

- (3) Universal Utility Service. Drawing on the concept of universal telephone service,⁷ Texas Commissioner Karl Rabago argues that the entire community receives a benefit from the ubiquitous provision of electricity services, including weatherization, which he calls "universal electric service." Commissioner Rabago did a great service in pulling together what many of us were doing and giving us a clear new lens through which to view our efforts.

The benefits of universal utility service include the avoided costs already noted. They include the benefits attributed to universal phone service: public health, safety, economic stability and growth. They would also include benefits such as the enhancement of neighborhood property values, health and safety, and other larger considerations. There is also the squishy intangible previously noted, which the author nonetheless considers real: how we act toward one another collectively through public policy and voluntary action has the potential to tighten or loosen our moral bonds as a community. Because this is such an intangible, the author is careful not to draw on it too heavily, especially in contested cases.

The author refers to universal utility service rather than universal electric service in order to reinforce the importance of total shelter costs. In Seattle, where all services are provided municipally, reduced rates were extended to services other than electricity, including water and garbage. The goal in Seattle was to keep total utility expenses below a certain percentage of income. It is worth considering whether the aggregate impact of all utility bills should affect the amount of proof a commission would require to support a specific rate proposal for a certain utility; for example, reduced rate proposals by a nonelectric utility operating within the service territory of an electric utility that provides rate assistance.

Recognize and Consider Seriously the Objections to Commission Involvement in These Areas: Not everyone agrees these programs are the "sliced bread" of utility regulation. The tough questions regarding these programs include the following:

- (1) Does this put the utility in the position of social worker? In part, the answer is that the most socially desirable way for traditional utilities to survive in the emerging environment may be for them to become "energy service companies." By addressing the costs already described, utilities are providing real energy services. Utility surveys confirm these services are supported by customers. In part, the answer may be to clearly define the utility role vis-a-vis the public sector, nonprofit entities, and the individual customer. For example, is it efficient for utilities to independently verify eligibility or should eligibility be keyed to another program (as in Montana)?

⁷ Universal phone service has been national policy since the Federal Communications Act of 1934, codified at Title 47, United States Code, Section 151. Both the elements of universal service and the means by which it is achieved are now the subject of intense review.

- (2) Do reduced rate programs constitute unreasonable rate discrimination? Several courts in the early eighties found certain lifeline programs to be discriminatory; others found them to be reasonable. One definition of unreasonable discrimination asks whether the customer covers all the variable costs of providing that customer service and makes at least some contribution to the utility's fixed costs. A more strict view would find anything not supported by different costs of serving different customers unjustified. The latter position, applied rigorously, would pose a challenge to the way some customer classes are defined.

The author is of the opinion that the answer rests on a thoughtful balancing of economic and noneconomic considerations grounded in the purposes of regulation, a good understanding of a commissioner's legal discretion including its limitations, and careful development of the facts in particular cases.

- (3) Do reduced residential rates open the door to various other rate discounts? Reduced residential rates are often much smaller expenditures than are industrial incentive and retention rates, employee discounts, or even the various special reduced rates now being discussed to increase utilization of telecommunications networks for educational, medical, and other beneficial purposes. Utilities and large customers may explicitly make the comparison. Conversely, advocates for reduced residential rates may use the history of industrial and other discounts as an affirmative defense for their own programs.

Any proposal should be able to stand on its own. The author attempts to carefully scrutinize any attempt—in either direction—to link disparate proposals. The author has asked the advocates and experts whether they are able to make principled distinctions based on the merits. They assure that they can but the author is not entirely persuaded. The author is even more troubled by whether a regulatory commission has the institutional will to make such distinctions. If not, the implicit cost of a desirable program may be much greater than the specific amount of rate assistance provided.

- (4) Do reduced rates force one set of customers to subsidize another? This is a serious question. The best answer may be drawn from the cost justifications already described. In Montana, there is some initial evidence that customer costs are being reduced. If this holds true, all customers benefit.

Particularly for small utilities, however, it may be inefficient to redevelop this cost/benefit information in each case. Another part of the answer draws on the larger purpose of regulation and asks what do ratepayers consider fair. Public acceptability and fairness are standard tests of good ratemaking. Reports elsewhere indicate ratepayers are willing to see their rates go up by modest amounts to help those less fortunate. It has been variously suggested that ratepayers would be willing to see their bills increase to provide residential ratepayer assistance by 3 percent or by fifty cents a month.⁸ MPC estimates the direct cost of its reduced rate program to be approximately eleven cents per month for an average residential electric customer and about twenty-five cents per month for a typical residential gas customer. Again, these estimates do not reflect any of the potential savings from reduced rate programs.

The author prefers to see any direct costs spread across all customer classes, as occurs with the MPC program. The author does not believe the costs should be recovered from the residential class alone. The author is more concerned about the possibly greater effects on a utility with a small customer base in which a large portion are eligible. The author will also generally prefer some reasonable attempt to track the direct and indirect benefits, as well as the direct costs.

⁸ Final Opinion in California PUC Proceedings, *Review of DOE and PUC Policies and Procedures for Implementing Low-Income Home Energy Assistance Programs*, Decision 89-09-044 (Cal. PUC: September 7, 1989), 4-5.

TELECOMMUNICATIONS CUSTOMERS' BILL OF RIGHTS¹

A Proposal for Discussion

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INTRODUCTION - Technology and policy are encouraging the introduction of increased competition into local telephone service. This brings both opportunities and risks for customers.

Customers for monopoly telephone service have been protected through a variety of regulatory approaches, ensuring affordable prices, the orderly introduction of new services, and improved quality. Recent technological and public policy changes have made it possible and necessary to introduce increased competition in local telephone service. Local telephone competition is unique because it will depend upon potential competitors having fair access to one another's facilities. In this environment, some traditional regulatory tools will continue to be important, others will change, and new approaches will be required.

The Public Service Commission will increasingly become a market monitor, setting terms among various competitors. It may also be called upon increasingly to protect customer rights, provide consumer information, and promote community development through the deployment and effective use of appropriate new technologies.

Competition may provide lower prices, greater customer choice, and increased quality. However, these changes also create the risks of higher prices, especially for rural and residential customers, service quality deterioration for some services, and a variety of abusive practices. To

¹*This is a proposal for discussion.* The author encourages responses from all interested persons. The proposal is intended to facilitate implementation of the national Telecommunications Act of 1996. The author consulted the work of the Indiana Local Competition Project, directed by Paul Hartman. He also used the work of Dr. Vivian Davis of the National Regulatory Research Institute, the Colorado Public Utilities Commission and the Vermont Public Services Board. The author does not speak for the Montana Public Service Commission

guide the transition, customers must be assured they will be no worse off in the short-run, and will be better-off in the long-run.

1. **AFFORDABLE LOCAL SERVICE** - Local service should be available at an affordable flat rate.

All customers should be able to obtain local telephone service at an affordable flat monthly rate. Prices should be comparable to or better than current prices. Raising local exchange rates while lowering other rates, such as long distance, redistributes costs but does not necessarily lower total rates.

2. **UNIVERSAL SERVICE** - All customers should receive basic telephone service at affordable rates, and also affordable access to advanced services.

Universal service refers to the historical goal of connecting all households to the telephone network, and to the various payment mechanisms which support this goal. A "universal service" package of basic local services should be available to all at an affordable rate. The definition of universal service is evolving. At a minimum, universal service should currently include unlimited voice-grade local calling to an appropriate local calling area, touch-tone service, single party service, access to 911 and emergency services, access to operator services, access to Telecommunications Relay Service for the hearing or speech impaired, access to directory assistance, a directory listing and a directory.

Customers in high-cost areas and low income customers may require additional support through universal service funds, Life-Line, Link-up and other programs. Some industry observers believe significant rate increases will be required for residential and rural customers in order to "rebalance rates" and promote competition. Significant rate increases are unacceptable, and would cause a decrease in the number of families connected to the phone system.

The State of Montana should consider enabling legislation, authorizing a Montana Universal Service Fund to supplement the national fund. Such a fund could be used to protect customers who might otherwise experience significant rate increases, to keep service affordable in

rural areas, and to support advanced services where they would not otherwise be made available at affordable rates. The Blue Ribbon Task Force on Telecommunications is currently considering such a proposal.

3. SERVICE QUALITY - Customers should receive high-quality service.

Customers should have access to service which at a minimum meets service quality standards adopted by the Public Service Commission and federal regulators. New service providers should maintain service quality which at a minimum equals that required of the current Local Exchange Carrier (LEC). As soon as possible, all customers should be fully and seamlessly interconnected, regardless of service provider. As soon as possible, no customer should have to change their telephone number solely as a result of changing service providers within their local exchange area (number portability). Service quality should be consistently and reliably monitored and reported to the Public Service Commission. The Public Service Commission should update service quality standards based on the highest standard which is technologically feasible and economically efficient.

4. CUSTOMER COMPLAINTS - Customers should be able to resolve their complaints simply and effectively.

Telecommunications service providers and vendors should provide clear and concise information on how customers may seek to resolve problems. All customers should have access to simple, rapid, and effective means to resolve problems, for example through a toll-free consumer hotline staffed by the service provider. Service providers and vendors should monitor and report complaints and complaint resolutions in a consistent manner. The Public Service Commission should provide information about common problems and the availability of dispute resolution mechanisms. The Public Service Commission should resolve customer problems fairly, work to end recurring abuses, and monitor and report complaints. The Public Service Commission should seek to obtain a direct toll-free line for customer complaints.

5. **CITIZEN PARTICIPATION AND ACCESS TO INFORMATION - Citizens should be able to participate in telecommunications policy decisions which affect them.**

Citizens should have the opportunity to participate in telecommunications policy-making, as well as traditional contested case procedures. Citizens should have access to information necessary to participate and to evaluate the decisions which result, consistent with protecting the confidentiality of legitimate trade secret information. The Montana Consumer Counsel plays an essential role, providing citizens access to adequate representation in governmental decision-making about telecommunications.

6. **PRICE AND TERM INFORMATION - Customers should receive accurate information.**

Customers should be provided information which clearly states the service, the price, and the terms on which it is offered. Information should be provided in a manner which allows simple comparison between competing services. When the price or other term is changed, customers should receive clear notice of the change, sufficiently in advance to select an alternative or terminate the service. The Public Service Commission should adopt policies which encourage widespread dissemination of important information about all kinds of telecommunications services.

7. **CUSTOMER PRIVACY - Customers' privacy should be protected and enhanced.**

All customers are entitled to privacy concerning their telecommunications. Customers should be able to reject intrusive communications where technologically feasible. Telecommunications providers have enormous information about customers' use of telecommunications services. Customers should be protected from any use of their equipment, records, or payment history without their express and confirmed permission, unless the use is required by law. All service providers should make available a clear written statement describing how information about customers will be used and maintained, and under what circumstances it

will be disclosed. The Public Service Commission should work with service providers and customers to ensure this occurs.

8. EFFECTIVE COMPETITION - Customers should receive the benefits of effective competition.

Competition promotes innovation and efficiency and constrains prices when it is effective competition. Effective competition requires a significant number of firms, with no one firm or group of firms possessing substantial market share. Some parts of the telecommunications system will become effectively competitive more quickly, while others will retain monopoly characteristics. The Public Service Commission should carefully monitor the characteristics of various elements of the telecommunications system, measure competition, and regulate each element appropriately. The Public Service Commission must develop new ways to fairly and efficiently mediate and arbitrate disputes among competitors.

Customers are entitled to see real benefits of competition as it emerges. Customers should receive protection against monopolistic or oligopolistic pricing and other practices where effective competition has not emerged.

9. FAIR COMPETITION - Customers should be protected from unfair and abusive practices.

Customers in a more competitive environment should be protected against anti-competitive and abusive practices such as slamming long distance carriers, deceptive marketing practices, unwarranted bundling of services and other practices which may develop. Additional abuses occur where the person selecting the service provider or service is not the person paying the bill. The Public Service Commission should monitor all kinds of abuses as they develop, resolve customer problems, adopt appropriate procedures to eliminate abuses, and take whatever other actions are necessary and available to protect customers.

- 10. **IMPROVED SERVICES** - Customers should receive continually improving services at affordable rates.

All customers and all communities should have access to ever-improving services, of high quality, at affordable rates. Customers should also have access to information about service options which are available to them and about how to use telecommunications services. Service providers and vendors should make this information available. Schools, libraries, community development organizations and other community-based associations may also help provide this information, adding essential value to customers' ability to use services. The Public Service Commission should support these efforts.

38.5.3339 TERMINATION OF SERVICE (1) A carrier may interrupt service without notice only in emergency situations or if the service was obtained without the carrier's authorization.

(2) Grounds for termination. Subject to the requirements of these rules, telecommunications services may be discontinued, after notice, as provided in ARM 38.5.3339(5), for the following reasons:

(a) Failure to make a security deposit or guarantee.

(b) Nonpayment of undisputed past due bills for regulated services.

(c) Unauthorized interference, diversion or use of telephone service.

(d) Violation of relevant laws, ordinances, commission rules or carrier tariffs, or

(e) Refusal to allow reasonable access to facilities or equipment.

(3) Grounds that do not support termination. None of the following constitute sufficient grounds for discontinuing regulated local exchange service.

→ (a) The failure of any person, other than the customer against whom termination is sought, to pay any charges due to the telecommunications utility.

(i) Failure to pay for business service at a different location and with a different telephone number is not grounds for disconnecting residential service and vice versa.

(b) Failure to pay an amount in dispute pending before the commission.

→ (c) Failure to pay for nonregulated service or service provided by other carriers.

(4) All exchange carriers must establish a system of third party notification. That is, if a customer requests that a third party such as a social service, minister, responsible adult, etc. be notified of nonpayment, the exchange carrier must provide such a service, free of charge.

(5) Notice.

(a) Written notice of termination must be sent at least seven days prior to service disconnection and must contain the following:

(i) The reason for disconnection.