every single bit of ammunition you could have of why regulation won’t work. I mean, [former FCC
Chairman] Reed Hundt’s book, not that I want to digress on Reed Hundt’s book, I mean it’s a walking *ex parte* violation.

So if you have some body like a Billy Tauzin who just hates regulators, that’s an important. I don’t think it bears the economics, but it bears to your political philosophy.

**KEVIN HASSELT:** So the idea would be that if you (INAUDIBLE) say a “Hayekian” ideal law that basically made it so the FCC could do nothing. And then you said, and it’s binding at the state level, then you would succeed that ivory tower ideal of just wiping out the regulators everywhere. And that might be the kind of motivation that if there was some one who weren’t paid by anybody, but were just trying to be an ideologue, that would be the argument there. Do you think?

**LARRY SPIWAK:** Yeah. But that’s (INAUDIBLE) ideology and not good solid analysis. And I think that’s been one of the problems on both sides of the aisle over the last, since the ’96 Act. You have results-determined outcomes based on sort of ideology. The previous administration was motivated to wire the schools and libraries at all costs and who better to do that than incumbent monopolist?

The current administration seems to be that the invisible hand will work and a thousand broadband flowers are blooming. I think, in both cases, you end up at the same spot but you don’t, you haven’t done the requisite analysis to say, at our Symposium we had, the theme was, how do you go from one to many? That is the issue that I think policy makers should be focusing on.

When you hear about the issue of broadband, to me, the fact the FCC has a NPRM out there on what is a relevant market for broadband? My response to that has always been, the operative word in that sentence is “relevant.” The market for broadband is about as relevant as video dial tone. The issue is, you have a market power problem, how do you go from one to many? How do you get, promote entry in more competition?

**JOHN MAYO:** Just one quick point here and that is, we could very quickly, I think, digress on matters of economic philosophy, basically, with respect to the “Hayekian” notions here, but one I think important difference while I completely endorse the idea in general of competition and competition among the various state public utility commissions, there is an important difference. At least a caveat, I think, that gives pause at this juncture and that is that state public utility commissions don’t compete for profits. Which we know generates its competition among firms in seeking profits that tend to create a variety of customer benefits.

State commissions typically compete on the public interest and that I would suggest to you, is a much broader definition and much more elusive goal. And the pursuit of the public interest may very well lead to some very silly policies and I think Brad, you would acknowledge that regulatory agencies have, in the past, once or twice may be adopted a silly policy. (OVERLAPPING REMARKS) (LAUGHTER)
So I think it’s simply, Kevin, back to your point, a caveat before you just simply abolish the ability of the FCC to move forward. I think what I would say is that it is perhaps a time for the FCC, which is also charged with the public interest, to actually step up and to the extent that the Telecommunications Act provided some guidance on establishing a benchmark or a stake in the (INAUDIBLE) pro competitive deregulatory policies, I think that’s exactly what the charge is to the FCC. And the fact that they have a lot of latitude out there should not be made to be an excuse for not stepping up and pursuing that goal.

BARRY PINELES: Let me follow up on a point that Brad and Kevin were making, but let me just (INAUDIBLE) competition among state regulators. I will bring up (INAUDIBLE), and the simple fact of the matter is, is that while state regulators can be an evasive imposition of state regulations because these dramatic transaction costs on companies like InfoHighways. Because InfoHighway communications need to be certified in whatever state they’re operating in. I used to work in a competitive local exchange (INAUDIBLE) and you had nightmarish problems dealing with various and sundry state regulators.

Even trying to figure out where a particular state regulator is going. Trying to keep track of, which is one thing that I had to do when I was at GST Telecom, keep track of the proceedings of California Public Utility Commission, was simply a nightmare. And the cost of doing that may create certain transaction costs that may override the benefits in competition with the states and when we follow up another point.

This whole sort of Federal/state split and again, these are my views, not the views of the Chairman or any member of The Small Business Committee, is that what happens if the Supreme Court had had the decision, Smith v. Illinois Bell Telephone Company, and made that decision in 1942, instead of 1930? And where would be today if that decision had come down in an environment where the sale of $17 worth of wheat for (INAUDIBLE) for lawyers in the room, where $17 worth of wheat actually effected interstate commerce. Would we have a Federal, state split?

Obviously, that is sort of an open, rhetorical question, just making a point about something.

LARRY SPIWAK: And I think the issue of the public interest, I myself, for those of us who are lawyers, we all have that sort of pet project we did when we were first year associates. Mine was the definition of the public interests, because I cut my teeth litigating utility mergers. If you would like to see my exegesis of it, I’ll give you a copy of my book (LAUGHTER).

But there is, surprising enough, a tremendous amount of law on it. And the law is basically, it’s a consumer welfare maximization standard.

Let’s go over to Dan to get a contrary view as he’s waited very patiently.
DAN PYTHON: Yes, I was going to provide a contrary view. Some much to say, so little time. Getting back to original, I think, point that started this around the table, sort of. Again, what’s the consumer, small business consumer experience? And again, I’m not here to say competition is bad. Competition is good. Competition certainly improves the consumer experience. It certainly improves it from my consumer standpoint at home, whether it’s a cable provider or I’m fortunate to be in the neighborhood where I don’t have to look at a monopoly voice provider either. There’s cable that Comcast is offering cable voice services, as is StarPower. So again, competition, almost by definition, will improve the consumer experience.

But the inflexion point, as we’ve heard, that the commission is facing next month, again is not is competition good or bad. Are we going to promote competition or are we going to turn back the clock to a monopoly environment. I mean really, the flexion point, one of them that the commission is dealing with is taking InfoHighway’s situation for example.

If the commission determines that switching is competitive, that it’s not necessary for you to go for the switch that allows you to offer your services in your market, if that’s competitive, if it makes that determination, will competition as we know it end? I don’t think so. I think that determination would mean that in Yonkers, wherever you are in Brooklyn, that there would be other switch providers that you could go to as a third party. You might be able to acquire those switches yourself, or you might seek to engage in actually wholesale discussion with Verizon over that switch.

Other elements could continue to be provided to you by Verizon at TELRIC pricing. So the question again is not, is competition good or bad? But has competition for those elements evolved to the point where it’s not necessary for you to do an end-to-end UNE-P transaction at TELRIC pricing with Verizon.

And I think our view is yes, the commission should make that determination. At least I believe in the New York urban market that there are probably switches available from alternative providers and we can move off of this UNE-P regime. So competition, again, is not going to disappear. How you have to negotiate with whom, to get the elements that you need to continue to provide those services to your business customers, that would change.

I guess the other point I would make is in observing customer experiences, I think The Washington Post had a very interesting article last week about the type of competition that can be provided under the UNE-P regime if it continues to be maintained by the FCC and that’s Ottenberg’s Bakery here in Washington, 40-line customer, 300 employees, went with presumably a UNE-P provider. Their phone service went down on the busiest day of the week. Turned out that alternative provider for them had not a single technician in the Washington, D.C., area who could deal with their problem when their phones went down. I don’t think that was a very good customer experience for Ottenberg’s.
And again, the UNE-P regime, part of our problem with it, and I think a public policy matter is simply maintaining a UNE-P environment forevermore is not going to provide the right incentives for other companies to invest in facilities, invest in technicians as well as sales people, that will continue to provide a good customer experience for the demand side of the world.

So, I’ll stop there and I’m sure there are other points I’ll want to bend on later.

LARRY SPIWAK: Yeah, I always like to joke, you can never underestimate the schmuck factor in the competitive world. Karen, you just showed up so why don’t you introduce yourself and sort of pick up. We appreciate your coming.

KAREN KERRIGAN: Sure. Good morning. Karen Kerrigan with The Small Business Survival Committee. We’re an advocacy organization with 70,000 members nationwide. And we’ve been monitoring this issue both from a competitor’s side and from the consumer side, the small business consumer side since the passage of the Act in 1996.

One horror story was pointed out here regarding Ottenberg’s but I can give you hundreds of others with the Bell monopolies (LAUGHTER) around the country in small business and sort of the response of customer service when it comes to the Bells and what are we doing if there’s a lack of competition in the future.

Erin (Fuller) articulated, I think, the issue very well from the small business and entrepreneurial perspective. And I’m sure Lara (Chamberlain) did as well in her comments. One thing that, from a small business perspective, if they’re going to be successful and they’re going to do well, is that there has to be certainty. Not only in the economic environment, but also in the tax environment and in the regulatory environment and certainly competition has served small businesses very well as consumers since the passage of the Act.

But one of the big challenges that we see in terms of going forward, there’s been a cloud over the industry in terms of (SOUNDS LIKE: FAME), small businesses, the (INAUDIBLE) of innovation and competition has been regulatory uncertainty in terms of policy.

Regulatory uncertainty continues to play both competitors and consumers. And until there is a certain path in terms of where of regulation is going, we feel we are in a deregulatory process. I know the folks on the other side say well, when you get deregulation, this is a deregulatory process that we’re going through right now. Albeit, it’s been a messy one and an ugly one at times plagued with court cases and other things. But really, it’s small business, in the long term both as competitors and consumers when it comes to these services, there has to be regulatory certainty if we’re going to have all these “blooms” that you talked about that will serve small business as well.

So just a general statement to follow up on what other folks have said.
CAROLYN FLEMING WILLIAMS: Well, I am like Kevin here, to here (INAUDIBLE) one thing though, I would like to say, when small businesses come and talk to us, one thing they talk about is the notion of respective competition. And that may implicate a set of policy and choices. Being able to have head-to-head competition, being able to sort of level the entry field in a lot of respects.

So that’s the notion that maybe someone would like to address it?

LARRY SPIWAK: Yeah. I certainly don’t want to put you on the spot being a former FCC person, but what are the kind of stories that you have been hearing just from people coming in and going, “hi, I’m a small business, this is what’s going on.”

CAROLYN FLEMING WILLIAMS: Well, certainly the imbalance in negotiating position to start with. With the current atmosphere of bigger, big and bigger, not being able to effectively negotiate and therefore, that has an impact on your ability to compete. We just had a meeting with the Association last week that talked about our programming, how to acquire programming. They’re not in a position to do that. And not serve the local interests. Those are the typical kinds of issues that are raised (INAUDIBLE).

LARRY SPIWAK: Do you deal with companies that aren’t necessarily telecommunications companies but small businesses where high users (OVERLAPPING REMARKS)

CAROLYN FLEMING WILLIAMS: Not (OVERLAPPING REMARKS) no.

BARRY PINELES: I think Carolyn remarks demonstrate one of the problems in this debate and that is that for the most part, the debate that goes on between the regulators and regulated is a debate between, let’s say Dan’s group and John Windhausen was here earlier, and John’s group. That’s the people who wind up doing the debate. The problem is, is the debate should be between Erin’s group and Lara’s group and Karen’s group and the regulators. Because, and I know I’ve sat in meetings with representatives of Commissioner Powell’s who have told me that what he is doing is an attempt to do what’s good the consumer. The problem in this is that the commission sort of has to take a guess as to what’s good for the consumer because the consumer typically does not get involved in FCC regulatory proceedings.

I mean, you don’t have the same kind of organized participation that you know Jack (Goldberg) and Joe (Gregorie) do either though PACE or CompTel or any of those sorts of organizations. And to some extent, that’s unfortunate, because the commission is only, let me give an example of talking to Dan’s point about the availability of switching service.

Dan looks out, sees the market, sees who’s competing with Verizon, or SBC and how many switchers are out there, but nobody is coming into their Federal Communications Commission as retailers, small businesses and saying, yes I can get competitive service, no I can’t get competitive service and here’s why.
So they’re seeing a supply, they’re seeing the debate solely from the supply side as opposed to the demand side. Now I’ve gone in lots of meetings where I’ve made this speech about the who’s getting what in the debate. About the how the small business need to be involved in this debate. Consumers need to be involved in this debate. And consumers often are either through the public utility commissions or the state consumer’s utility advocates. Most state consumer utility advocates are not necessarily required to represent the interest of small businesses. Some are. Some are statutory required by Colorado, for example. Many are not.

So you get, there’s sort of this gap. And you see it in how the commission treats small business. They sort of work that together with residential service and it isn’t just in the (INAUDIBLE) in the (INAUDIBLE) man proceeding. They’ve been doing this since price capping AT&T back in the early 1990s. And then they just sort of lump everybody, they work small businesses and residential consumers together and I will guarantee that Dan and Jack and Joe would agree on one thing: and that’s small business customers are different than residential customers.

Now, there are small business customers. They’re actually residential customers in the sense that they’re starting small businesses from their home, but then they’re still looking at pumping in more than one or two phone lines, and possibly a fax line into their home. So you have to treat these businesses differently. The FCC doesn’t see that debate. I don’t know how to get the FCC to see that part of that debate.

Now before I sort of yield the table here, I just want to make one other point. And that’s sort of the debate over Ottenberg’s Bakery. And I actually worked for (SOUNDS LIKE: ASELAC) and we had as many screw ups as (SOUNDS LIKE: WE MAY BE COMPETED) in U. S. Western SBC territory at the time. We had as many things go screw up, if not more, than did U. S. West and SBC. In other words, a lot of the fault of the problems that our customers had were often time GST’s fault.

Two things. One, one of the reason that happens is because GST is a relatively new business and Dan would agree with me as would Joe and Jack, that telecommunications is not as easy or simple or straight forward providing a service. So on a learning curve basis, a lot of small businesses are going to be providing that service are going to screw up, and you get lots of sort of small business customers who get, have a sort of Ottenberg’s Bakery kind of situation. I mean, that happens frequently.

On the other hand, I’ve been trying to get DSL service into my apartment and can’t get it because I have a fiber optic line somewhere between the central office and my apartment. And nobody is going to run a clean copper wire between that central office and my apartment.

And no amount of, unless either my apartment building owner allows multiple providers into the apartment, or we come up with a different technology other than DSL to provide that kind of broadband service, I’m stuck in a certain monopoly situation with Comcast.
There are both sides of that sort of customer situation.

**ERIN FULLER:** Barry, I think your example is really personified the intensely personal relationship that people have with their phone service provider and how that is a different type of relationship and utility service than others. And I do think you did touch on one point that I had wanted to make earlier which is there is an overlap between your residential and your business service when you have a small business. Especially, as I said, if you’re running a small business in a room in your house.

And so it’s very artificial to put up barriers between residential and business service when you have a negative experience with your residential service provider or vice versa with your business. That experience really goes into your decision-making processes to who you are going to select for a service provider.

And it’s the same thing with cell phones and everything else now. But I do think that that was an interesting point because so often we hear this debate very clearly defined between your business and your residential service, but we all know that people have one line that serves both purposes, or they use the residential line as a fax service during the day. There are a lot of ways that small business owners try to maximize the number of lines they have going into their house and that means that there is significant overlap.

**LARRY SPIWAK:** Yeah. For me I can’t get DSL and I’m close enough to the central office, but because we ran out of telephone lines in our neighborhood, they had to split the line. So I don’t have the bandwidth. Whether I want to or not.

Let me ask you a question, Barry, really quickly. That was really excellent. What do you see the temperature of the Hill on this particular issue? I think the way you’ve tee’d it up, again all politics is local and all constituents eventually start complaining. Do you see anything going on?

**BARRY PINELES:** Is that a receptive position? I think there are two different positions here. One is, and I don’t think most small businesses actually write their members of Congress about telecom issues.

Clearly I don’t receive that as the regulatory counsel and the small business committee, my boss hasn’t received any letters from any of his constituents about this issue. And I would suspect, in talking to other members of Congress who have written a letter to the FCC about some UNE-P issues and his basic attitude is, I hope the FCC makes all of this go away so I don’t have to worry about it. (LAUGHTER)

I think there are a lot of people on Capital Hill who basically, well, this is why we have the delegation doctorate. So we print it, instead of making the decisions, we print these decisions to the Federal Communications Commission. A lot of people want to see this issue simply go away. The problem is, is that it won’t go away. Because what’s going to happen, depending upon how the FCC makes a decision is, I’ll give you an example, if one of Joe’s customers suddenly can’t get their service anymore, and Joe
says, well, why can’t you get the service? Well, we can’t the service because we’re now, let’s say, negotiating with the Allegiance or Verizon to get switching capacity, meanwhile we don’t have switching capacity so your service is going to shut off. The first person that they’re going to complain to is their Congressman or Senator.

So initially, the reaction is we don’t want to deal with this because this is a fairly complex topic and hopefully the commission will take care of it, but the commission doesn’t take of it, it will come back to Congress at some point.

And sort of a good analogy is does everybody the remember the debates about what was happening when Mel Gibson had those ads that the FDA is going to take away your vitamins and there was a debate over FDA regulation of nutritional supplements, and nutritional supplement manufacturers created these ads where Mel Gibson, got on television and basically said, the Federal Government is going to take away your vitamins. And then led to essentially, the enactment of legislation that completely deregulated nutritional supplement industry.

So I can see that sort of same kind of campaign being created at some point down the road.

LARRY SPIWAK: I remember the Congress of that and that is in 1992, the Cable Consumer Protection and Competition Act where Al Gore very successfully got George Bush Sr., veto overruled by basically telling the American consumers that they were going to have to watch the Superbowl on pay TV. And that’s just down right un-American. You don’t pay for the Superbowl. You think I’m kidding you. Go back and look at the press reports.

We actually at the FCC had to do a sports migration report. This is big stuff and the cacophony does get large.

So let’s move on. Thank you very much that. Let’s briefly touch on the current regulatory developments. I know we’ve touched on it. I don’t want to spend too much time on this, but I do want to sort of focus on the two latter points and that is constituent awareness and economic impact. And we touched lightly upon that, but again it goes back to are people aware of what’s going on and then how do we make people aware of what’s going on, which seems to be a theme that is emerging.

It’s so important, but yet people don’t quite grasp that yet. Why don’t we go around the table here again.

JACK GOLDBERG: In terms of my perspective on what’s currently going on and I’ll focus on the small, medium business market segment. Again, I think any realistic look at what the options are for serving these kinds of customers just reconfirms that the only way to do it practically and the only way it’s going to happen successfully is by until one gains some kind of scale and concentration, having the ability to use the incumbent’s facilities and what we pay to use the incumbent’s facilities has gone
through years of regulatory scrutiny and negotiation and all the rest of that. But, that’s a side issue.

If you look at small, medium size business customers, these customer locations are not on cable plant. There’s no co-ax to these two and three story office buildings. So the cable company is (INAUDIBLE) competition. The cable companies are not there. Wireless can’t be used to provide these companies with the kind of telephone services and data services that wire line can, so that form of intermodal competition is not there.

These customers are simply not concentrated enough for anyone to want to put fiber to their location who doesn’t already have a presence. And they’re not concentrated enough in either urban or rural areas to be effectively served. Why (INAUDIBLE) co-location or hubbing. So as a result of that, if you look at the real world situation today, these kinds of customers today are almost entirely served by competitive carriers who are relying UNE-P. And based on the data the Pace Coalition has been able to gather, by the end of 2002, almost eight percent of the small business market, eight percent of the lines of the small business customers, were being served by competitive carriers using UNE-P. And this has been growing rapidly over the last couple of years.

If the events unfold at the FCC which eliminate that platform, as an option for serving these kinds of customers, what will happen is that these customers will no longer have a competitive carrier available to serve them. That market will be re-monopolized and this rapid uptake now of competitive suppliers by these customers will stop.

There are some interesting test cases that we can look at in the country now in areas where UNE-P is not available and let me share that with you and then I’ll let this move on. Verizon, today’s Verizon, which is actually the combination of the old Bell, Bell Atlantic, and the old non-Bell, GTE, is an interesting case study in this. Because the Bell part of Verizon had 271 obligations and a lot of scrutiny and lot of pressure on them to create a more pro-competitive environment in order to get LD entry, what you have in that part of the Verizon is over seven percent of their lines have been lost to competitors who use UNE-P to serve those customers.

In the old GT&E part of Verizon which did not have any regulatory pressure to get into long distance, didn’t have any of those issues to deal with, there is not UNE-P. UNE-P is available but it’s a very unfriendly environment. Things resulted that about a tenth of a percent of their lines have been lost to competitors using UNE-P compared with seven percent in the old Bell part of Verizon. Very interesting.

But what’s even more interesting is if you look at the other form of serving these customers, where someone self provide switching and just gets the loop from the incumbent, in the Bell part of Verizon, almost four percent of their lines have been lost to competitors who are using switching. In the GTE part, it’s less than one percent. And what that underscores, and you see this if you look at Southern New England
Telephone, which is not part of SBC, what that underscores is that these things go together.

Competitors need to have both forms of serving their customers available to them to be able to effectively compete. If you don’t have UNE-P, which is the full use of the network, you’re not going to get very much switch deployment and UNE-P type of competition.

So, as I watch the Washington scene and the debate that’s been going on over the last few months and the direction that the Chairman seems to be trying to take this issue, I’m just amazed that, I think John talked about the historical experience in the long distance market. In the period of time over which (INAUDIBLE) developed and the greed in which that relied on the availability of re-sale of incumbent facilities, here we have a situation in the local market where competition is finally beginning to take off and it’s taking off at a rate comparable to and a fashion comparable to what happened in LD and there are folks at the FCC who want to stop it. Why?

ERIN FULLER: Do you find that the people that you serve have an understanding of the regulatory framework under which you are providing services, because at least from my perspective, trying to research on this, it’s not always easy to get the data and a lot of it is proprietary and (INAUDIBLE) has recently, as you know, produced some great material on the take off from (SOUNDS LIKE: VELUX), but it’s not something that’s been available in the past. (INAUDIBLE) That’s one point and secondly do you (INAUDIBLE) that your constituents or that your users understand that you may not be able to provide them service (INAUDIBLE)?

JACK GOLDBERG: Well, we certainly don’t want to go around telling our customers to worry about whether or not (OVERLAPPING REMARKS), Joe, do you want to (LAUGHTER)

JOE GREGORIE: (INAUDIBLE) Commenting on the regulatory framework, I think was the question. Let me respond. I’m encouraged by the states. I’m encouraged by these open discussions. If you would have asked me a year ago about UNE-P and could it have taken center stage in the discussions here at the FCC, I would have said to you, UNE-P? Nobody could spell it. Okay?

Today, what’s happened in my mind, and this is my opinion, as a (INAUDIBLE) I can speak for the company, I don’t have to qualify these remarks. (OVERLAPPING REMARKS) The only reason it’s in debate now is because it’s proved to be successful. You know what? I understand it. And I’m not naming names. But when you see your competitors starting to gain hold, the normal response is to cut it off at the pass. Okay?

In 1999, there were less than a half million customers being served by UNE-P. Facilities based deployment was what Wall Street, the smart money, was backing. It was a land grab. You’ve all heard it. Build it. They’ll come. Technology. Innovation. And billions, tens of billions were lost by some very smart people. They were up against some very formidable competitors.
Today there’s over ten million small business lines and residential customers being served by UNE-P. Do you understand why there’s a big movement going through (INAUDIBLE).

BARRY PINELES: (INAUDIBLE) on the issue that the thing about build it, they will come also relates something to what Kevin was talking about in the zero sum game, was I think there was some inclination that when the Telecom Act was passed, that the demand curve would move out sufficiently because there would be all these competitors coming in offering new kinds of services. They would build lots of facilities. I worked for one that built lots of facilities in the ground that would then automatically incite lots of other people to use all sorts of high bandwidth capacity. Never happened.

JOE GREGORIE: Never did. Let me share with you. I am not immune to facilities built. In fact, when we raised our first round of capital, our vision was, we’ll build a network here. We’re building a data network to deliver data to our customer base, providing telephony bundled service and as the technology evolves, as the big and small start to embrace, IP, voice over, we’ll move in that direction too.

(SOUNDS LIKE: AND IT’S RE-BUILT DOWN) facilities, we risk our very company. And it was only very near the end that we pulled back from that strategy and refocused on building market share to drive top line revenues, real cash flow, building a business and deferring to the future, the investments to build.

To your point (INAUDIBLE), and I must respond, if there were switching opportunities available at the five to ten line customer size, in my markets, rest assured I would be pursuing them. Because it would make my existing provider treat me more like a customer. It would make them more responsive. I don’t this there’s any dispute there. When customers have choice, everybody’s service level in the food chain has to go up or you get discarded.

I do have choice at the DS-1 level and up, limited. And it’s very limited. Some of the (SOUNDS LIKE: SEALEX). And we utilize those. Okay? For many reasons. And as a small business customer, I’m not running DS-1s to their premises and somehow thinking I could either subsidize the cost over the long run to make a buck or, and I know. I’ve risked my own money in this business from the very beginning and it’s been at stake.

So, I’m going to tell you that I’m encouraged by what’s going on in terms of the awareness, the regulatory (SOUNDS LIKE: FRANK). But at the end of the day, let’s give competition a chance before we find ways to corral it or eliminate it.

KEVIN HASSELT: Again, thinking about it logically but in a slightly disaggregate level so I don’t actually know like the electronics of it all, I think one of the interesting things about this debate about switches is that if I am an incumbent an say I’m leasing five things to Larry so that he can sell stuff to my customers, I’m a little upset that Larry stole my customers, is the way that I’m thinking of it, right?
But I’m getting some revenue because I’m leasing him these five things. Now suppose that, so then the question is well, if I instead, get the rule changed so I’m only leasing him four things. Then I lose the revenue, the rent on the fifth thing, okay? And, in fact, like if I’m saying, well, you know, we should encourage the folks at this table to buy switches so that they can come in and offer switching to other people, then what you’re basically doing is you’re bringing in competition for you at the level of the fifth thing.

And if the other four things are definitely still going to be unbundled or leased to Larry, then in the marginal cost of running that fifth thing is kind of low, (INAUDIBLE) cost of things running any way to do my stuff, then basically, I just lose revenue for this. Unless there’s something else that I gain. So the question is, what could possibly motivate you to take the switch off the table?

The only logical thing I can see is that you’re killing the guy’s access to the customer. (OVERLAPPING REMARKS) And so I think that the position of taking the switch off, it seems to me, has to have some other thing going on. Like you can’t take the position logically that you can remove the switch and not have an impact on anything, because if that were true, than your position shouldn’t be to remove the switch. Because you lose the revenue for the switch.

LARRY SPIWAK: I will forward you over a paper written by one of adjunct fellows, Dr. George Ford, called, “A Fox in the Hen House,” which goes exactly through that argument in the economics of, because you’re right. If you lose a company, if you think about it, it’s really bizarre. If you lose a customer to facilities based competition, then you get no revenue for your network. But you still have to incur the cost. You build a network to serve 100 people, your serving 99, now that 99 have to absorb that extra unit of output. But if you’re leasing it, and you demonstrated conclusively that a, the rates aren’t confiscatory and (b), you’re a profitable wholesale provider, there’s something wrong with this story and you’ve . . I’ll send you the paper. (OVERLAPPING REMARKS)

JACK GOLDBERG: Prior life, up to a couple years ago, I was with Bell Atlantic. In fact, I was President of its Wholesale Division which provided these services and so let me make an informed guess here.

My informed guess is that the thinking is that if you withdraw switching, you’ll put these guys out of business and you’ll get back the whole customer. Because if I were running that wholesale unit, there’s no way I would try to push those customers to something that will give me lower revenue per unit. Why would I do that?

So there’s a larger goal here, which, you know, is entirely an all-American goal.

KEVIN HASSETT: There’s also one thing, again, if you wanted to try to think about what the other side could be on that from your view. You could say that, well suppose the switch costs a fortune to run. And that TELRIC really doesn’t compensate you for
that because they screwed up the formula and if we take the, but the other stuff they got right.

And so what’s happening is, is we’re hemorrhaging money (INAUDIBLE) monopolist, or the incumbent, we’re hemorrhaging money because they got the switch part of the formula wrong. That would be another position that perhaps one could defend, logically.

LARRY SPIWAK: And I think that argument’s been made in various state commissions and it’s been rejected, soundly. As far as I know. (OVERLAPPING REMARKS)

JACK GOLDBERG: (INAUDIBLE) as there is a migration to higher (INAUDIBLE) types of facilities, all of these imbedded, sunk investments in switch ports, the demand for those has declined. So (LAUGHTER) there’s actually more switch ports available over time, analog switch ports available (INAUDIBLE). So you don’t have a, and you’ve got spare capacity. You’re not being forced to create new capacities to serve the, provide switch ports to the (INAUDIBLE) entrants. You’re not adding anymore of those switch ports.

SUE ASHDOWN: I think that (INAUDIBLE) discussing the future of telecom services and when I mentioned before the idea of voice over IP and how the regulatory reclassification that’s being contemplated right now at the FCC effects not just, I mean, UNE-P I think is certainly a very important issue and a very crucial issue. It’s one that’s getting a lot of attention right now. But I think that we need to also think about the future of telecom in fact that a lot of small businesses and consumers may not be getting their service through switched elements in the future. And how the FCC reclassifies broadband, which can carry some of those voice communications, is really carries concern.

When I saw Chairman Powell at the Senate Commerce Committee a couple weeks ago, it appeared clear to me that he seemed, if he had his way, he would like to reclassify broadband as an information service and retain the computer rules which govern an internet service providers access to the network.

Well, that might work, if the computer rules were being enforced, but the computer rules are not being enforced so you have, basically, if you take away the right of access an internet service provider has to the network, the computer rules are no protection at all.

Also the reclassification of broadband I think puts state commissions in a tough spot when it comes to protecting consumers against discriminatory activities of the ILECs and certainly there have been different state commissions that have addressed some of the discrimination that they had seen when consumers had tried to obtain service from a competitive internet service provider. There’s a complaint right now that has been filed in California on behalf of two Internet service providers, who are trying to be able to have a fair shot in obtaining the Direct TV, DSL subscribers.
You know, Direct TV is shutting down its DSL division and Verizon and SBC swooped in, mid December, sent out press releases saying, if you come over to us, you’ll experience no down time.” Well, one of two things must be true. Either the consumer is experiencing down time if they choose somebody other than the monopoly, which is discriminatory and state commission has every right to deal with that, or they are engaging in deceptive advertising. And that’s something that will play out this week but something that if the FCC reclassifies broadband, nobody has any right to look at and the consumer is bereft protection.

Why is it important for internet service providers to be able to have that ability to compete fairly for their customers because they are providing a service that Verizon and SBC don’t provide to their customers. One thing that’s very important if you’re a small business or a telecommuter working on a local area network, you need to be able to receive a static IP. Direct TV provided static IPs. Competitive Internet service providers on a routine basis provide static IPs for their customers, but that’s not something that SBC or Verizon provide except at great cost.

DSL is notoriously fickle in certain parts, I think, depending on how far away you are from the central office. Competitive Internet service providers who provide a free dial up alternative for when your DSL goes down, that’s not something that’s available for the monopoly.

And finally I wanted to say that I’m concerned, too, that Tom (SOUNDS LIKE: TALKY’S) idea of new wires, new rules seems to be gaining some traction over the FCC that maybe if we keep PUP, we can go with new wires, new rules. Give us the penthouse, everybody else can have whatever comes below that. And in a world in the future, where everybody is going to be able to compete for the business restricting competitors to the old, corroded, what we call the crumbling copper network, which cannot, you can’t have the penthouse without the floors below it, seems to be a segregation, once again, of competition and of preservation and the cementing of the monopoly that I think is not good for consumers in a rapidly changing telecom environment.

And finally one thing that I wanted to say was in regard to what you were saying earlier, Barry, that there’s not really a dialogue going on between consumers and the FCC or consumers, meaning residential consumers and small businesses, there’s not really a dialogue going on between them and the FCC and them and the Hill, I think there’s a huge disconnect going on between the consumers.

I talk to people all the time. Internet service providers all the time and say, write a letter to your representative, to your senator telling them what’s happened to you and you need to fix it, but I think they don’t know exactly how to say, how to tell people what to do. To tell my representative preserve UNE-P, don’t reclassify broadband, it’s a very complex broadband. It’s a very complex argument for them to make and I think that consumers are just fed up when they get the bill, but absolutely disconnected and clueless about how to change that.
LARRY SPIWAK: (INAUDIBLE) is a perfect example of that. Erin?

ERIN FULLER: (INAUDIBLE) with how consumers are understanding the regulation?

LARRY SPIWAK: Yeah. Their understanding of the economic impact. I mean in more of what can be done to increase awareness among them so that people are aware of the importance of the issue.

ERIN FULLER: I think that most consumers are informed of regulatory impact from the provider. And that is where people are receiving a lot of the communication and they tend to be letters that sometimes can instill panic or fear about the services that they receive, urging them to commit to one or that type of thing. And that is where probably the bulk of the communication comes out.

There’s a variety of reasons for that. One is that potentially groups like my own, and I’ll take responsibility, don’t do the best job in communicating it. I think that telecommunication regulations are both incredibly complex. And quite frankly, not the sexiest issue to convey to my members.

They are much more, if I look at policy decisions that are going on right now, they are far more interested in issues such as taxation, procurement opportunities, that type of thing that they seem to have a real impact. Now certainly, these regulations that we’re discussing do have an absolute financial impact and what I said at the beginning, was that we really need to work to clearly define that x-policy or x-deregulation, translate into x-amount of dollars for your small business.

Because that is really the level and is not trying to talk down to my members, but they’re small business owners, they wear very many hats and they need to synthesize information fairly quickly and that bottom line analysis is really what’s needed and has really been very hazy for people to plow through and try to digest and make decisions about. I think that that’s something that we probably all could do to work together and do a better job of providing information.

JOHN MAYO: If you were a consumer and you ask what do I want, I think it’s absolutely unequivocal and every consumer would readily and very quickly go to the proposition center. I love competition, I’d love to have people fighting over me the way the commercial is now, on the banks and all the bankers in the living room, bidding down mortgage rates.

It seems very clear that that’s the case. And if you listen to Sue and Erin here, I think that what slips, the slips between cup and lip sort of speak, is that if I am asked as a small business consumer to say what do I want, it’s very easy to say, I’d like competition. And I could write that letter to my congressman.

But the very question on the table, well, okay. How are we going to get there? How are we going get there because I think everybody around the table has offered at least in
nominal terms, and embrace of the notion of competition. So I think there are really the challenges and I think the difficulty is that consumers don’t have the time, frankly, to peel the onion back one level and say, okay, what does it really mean that I am supporting competition. Because there are two very different views of how that competition is going to unfold.

And they’re really not all that complicated but people are busy and don’t have time to do this. One vision is that the act mandate that there be three viable options to get into the local exchange telecommunications market, and that we pursue, ultimately, I think, as a regulatory policy, a way of allowing all those options to be available and that knowing that this is a very highly capital intense industry, that a natural business strategy for entering market is to enter with a low sunk cost strategy to not put yourself at risk the way Joe had a strategy and said, I’ll go ahead and put those facilities in the ground, and that is an extraordinarily risky proposition.

But to know that sooner or later, nobody as a fledgling competitor wants to ultimately be reliant upon your competitors for facilities to keep those options open. That’s policy number one and that ultimately by keeping that open, that we will emerge and we will evolve to a true facility based sort of more effective competition model in the telecommunications market.

The alternative path to competition that’s being articulated here is no, if you want to really get to that full facility in this competition, what we need to do is make it harder. We need to make it more difficult on you to get in to the market using the facilities of the incumbent, and therefore it will be more meaningful if you do enter it.

This seems a bit, to me, like the strategy of how you teach children how to swim. You say, well, we’re going to throw you into the water and you’re going to swim. There’s some (INAUDIBLE) sympathy that we all might have to say, well, let me try. But it’s a bit difficult when you first say, I’m going to strap leg weights on you and then I’m going to throw you in or I’m going to ask you to swim and if you swim, you’ll be stronger. You’ll be stronger and you’ll be a better competitor if you swim then.

I think the rationalist strategy on the part of any perspective entrant faced with those leg weights is simply not to jump in the water. Now I think that’s what’s at stake. There is a difficulty explaining what those benefits are to consumers. It’s very difficult. There are some estimates out there, I know I saw one from CompTel saying $9.2 billion worth of benefits. Those are numbers that are, as an economist, I would say there’s probably some number of billions of dollars and that’s either plus or minus, but the fact is it’s significant. And it’s significant we’ve seen in the evolution of truck deregulation and airline deregulation. In the deregulation of railroads.

But behind all of those was competition was the driver and then deregulation. Not the other way around.

BRAD RAMSAY: I’m thinking (INAUDIBLE) again suggest that the place for the decision to be made is at state level. Because unlike my (INAUDIBLE) I’m going back to
this, (INAUDIBLE) my senators don’t hear, my congressman don’t hear, I guarantee the
FCC commissioners don’t hear. But if a small business has a problem with their phone
service, their local PUC hears. And so if a residence customer has a problem with their
phone service, the local PUC hears and frequently the CEO of the small business will
show up the PUC and have a conversation.

UNIDENTIFIED FEMALE SPEAKER: Brad, when they have the problems with
DSL, you hear, right?

BRAD RAMSAY: We hear. That’s true. Now people say, well I get this constantly
it’s, gosh, all those state commissioners, all they want to do is regulate. No. No. The
state commissioners do not want to regulate. The regulated entities make us regulate
because all of the people call us with their problems. Wireless. Let’s talk about wireless.
I go off on that every now and then, and it’s like, guys, get your act together so we don’t
have to mess with you.

If I get 3,000 complaints, I can’t ignore it. The state can’t ignore it. So the feedback
mechanism is there. Now the residential customer and some of the business customers
won’t call in and say, oh, UNE-P. No, they won’t call in and say that, but let a state
commission or let a state legislature try to retile its rates, now let’s use Florida as an
example.

Because of what the commission is required, because the policy is put in place by the
FCC, to this grand competitive scheme, ultimately the states are going to have to figure
out a way to rebalance their rates. And people trying to put the decision off. But
somewhere down the line, they’re going to have to deal with it.

This is all tied up with that whole universal service issue. Florida not that long ago
was supposed to raise rates and there were all these editorials all across the state of
Florida saying, you know, the legislature didn’t want to do it so they kicked it the PUC
so the PUC could take all the flack. And said, there were all these editorials saying,
basically, you know the Florida commission wants to raise your rates so you can
experience the benefits of competition. Well, the average residential and small business
customer doesn’t like to hear that.

So the incentive for the, when you were talking about where the state commissions
look at a broad public interest standard, yes, that’s true. They don’t look for profit
standard. Yes, that’s true. They look for survivability (LAUGHTER) standard here and
in this context, I think the majority of my members, not all of them, but the majority of
my members understand where the end game is and that they’ve got to find a way to
make this whole competition thing work. And it can’t be unsustainable competition and
it can’t be some competition that kills your monopoly incumbent provider
(INAUDIBLE). It can’t be those two things. We’ve got the impossible take of making
this whole thing work. Which is, not the impossible task, but extremely difficult task of
making all the piece parts work. And taking the blame when the problems arise. So
again, I think you’re driving the consumers know, they’re not as active at the photo level certainly as they should be, but I don’t know any good solution for that.

But the asking of the question to me, brings you back to, where should the decision be made and one thing I wanted to say, I didn’t get to reply to this earlier, being at NARUC, I always hear when a competitor or an ILECs’ interest, did at the Federal level, when they like what the Federal guys are gonna do. At the state level, when you like what the state levels are going to do. The fact is, you’re in the United States of America and even if I’m not regulating you in terms of traditional (INAUDIBLE) regulation, you’re subject to all kind of regulations in all 50 states. And you’ve got to have a regulatory policy, a regular compliance policy, you’ve got different obligations in terms of registering to do business there, a lot of companies don’t worry about that. But if they get sued, they’ll have to. But I mean, there’s a different regulatory environment in every state.

And different rules with the AG may apply. If you’re going to operate in a country as big as the United States, that’s part of the regulatory picture that you’re just going to have to deal with and I don’t think, I do think that there’s a row for Federal regulator in certain instances, but the solution of having it all done inside the Beltway terrifies me beyond measure (LAUGHTER).

BARRY PINELES: Brad, all I was doing was asking a rhetorical question about what would have happened, from a regulatory perspective, had the decisions, Smith v. Illinois Bell Telephone Company, happened 12 years later. I mean you probably would have gotten a very different kind of regulatory regime than you have now.

DAN PYTHYON: As people around the table look at the economic impacts, I would encourage people also to look at the economic impact of the current regulatory model. Looking at, you know, forget interesting terminology referring to (INAUDIBLE) competitors and the monopoly provider in the same sentence, (INAUDIBLE) is there any such thing anymore, but forget the economics of our membership, look at what’s happening on the equipment supply side under the current regime.

Look at the distance (INAUDIBLE). I would argue to those who say the cable plant isn’t extending out to small business and medium size business, I think I would argue again, the current regulatory model is a disincentive for the cable industry to invest in those additional facilities if they have to compete against non-facilities based carriers who are able to offer services on the UNE-P platform at TELRIC pricing.

Looking at the future of the broadband world, again, is there even going to be a penthouse that you would like to get access to if the current regulatory model is simply replicated in the broadband world and that model acts as a disincentive for incumbent carriers to invest in new facilities.

Look at, like I said, what’s happening with the looseness of the world according to the world. Reminds me a little bit of the joke of how do you make a small fortune in yacht racing, wine growing, what have you? You start with a large fortune. If the
current regulatory model persists, I think that companies like Lucent and Corning very well may shrink to the size we’re they’re eligible to join some of the small business entities represented around this table.

So please keep, as you examine this, please keep those economic issues in mind as you try and figure out what are my interests as consumers in these telecom services.

**BARRY PINELES:** I would like to respond to one thing to Dan. I mean, that’s true. Right now, when you say North Cal, Corning has sort of problems, but I mean, if you asked Lucent three, four years ago, they are having problems at all. What happened was, for whatever reason, you had a regulatory (INAUDIBLE) I won’t say whether that was good or bad regulatory model, but you had a regulatory model and you had an investment banking community that said, go invest in networks. I mean, clearly Lucent stock, Nortel stock works, you know, Corning stock was skyrocketing. At one point.

What you wound up having is in overinvestment in facilities. I mean, and I work for a company that did that and did we have model that could sustain six, ten, 15, 20 companies and the answer to that is, probably not.

**DAN PYTHYON:** I understand. But again, also look at if the current regulatory regime is replicated in broadband, are those gentlemen going to have the incentive to invest in a new broadband plant. Probably not if they can get it riding off the incumbent network. But is the incumbent going to have an incentive if they can ride off our investment in investing in those additional facilities to get (INAUDIBLE) DSL. Look at where, you know, again, the Lucents, the Cornings, the high tech community that really, really wants, again, beyond the cable modem type of capacity, beyond the DSL, much less the (INAUDIBLE) world, what are the incentives? If we’re going to get to that world, and if the FCC simply maintains the status quo, maintains that regulatory certainty that some segment of the industry says they want, I think the Lucent’s and the Cornings of the world are going to continue to be in trouble.

**LARRY SPIWAK:** Just to plug another Phoenix Center policy paper (LAUGHTER), which I’m proud to say we got an award from CNET.com as one of the most downloaded papers on the Internet. We wrote a paper called, “Why ADCo? Why Now?” which actually talks about a market based solution to this issue and that is if you do the economics in the last mile, unlike the long haul, unlike the metro rings, it’s going to be very highly concentrated. You’re going to have few firms.

And so if the Bell company is one and maybe there’s, you know, let’s (INAUDIBLE) come for another, the issue is that you need the unbundling, you’re probably not going to need to presence of a exclusively wholesale, non-vertically integrated provider, i.e., does not engage on the retail side, essentially a carrier, a carrier is the line side of the switch, is probably the way that things are going to end up having to work.

Because no one person is going to get a 40 percent market share to justify those investments. However, if you can get and aggregate of the traffic, like (INAUDIBLE) the
number of networks may be few, the number of providers will be many. And I think that one has to distinguish between facilities-based and network-based.

**BARRY PINELES: (INAUDIBLE COMMENTS)**

**LARRY SPIWAK:** No, it’s actually, it has applicability. The economics are very, very different in the local market.

**BARRY PINELES:** (OVERLAPPING REMARKS) But that means the underlying thesis is pretty much the same.

**LARRY SPIWAK:** Yeah. And the same in satellite as well. And guess what? It worked. Karen?

**KAREN KERRIGAN:** (INAUDIBLE) awareness that’s what I’m going to touch on. We do what we can as an organization. We have regular communication that has gone out to our members on this issue for the past eight years and it certainly activities in the states as well as stuff moving up on the Hill has given us the opportunity to further educated them in the importance of getting involved in this issue.

And like every other issue, we try to make it very easy for them to contact who they need to contact to let their voices be heard. We just recently sent out a piece of communication to 60,000 of our members and gave the email addresses of all the commissioners. So hopefully, (LAUGHTER) you’ll hear directly from small business consumers on that issue.

I think Erin is right there, there’s a lot of stuff on small business’s plate right now. With the cost of health insurance going up and the current economy, so there’s a lot of things we’re asking them to do to get behind and so there are other concerns that we compete with as an organization.

But we do what we can to bring our folks either to the Hill or to communicate with the FCC and will continue to do that and over the next couple of weeks for sure.

**LARRY SPIWAK:** Okay. Carolyn, why don’t we wrap up with you.

**CAROLYN FLEMING WILLIAMS:** Well, I’ll speak to awareness. We try to get out information as early and often as possible. We maintain a small business and entrepreneurial database and so I would encourage, I don’t know if everyone here is of the Association or on our list, to get on our list. And also to make your constituents aware that our offices exist. And we’re open to meet with small business and we’re able to meet at the level where the rule making and policymaking are set in place and also to be an advocate inside for some of those issues.
LARRY SPIWAK: And on that note, we actually went a little bit long. I want to thank every single one of you for, again, showing up. This was incredibly productive. I really appreciate it and I look forward to having you back for future events. Thank you.

(END OF PRESENTATION)