

Gina Harrison
Director
Federal Regulatory Relations

1275 Pennsylvania Avenue, N.W. Suite 400
Washington, D.C. 20004
(202) 383-6423

PACIFIC  **TELESIS**
Group-Washington

EX PARTE OR LATE FILED

DOCKET FILE 96-149

RECEIVED

DEC 17 1996

Federal Communications Commission
Office of Secretary

December 17, 1996

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

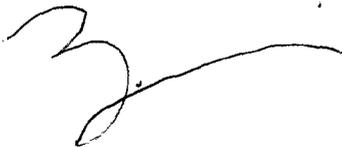
Dear Mr. Caton:

Re: Non-Accounting Safeguards, CC Docket No. 96-149

Yesterday, the attached material was given to James L. Casserly, Senior Legal Advisor to Commissioner Ness. Please associate this material with the above-referenced docket. We are submitting two copies of this notice, in accordance with Section 1.206(a)(1) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely yours,



Attachment

cc: J. Casserly

No. of Copies rec'd 024
List ABCDE

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, DC 20006
(202) 429-7000
FACSIMILE (202) 429-7049
TELEX 248349 WYRN UR

Re: BOC Provision of "Carrier's Carrier" InterLATA Services

The Telecommunications Act of 1996 (the Act) allows a Bell Operating Company (BOC) to provide interLATA services to other carriers, including to the separate affiliate required by §272. The provision of such "carrier's carrier" services is subject to Commission approval under §271, if they originate in-region, and to the nondiscrimination safeguards of §272(e)(4), but not to the §272 separate affiliate requirement.

I. The Language of the Act Allows a BOC To Provide Carrier's Carrier Services

It is unquestioned that a BOC may provide out-of-region interLATA services both on a retail basis and to other carriers without Commission approval and without a §272 separate affiliate.¹ It is also clear that a BOC must have approval under §271, and use a §272 separate affiliate, to provide retail in-region interLATA services to the general public. The parties to CC Docket No. 96-149 disagree on whether a BOC must use a separate affiliate to provide in-region interLATA services to other carriers, including the BOC's own separate interLATA affiliate. The comments in that docket have focused on §272(e)(4). In addition to that subsection, it is also necessary to refer to the definitions in the Act and the specific provisions of §§271(b)(1) and 272(a)(2) to resolve this question. (See the attached diagram for an overview of the relationship between the §271 approval requirements and the §§272/274 structural separation requirements.)

Section 271(b)(1) of the Act requires Commission approval before a BOC may provide "interLATA services originating in any of its in-region States." Section 3(21) defines "interLATA services" as "telecommunications between a point located in a local access and transport area and a point located outside such area." Section 3(43) defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." These provisions do not draw distinction between retail and carrier's carrier offerings. Thus, a BOC must obtain Commission approval

¹ The Commission's interim *Competitive Carrier* policy allows a BOC the option of using an affiliate that complies with certain safeguards (although not all of the §272 restrictions) or being subject to dominant regulation. Report and Order, Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, FCC 96-288 (released July 1, 1996).

under §271 before it may provide in-region interLATA services originating in-region to other carriers.²

Section 272 uses different terminology, with a different result.

Section 272(a)(2)(B) requires a BOC to use a separate affiliate for “[o]rigination of interLATA telecommunications services.”³ Section 3(46) defines “telecommunications service” to mean “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” Accordingly, the scope of the separate affiliate requirement only includes offerings “directly to the public.” This is a much narrower class of services than those described in §271(b)(1). Congress’s use of a different defined term in §272 (“telecommunications service” versus “interLATA service”) leaves no doubt that the BOC itself may provide carrier’s carrier services, which the BOC does not offer “directly to the public,” without using a separate affiliate.

In view of the above, there is a clear resolution to the controversy in Docket 96-149 over the meaning of §272(e)(4). That section states that a BOC “may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such service or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.” Because the §272 separate affiliate requirement does not apply to carrier’s carrier offerings, there is no conflict between the requirement that retail services be offered through a separate affiliate. The function of §272(e)(4) in the Act, which is fully in harmony with §272(a),⁴ is to clarify expressly that (1) a BOC may provide carrier’s carrier services, (2) a BOC may provide facilities, as well as services, to carriers, (3) a BOC may make these offerings to its own interLATA affiliate, and (4) nondiscrimination and cost allocation apply to such offerings. Thus, §272(e)(4) is neither redundant nor is it in conflict with the overall structure of the Act.

II. BOC Provision of Carrier’s Carrier Services Is in the Public Interest

Section 271(d)(3)(C) requires a BOC to satisfy the Commission that the offering of carrier’s carrier services originating in-region will be consistent with the public interest before the BOC can offer such services. The BOC will make a specific public interest showing in a §271 application proceeding. However, several general public interest

² Section 271 only applies where a BOC “provides” interLATA services such as to another carrier or to the general public.

³ There are exceptions to this requirement not relevant to this discussion.

⁴ Even if §272(a) could somehow be read to include carrier’s carrier services, §272(e)(4) would constitute an exception because, as a matter of statutory construction, the more specific provision (§272(e)(4)) would take precedence over the general provision (§272(a)). *See MacEvoy v. United States*, 322 U.S. 102, 107 (1944). The Commission must avoid an interpretation of the Act that would make §272(e)(4) superfluous and must construe the Act to give effect to all of the words used by Congress. *See Beisler v. Commissioner*, 814 F. 2d 1304, 1307 (9th Cir. 1987).

considerations show that there is a sound policy basis for Congress's decision to allow BOC in-region interLATA carrier's carrier services.

A Bell regional holding company needs maximum flexibility to implement its network—the same flexibility that other providers of intraLATA and interLATA services enjoy—if it is to provide consumers efficient, economical, and innovative service. This includes the option of provisioning both intraLATA and interLATA services from the same underlying BOC network. Compared to using services provided by the BOC on a wholesale basis, the separate interLATA affiliate that provides retail services may not find it efficient to resell another carrier's services, acquire facilities from a third party, or construct new facilities. To optimize consumer welfare, the separate affiliate must be able to choose among all these options.

If the separate affiliate must buy from a competing interexchange carrier to provision its own interexchange services, its cost may be higher and it will be handicapped in competing on price with the existing interexchange oligopoly.⁵ The ability of the BOC to offer carrier's carrier services can add an additional source of facilities-based competition at the interexchange wholesale level that will serve not only the BOC's interLATA affiliate but potentially other second tier retail interexchange carriers, who are now subject to the pricing of the big three—AT&T, MCI, and Sprint.

In addition, the BOC may provide underlying services to its own interLATA affiliate for new retail offerings not now available in the marketplace. Consumers will benefit from the introduction of these new offerings and, because the BOC must make the same underlying services available to all carriers, other retail carriers will have an opportunity to match the BOC affiliate's products.

Finally, the §272 separate affiliate requirement may apply for as few as three years after the separate interLATA affiliate enters the market.⁶ Congress intended that this provision would sunset and that afterwards BOC would be able to take advantage of all possible economies of scope and scale, just as all other carriers may do today. BOC provision of carrier's carrier services to its separate affiliate would permit a quicker and more efficient transition from structural separation to integration, which promises further cost reduction and consumer pricing benefits. Forcing the interLATA affiliate to acquire duplicative facilities would prove wasteful and inefficient.

⁵ Interexchange carriers are not legally obliged to provide at cost unbundled network elements to other carriers, nor to resell their services at wholesale prices—unlike the reverse situation where incumbent interexchange carriers are guaranteed an efficient method of entering the local market. Moreover, the major facilities-based interexchange carriers are nondominant and untariffed, which gives them total control over their offerings to retail carriers. Thus, the BOC's separate affiliate may or may not be able to negotiate favorable resale terms to provision its interLATA offering. Also, as long as the option of using BOC-provided facilities and services exists (even if not exercised), it will be a factor in negotiations for resale services from the interexchange carriers that will help the affiliate reach a price that is fair.

⁶ See §272(f)(1).

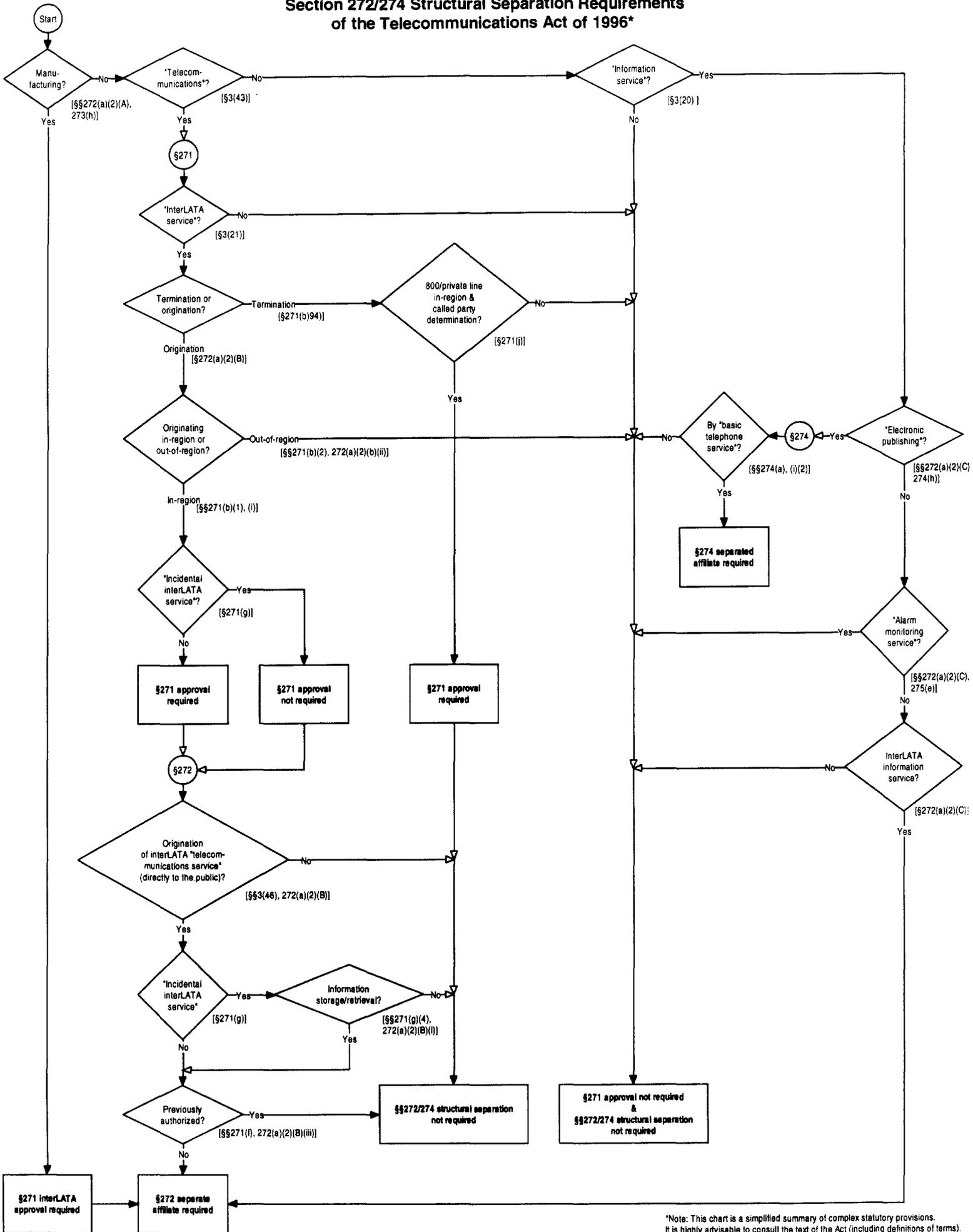
BOC provision of carrier's carrier services presents no risk of discrimination or cross-subsidy. In the first place, §271(d)(3)(B) requires the BOC to demonstrate to the Commission, before it may provide carrier's carrier services, that it will comply with §272, including the nondiscrimination provisions of §§272(c)(1) and 272(e)(4) and the accounting and affiliate transaction requirements of §272(c)(2). Second, the BOC will have an ongoing obligation under §§272(c)(1) and 272(e)(4) to offer such services on nondiscriminatory terms to all carriers. Third, the BOC will not directly engage in competition with other interLATA carriers for retail business, which is the largest and most critical part of the market. Instead, it would be acting as a supplier to interexchange carriers—sophisticated customers with many choices other than the BOC for interLATA service and facilities. These carriers can easily detect any discrimination—and easily avoid it by use of some other carrier's wholesale services.

The Commission's accounting and affiliate transaction rules, which implement §§272(c)(2) and 272(e)(4), will prevent the BOC from cross subsidizing any carrier's carrier services it provides to its interLATA affiliate. Moreover the BOC would have no incentive to set its prices at "subsidized" low rates, because the affiliate's competitors in the interexchange market would be entitled to the same prices and the BOC's affiliate would have no advantage. For the same reason, there would be no effect on competition at the retail consumer level because all carriers would have the same access to BOC services at the same prices.

* * *

In sum, the Act allows a BOC to provide in-region interLATA carrier's carrier services to its separate interLATA affiliate and to other carriers; the public will benefit from such offerings; and there is no danger of discrimination or cross subsidy.

Section 271 Approval Requirements and Section 272/274 Structural Separation Requirements of the Telecommunications Act of 1996*



*Note: This chart is a simplified summary of complex statutory provisions. It is highly advisable to consult the text of the Act (including definitions of terms).

considered "competent" to make such a choice.

The record in this case gives rise to grave doubts regarding respondent Moran's ability to discharge counsel and represent himself. Just a few months after he attempted to commit suicide, Moran essentially volunteered himself for execution: he sought to waive the right to counsel, to plead guilty to capital murder, and to prevent the presentation of any mitigating evidence on his behalf. The psychiatrists' reports supplied one explanation for Moran's self-destructive behavior: his deep depression. And Moran's own testimony suggested another: the fact that he was being administered simultaneously four different prescription medications. It has been recognized that such drugs often possess side effects that may "compromise the right of a medicated criminal defendant to receive a fair trial ... by rendering him unable or unwilling to assist counsel." *Riggins*, — U.S., at —, 112 S.Ct., at 1818–1819 (KENNEDY, J., concurring). Moran's plea colloquy only augments the manifold causes for concern by suggesting that his waivers and his assent to the charges against him were not rendered in a truly voluntary and intelligent fashion. Upon this evidence, there can be no doubt that the trial judge should have conducted another competency evaluation to determine Moran's capacity to waive the right to counsel and represent himself, instead of relying upon the psychiatrists' reports that he was able to stand trial with the assistance of counsel.⁵

To try, convict, and punish one so helpless to defend himself contravenes fundamental principles of fairness and impugns the integrity of our criminal justice system. I cannot condone the decision to accept, without further inquiry, the self-destructive "choice" of a person who was so deep-

5. Whether this same evidence implies that Moran's waiver of counsel and guilty pleas were also involuntary remains to be seen. Cf. *Miller v. Fenton*, 474 U.S. 104, 106 S.Ct. 445, 88 L.Ed.2d

ly medicated and who might well be severely mentally ill. I dissent.



UNITED STATES and Federal
Communications Commission
Petitioners,

v.

EDGE BROADCASTING COMPANY
T/A Power 94.

No. 92-486.

Argued April 21, 1993.

Decided June 25, 1993.

Owner and operator of radio station brought action seeking declaratory judgment that federal statutes prohibiting broadcast of lottery advertising by licensees located in nonlottery states violate First Amendment and equal protection clause, and sought injunctive relief. In United States District Court for Eastern District of Virginia, Frank A. Kozlowski, Senior District Judge, sitting by designation, 732 F.Supp. 633, granted relief. Government appealed. The Court of Appeals for the Fourth Circuit, 956 F.2d 1000, affirmed. United States and Federal Communications Commission (FCC) filed petition for writ of certiorari, which was granted. The Supreme Court, Justice White held that federal statutes prohibiting broadcast of lottery advertising by broadcaster licensed to state that does not have lotteries, while allowing such broadcast by broadcaster licensed to state that does not have lotteries, regulated commercial speech in manner that did not violate First Amendment.

405 (1985) (voluntariness is a mixed question of law and fact entitled to independent review).

ant,
nlo:
ate.
R
J
pa
J
w
Co
Te
F
road
es
comm
plate
ster
at ne
const.
1807.
Cor
Co
to con
ation:
U.S.C.
Cor
In
First
bitin
ng b
ates,
a sup
well as
that pe
1807;
A. Con
Gan
Ga
ly prot
gory o
frequ
S.
for
defi
A. Con
W
speech
1138 S

ent, as applied to broadcaster located in lottery state but near border of lottery state:
 Reversed.

Justice Souter filed opinion concurring in part in which Justice Kennedy joined.
 Justice Stevens filed dissenting opinion in which Justice Blackmun joined.

Constitutional Law ¶90.3
Telecommunications ¶384

Federal statutes prohibiting radio broadcast of lottery advertising by licensees located in nonlottery states regulated commercial speech in manner that did not violate First Amendment rights of broadcaster that was located in nonlottery state, but near border of lottery state. U.S.C.A. Const.Amend. 1; 18 U.S.C.A. §§ 1304, 1307.

Constitutional Law ¶90.2

Constitution affords lesser protection to commercial speech than to other constitutionally guaranteed expression. U.S.C.A. Const.Amend. 1.

Constitutional Law ¶90.3

In determining constitutionality under First Amendment of federal statutes prohibiting radio broadcast of lottery advertising by licensees located in nonlottery states, government had substantial interest in supporting policy of nonlottery states, as well as not interfering with policy of states that permit lotteries. 18 U.S.C.A. §§ 1304, 1307; U.S.C.A. Const.Amend. 1.

Constitutional Law ¶82(6.1)

Gaming ¶1

Gambling implicates no constitutional-protected right; rather, it falls into category of "vice" activity that can be, and frequently has been, banned altogether.

See publication Words and Phrases for other judicial constructions and definitions.

Constitutional Law ¶90.2

Whether regulation of commercial speech directly advances governmental in-

terest asserted, and, thus, whether regulation survives scrutiny under First Amendment, cannot be answered by limiting inquiry to whether governmental interest is directly advanced as applied to single person or entity. U.S.C.A. Const.Amend. 1.

6. Constitutional Law ¶90.2

In determining whether regulation of commercial speech violates First Amendment, validity of regulation's application to single person or entity is not irrelevant inquiry, but issue properly should be dealt with under factor of whether regulation is more extensive than is necessary to serve governmental interest. U.S.C.A. Const. Amend. 1.

7. Constitutional Law ¶90.3

Telecommunications ¶384

Federal statutes prohibiting radio broadcast of lottery advertising by licensees located in nonlottery states directly advance governmental interest of balancing interests of lottery and nonlottery states, for purpose of determining whether statutes violate First Amendment, even when radio station located in nonlottery state has signals that reach into lottery state. U.S.C.A. Const.Amend. 1; 18 U.S.C.A. §§ 1304, 1307.

8. Constitutional Law ¶90.3

Telecommunications ¶384

Federal statutes prohibiting radio broadcast of lottery advertising by licensees located in nonlottery states was not, as applied to radio station located in nonlottery state but near border with lottery state, more extensive than necessary to serve governmental interest in enforcing restriction in nonlottery states while not interfering with policy of lottery states, for purpose of determining whether statutes violated First Amendment. U.S.C.A. Const.Amend. 1; 18 U.S.C.A. §§ 1304, 1307.

9. Constitutional Law ¶90.3

Validity under First Amendment of federal statutes prohibiting radio broadcast of lottery advertising by licensees located

such lotteries, § 1307. This exemption was enacted to accommodate the operation of legally authorized state-run lotteries consistent with continued federal protection to nonlottery States' policies. North Carolina is a nonlottery State, while Virginia sponsors a lottery. Respondent broadcaster (Edge) owns and operates a radio station licensed by the Federal Communications Commission to serve a North Carolina community, and it broadcasts from near the Virginia-North Carolina border. Over 90% of its listeners are in Virginia, but the remaining listeners live in nine North Carolina counties. Wishing to broadcast Virginia lottery advertisements, Edge filed this action, alleging that, as applied to it, the restriction violated the First Amendment and the Equal Protection Clause. The District Court assessed the restriction under the four-factor test for commercial speech set forth in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341—(1) whether the speech concerns lawful activity and is not misleading and (2) whether the asserted governmental interest is substantial; and if so, (3) whether the regulation directly advances the asserted interest and (4) whether it is not more extensive than is necessary to serve the interest—concluding that the statutes, as applied to Edge, did not directly advance the asserted governmental interest. The Court of Appeals affirmed.

Held: The judgment is reversed.

956 F.2d 263 (CA 4 1992), reversed.

Justice WHITE delivered the opinion of the Court as to all but Part III-D, concluding that the statutes regulate commercial speech in a manner that does not violate the First Amendment. Pp. 2703-2708.

(a) Since the statutes are constitutional under *Central Hudson*, this Court will not consider the Government's argument that the Court need not proceed with a *Central Hudson* analysis because gambling implicates no constitutionally protected right and the greater power to prohibit

it necessarily includes the lesser power to ban its advertisement. This Court assumes that *Central Hudson's* first factor is met. As to the second factor, the Government has a substantial interest in supporting the policy of nonlottery States and not interfering in the policy of lottery States. Pp. 2703-2704.

(b) The question raised by the third *Central Hudson* factor cannot be answered by limiting the inquiry to whether the governmental interest is directly advanced as applied to a single entity, for even if it were not, there would remain the matter of a regulation's general application to others. Thus, the statutes' validity as applied to Edge, although relevant, is properly addressed under the fourth factor. The statutes directly advance the governmental interest at stake as required by the third factor. Rather than favoring lottery or nonlottery States, Congress chose to support nonlottery States' antigambling policy without unduly interfering with the policy of lottery States. Although Congress surely knew that stations in one State could be heard in another, it made a commonsense judgment that each North Carolina station would have an audience in that State, even if its signal reached elsewhere, and that enforcing the restriction would insulate each station's listeners from lottery advertising and advance the governmental purpose in supporting North Carolina's gambling laws. Pp. 2704-2705.

(c) Under the fourth *Central Hudson* factor, the statutes are valid as applied to Edge. The validity of commercial speech restrictions should be judged by standards no more stringent than those applied to expressive conduct entitled to full First Amendment protection or to relevant time, place, or manner restrictions, *Board of Trustees of State Univ. of New York v. Fox*, 492 U.S. 469, 477-478, 109 S.Ct. 3028, 3033-3034, 106 L.Ed.2d 388; the fit between the restriction and the government interest need only be reasonable, *id.*, at 480, 109 S.Ct., at 3034. Here, the fit is reasonable. Allowing Edge to carry the

lottery advertisements to North Carolina counties would be in derogation of the federal interest in supporting the State's anti-lottery laws and would permit Virginia's lottery laws to dictate what stations in a neighboring State may air. The restriction's validity is judged by the relation it bears to the general problem of accommodating both lottery and nonlottery States, not by the extent to which it furthers the Government's interest in an individual case. *Ward v. Rock Against Racism*, 491 U.S. 781, 801, 109 S.Ct. 2746, 2759, 105 L.Ed.2d 661. Nothing in *Edenfield v. Fane*, 507 U.S. —, 113 S.Ct. 1792, 123 L.Ed.2d 543, suggested that an individual could challenge a commercial speech regulation as applied only to himself or his own acts. Pp. 2706-2708.

(d) The courts below also erred in holding that the restriction as applied to Edge was ineffective and gave only remote support to the Government's interest. The exclusion of gambling invitations from an estimated 11% of the radio listening time in the nine-county area could hardly be called "ineffective," "remote," or "conditional." See *Central Hudson, supra*, 447 U.S., at 564, 569, 100 S.Ct., at 2350, 2353. Nor could it be called only "limited incremental support," *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 73, 103 S.Ct. 2875, 2883, 77 L.Ed.2d 469, for the Government interest, or thought to furnish only speculative or marginal support. The restriction is not made ineffective by the fact that Virginia radio and television stations with lottery advertising can be heard in North Carolina. Many residents of the nine-county area will still be exposed to very few or no such advertisements. Moreover, the Government may be said to advance its purpose by substantially reducing lottery advertising, even where it is not wholly eradicated. Pp. 2706-2708.

WHITE, J., delivered the opinion of the Court with respect to Parts I, II, and IV, in

* Justice O'CONNOR joins Parts I, II, III-A, III-B, and IV of this opinion. Justice SCALIA joins all but Part III-C of this opinion. Justice KENNE-

which REHNQUIST, C.J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined, the opinion of the Court with respect to Parts III-A and III-B, in which REHNQUIST, C.J., and O'CONNOR, SCALIA, and THOMAS, JJ., joined, the opinion of the Court with respect to Part III-C, in which REHNQUIST, C.J., and KENNEDY, SOUTER, and THOMAS, JJ., joined, and an opinion with respect to Part III-D, in which REHNQUIST, C.J., and SCALIA and THOMAS, JJ., joined. SOUTER, J., filed an opinion concurring in part, in which KENNEDY, J., joined. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined.

Paul J. Larkin, Jr., Washington, DC, for petitioners.

Conrad Moss Shumadine, Norfolk, VA, for respondent.

Justice WHITE delivered the opinion of the Court, except as to Part III-D.*

In this case we must decide whether federal statutes that prohibit the broadcast of lottery advertising by a broadcaster licensed to a State that does not allow lotteries, while allowing such broadcasting by a broadcaster licensed to a State that sponsors a lottery, are, as applied to respondent, consistent with the First Amendment.

I

While lotteries have existed in this country since its founding, States have long viewed them as a hazard to their citizens and to the public interest, and have long engaged in legislative efforts to control this form of gambling. Congress has, since the early 19th century, sought to assist the States in controlling lotteries. See, e.g., Act of Mar. 2, 1827, § 6, 4 Stat. 238; Act of July 27, 1868, § 13, 15 Stat. 194, 196; Act of June 8, 1872, § 149, 17

DY joins Parts I, II, III-C and IV of this opinion. Justice SOUTER joins all but Parts III-A, III-B and III-D of this opinion.

Stat. 283, 302. In 1876, crime to deposit in the circulars concerning lottery or chartered by state Act of July 12, 1876, ch. 90, codified at Rev. Stat. 1878). This Court rejected the 1876 Act on First Amendment in *Ex parte Jackson*, 96 U.S. 727, 777 (1878). In response to the proliferation of lotteries, particularly the advertisement of lotteries, Congress closed the advertisement of lotteries in the Anti-Lottery Act, § 1, 26 Stat. 465, codified at Rev. Stat. § 3894 (Supp.2d ed. 1893). This Court upheld that Act against challenge in *Ex parte Rockwell*, 12 S.Ct. 374, 36 L.Ed. 93 (1878). Louisiana Lottery moved to Honduras, Congress passed the Act of Mar. 2, 1895, 28 Stat. 963, which outlawed the trade of lottery tickets in interstate commerce. This Court upheld the constitutionality of that Act against challenge in *Ex parte Florida Lottery*, 158 U.S. 177, 187 (1895). This Court upheld Congress' power under the Commerce Clause in *Champion v. Ames*, 188 U.S. 321, 331 (1903). This Court upheld the Act in *Ex parte Rockwell*, 12 S.Ct. 374, 36 L.Ed. 93 (1878).

1. Title 18 U.S.C. § 1304 provides:

"Broadcasting Lottery I: "Whoever broadcasts by radio or television station for profit or otherwise, or who, in violation of any law of the United States, ever, operating any such station, transmits the broadcasting of, or information concerning, any lottery, enterprise, or similar scheme, dependent in whole or in part on chance, or any list of the prizes or means of any such lottery, or any list of the prizes or means of any such lottery scheme, whether said list is published or not, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

2. Title 18 U.S.C. § 1307 (1) provides in relevant part:

Exceptions relating to certain information about lotteries

"(a) The provisions of sections 1303, and 1304 shall not

Stat. 283, 302. In 1876, Congress made it a crime to deposit in the mails any letters or circulars concerning lotteries, whether illegal or chartered by state legislatures. See Act of July 12, 1876, ch. 186, § 2, 19 Stat. 90, codified at Rev.Stat. § 3894 (2d ed. 1878). This Court rejected a challenge to the 1876 Act on First Amendment grounds in *Ex parte Jackson*, 96 U.S. 727, 24 L.Ed. 877 (1878). In response to the persistence of lotteries, particularly the Louisiana Lottery, Congress closed a loophole allowing the advertisement of lotteries in newspapers in the Anti-Lottery Act of 1890, ch. 908, § 1, 26 Stat. 465, codified at Rev.Stat. § 3894 (Supp.2d ed. 1891), and this Court upheld that Act against a First Amendment challenge in *Ex parte Rapier*, 143 U.S. 110, 12 S.Ct. 374, 36 L.Ed. 93 (1892). When the Louisiana Lottery moved its operations to Honduras, Congress passed the Act of Mar. 2, 1895, 28 Stat. 963, 18 U.S.C. § 1301, which outlawed the transportation of lottery tickets in interstate or foreign commerce. This Court upheld the constitutionality of that Act against a claim that it exceeded Congress' power under the Commerce Clause in *Champion v. Ames (Lottery Case)*, 188 U.S. 321, 23 S.Ct. 321, 47 L.Ed. 492 (1903). This federal antilottery

legislation remains in effect. See 18 U.S.C. §§ 1301, 1302.

After the advent of broadcasting, Congress extended the federal lottery control scheme by prohibiting, in § 316 of the Communications Act of 1934, 48 Stat. 1064, 1088, the broadcast of "any advertisement of or information concerning any lottery, gift enterprise, or similar scheme." 18 U.S.C. § 1304, as amended by the Charity Games Advertising Clarification Act of 1988, Pub.L. 100-625, § 3(a)(4), 102 Stat. 3206.¹ In 1975, Congress amended the statutory scheme to allow newspapers and broadcasters to advertise state-run lotteries if the newspaper is published in or the broadcast station is licensed to a State which conducts a state-run lottery. See 18 U.S.C. § 1307 (1988 ed., Supp. III).² This exemption was enacted "to accommodate the operation of legally authorized State-run lotteries consistent with continued Federal protection to the policies of non-lottery States." S.Rep. No. 93-1404, p. 2 (1974). See also H.Rep. No. 93-1517, p. 5 (1974), U.S.Code Cong. & Admin.News 1974, p. 7007.

North Carolina does not sponsor a lottery, and participating in or advertising nonexempt raffles and lotteries is a crime

1. Title 18 U.S.C. § 1304 (1988 ed., Supp. III) provides:

"Broadcasting Lottery Information

"Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or who, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

2. Title 18 U.S.C. § 1307 (1988 ed. and Supp. III) provides in relevant part:

Exceptions relating to certain advertisements and other information and to State-conducted lotteries

"(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to—

"(1) an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is—

"(A) contained in a publication published in that State or in a State which conducts such a lottery; or

"(B) broadcast by a radio or television station licensed to a location in that State or a State which conducts such a lottery; or

"(2) an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted and which is—

"(A) conducted by a not-for-profit organization or a governmental organization; or

"(B) conducted as a promotional activity by a commercial organization and is clearly occasional and ancillary to the primary business of that organization."

under its statutes. N.C.Gen.Stat. §§ 14-289 and 14-291 (1986 and Supp.1992). Virginia, on the other hand, has chosen to legalize lotteries under a state monopoly and has entered the marketplace vigorously.

Respondent, Edge Broadcasting Corporation (Edge), owns and operates a radio station licensed by the Federal Communications Commission (FCC) to Elizabeth City, North Carolina. This station, known as "Power 94," has the call letters WMYK-FM and broadcasts from Moyock, North Carolina, which is approximately three miles from the border between Virginia and North Carolina and considerably closer to Virginia than is Elizabeth City. Power 94 is one of 24 radio stations serving the Hampton Roads, Virginia, metropolitan area; 92.2% of its listening audience are Virginians; the rest, 7.8%, reside in the nine North Carolina counties served by Power 94. Because Edge is licensed to serve a North Carolina community, the federal statute prohibits it from broadcasting advertisements for the Virginia lottery. Edge derives 95% of its advertising revenue from Virginia sources, and claims that it has lost large sums of money from its inability to carry Virginia lottery advertisements.

Edge entered federal court in the Eastern District of Virginia, seeking a declaratory judgment that, as applied to it, §§ 1304 and 1307, together with corresponding FCC regulations, violated the First Amendment to the Constitution and the Equal Protection Clause of the Fourteenth, as well as injunctive protection against the enforcement of those statutes and regulations.

The District Court recognized the Congress has greater latitude to regulate broadcasting than other forms of communication. App. to Pet. for Cert. 14a-15a. The District Court construed the statutes not to cover the broadcast of noncommer-

3. We deem it remarkable and unusual that although the Court of Appeals affirmed a judgment that an Act of Congress was unconstitu-

mental interest in a s on the effect of app Because the court eral statute unconst reasoning that was q cases relating to the cial speech, we gra U.S. —, 113 S.Ct. (1992). We reverse.

cial information about lotteries, a construction that the Government did not oppose. With regard to the restriction on advertising, the District Court evaluated the statutes under the established four-factor test for commercial speech set forth in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341 (1980):

"At the outset, we must determine whether the expression is protected by the First Amendment. [1] For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask [2] whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine [3] whether the regulation directly advances the governmental interest asserted, and [4] whether it is not more extensive than is necessary to serve that interest."

Assuming that the advertising Edge wished to air would deal with the Virginia lottery, a legal activity, and would not be misleading, the court went on to hold that the second and fourth *Central Hudson* factors were satisfied: the statutes were supported by a substantial governmental interest, and the restrictions were no more extensive than necessary to serve that interest, which was to discourage participating in lotteries in States that prohibited lotteries. The court held, however, that the statutes, as applied to Edge, did not directly advance the asserted governmental interest, failed the *Central Hudson* test in this respect, and hence could not be constitutionally applied to Edge. A divided Court of Appeals, in an unpublished *per curiam* opinion,³ affirmed in all respects, also rejecting the Government's submission that the District Court had erred in judging the validity of the statutes on an "as applied" standard, that is, determining whether the statutes directly served the govern-

tional as applied, the court found it appropriate to announce its judgment in an unpublished *per curiam* opinion.

mental interest in a s on the effect of app

Because the court eral statute unconst reasoning that was q cases relating to the cial speech, we gra U.S. —, 113 S.Ct. (1992). We reverse.

The Government arguing implicates no constitutional right, but rather forbids activities normally "vices," and that the prohibit gambling necessarily lesser power to ban argues that we therefore with a *Central Hudson* Court of Appeals did not and neither do we, for unconstitutional under *Central Hudson* applicable.

[1, 2] For most of purely commercial advertising considered to implicate the protection of the First Amendment. *Chrestensen v. Chrestensen*, 39 U.S. 394, 10 S.Ct. 920, 921, 86 L. 1976, the Court extended protection to speech that propose a commercial. *Virginia State Bd. of Virginia Citizens Consumer U.S. 748, 96 S.Ct. 1 (1976)*. Our decision recognized the "commercial" between speech proposing a transaction, which is constitutionally subject to government and other varieties of *Ohio State Bar Ass'n*, 456, 98 S.Ct. 1912, 1444 (1978). The Court affords a lesser protection to speech than to other

mental interest in a substantial way solely on the effect of applying them to Edge.

Because the court below declared a federal statute unconstitutional and applied reasoning that was questionable under our cases relating to the regulation of commercial speech, we granted certiorari. 506 U.S. —, 113 S.Ct. 809, 121 L.Ed.2d 683 (1992). We reverse.

II

The Government argues first that gambling implicates no constitutionally protected right, but rather falls within a category of activities normally considered to be "vices," and that the greater power to prohibit gambling necessarily includes the lesser power to ban its advertisement; it argues that we therefore need not proceed with a *Central Hudson* analysis. The Court of Appeals did not address this issue and neither do we, for the statutes are not unconstitutional under the standards of *Central Hudson* applied by the courts below.

III

[1, 2] For most of this Nation's history, purely commercial advertising was not considered to implicate the constitutional protection of the First Amendment. See *Valentine v. Chrestensen*, 316 U.S. 52, 54, 62 S.Ct. 920, 921, 86 L.Ed. 1262 (1942). In 1976, the Court extended First Amendment protection to speech that does no more than propose a commercial transaction. See *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). Our decisions, however, have recognized the "'common-sense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech." *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 455-456, 98 S.Ct. 1912, 1918-1919, 56 L.Ed.2d 444 (1978). The Constitution therefore affords a lesser protection to commercial speech than to other constitutionally guar-

anteed expression. *Board of Trustees of State Univ. of New York v. Fox*, 492 U.S. 469, 477, 109 S.Ct. 3028, 3033, 106 L.Ed.2d 388 (1989); *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, *supra*, 447 U.S., at 563, 100 S.Ct., at 2350; *Ohralik, supra*, 436 U.S., at 456, 98 S.Ct., at 1918.

[3, 4] In *Central Hudson*, we set out the general scheme for assessing government restrictions on commercial speech. *Supra*, 447 U.S., at 566, 100 S.Ct., at 2351. Like the courts below, we assume that Edge, if allowed to, would air nonmisleading advertisements about the Virginia lottery, a legal activity. As to the second *Central Hudson* factor, we are quite sure that the Government has a substantial interest in supporting the policy of nonlottery States, as well as not interfering with the policy of States that permit lotteries. As in *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 106 S.Ct. 2968, 92 L.Ed.2d 266 (1986), the activity underlying the relevant advertising—gambling—implicates no constitutionally protected right; rather, it falls into a category of "vice" activity that could be, and frequently has been, banned altogether. As will later be discussed, we also agree that the statutes are no broader than necessary to advance the Government's interest and hence the fourth part of the *Central Hudson* test is satisfied.

The Court of Appeals, however, affirmed the District Court's holding that the statutes were invalid because, as applied to Edge, they failed to advance directly the governmental interest supporting them. According to the Court of Appeals, whose judgment we are reviewing, this was because the 127,000 people who reside in Edge's nine-county listening area in North Carolina receive most of their radio, newspaper, and television communications from Virginia-based media. These North Carolina residents who might listen to Edge "are inundated with Virginia's lottery advertisements" and hence, the court stated,

prohibiting Edge from advertising Virginia's lottery "is ineffective in shielding North Carolina residents from lottery information." This "ineffective or remote measure to support North Carolina's desire to discourage gambling cannot justify infringement upon commercial free speech." App. to Pet. for Cert. 6a, 7a. In our judgment, the courts below erred in that respect.

A

[5, 6] The third *Central Hudson* factor asks whether the "regulation directly advances the governmental interest asserted." *Central Hudson*, 447 U.S., at 566, 100 S.Ct., at 2351. It is readily apparent that this question cannot be answered by limiting the inquiry to whether the governmental interest is directly advanced as applied to a single person or entity. Even if there were no advancement as applied in that manner—in this case, as applied to Edge—there would remain the matter of the regulation's general application to others—in this case, to all other radio and television stations in North Carolina and countrywide. The courts below thus asked the wrong question in ruling on the third *Central Hudson* factor. This is not to say that the validity of the statute's application to Edge is an irrelevant inquiry, but that issue properly should be dealt with under the fourth factor of the *Central Hudson* test. As we have said, "[t]he last two steps of the *Central Hudson* analysis basically involve a consideration of the 'fit' between the legislature's ends and the means chosen to accomplish those ends." *Posadas, supra*, 478 U.S., at 341, 106 S.Ct., at 2976.

[7] We have no doubt that the statutes directly advanced the governmental interest at stake in this case. In response to the appearance of state-sponsored lotteries, Congress might have continued to ban all radio or television lottery advertisements, even by stations in States that have legalized lotteries. This it did not do. Neither did it permit stations such as Edge, located

in a non-lottery State, to carry lottery ads if their signals reached into a State that sponsors lotteries; similarly, it did not forbid stations in a lottery State such as Virginia from carrying lottery ads if their signals reached into an adjoining State such as North Carolina where lotteries were illegal. Instead of favoring either the lottery or the nonlottery State, Congress opted to support the anti-gambling policy of a State like North Carolina by forbidding stations in such a State from airing lottery advertising. At the same time it sought not to unduly interfere with the policy of a lottery sponsoring State such as Virginia. Virginia could advertise its lottery through radio and television stations licensed to Virginia locations, even if their signals reached deep into North Carolina. Congress surely knew that stations in one State could often be heard in another but expressly prevented each and every North Carolina station, including Edge, from carrying lottery ads. Congress plainly made the commonsense judgment that each North Carolina station would have an audience in that State, even if its signal reached elsewhere and that enforcing the statutory restriction would insulate each station's listeners from lottery ads and hence advance the governmental purpose of supporting North Carolina's laws against gambling. This congressional policy of balancing the interests of lottery and nonlottery States is the substantial governmental interest that satisfies *Central Hudson*, the interest which the courts below did not fully appreciate. It is also the interest that is directly served by applying the statutory restriction to all stations in North Carolina; and this would plainly be the case even if, as applied to Edge, there were only marginal advancement of that interest.

B

[8] Left unresolved, of course, is the validity of applying the statutory restriction to Edge, an issue that we now address under the fourth *Central Hudson* factor, i.e., whether the regulation is more exten-

sive than is necessary to serve the governmental interest. We have held in *Central Hudson of State Univ. of N.Y.*, 447 U.S. 491, 109 S.Ct. 1989, and concluded that the restrictions on commercial speech cases are not to be judged by standards more than those applied to First Amendment restrictions on commercial speech cases. *Id.*, at 477-478, 109 S.Ct. 3034. We made clear that the restriction and the governmental interest that is not necessarily advanced by the restriction was also the approach in *Id.*, at 480, 109 S.Ct. 3034, 478 U.S., at 344, 106 S.Ct. 2976.

We have no doubt that the restriction was a reasonable one. The station was licensed to serve the area and chose to broadcast in that position, which allowed it into the Hampton Roads metropolitan area. Allowance of ads reaching over 90 miles into Virginia, would surely be a reasonable one. But just as the signals with lottery ads reached the nine counties in Virginia, the broadcasts reached the population of the substantial area supporting North Carolina's lotteries illegal. In Virginia's lottery case, what stations in a nonlottery State air, it is reasonable to require them to comply with the restriction. Applying the restriction to Edge, such as Edge directly advanced the governmental interest in enforcing the policy of lotteries in nonlottery States with the policy of lotteries in Virginia. We think this is the case if it were true, which it is not, that the general statement of Edge, in isolation, would not finally insulate the

sive than is necessary to serve the governmental interest. We revisited that aspect of *Central Hudson* in *Board of Trustees of State Univ. of New York v. Fox*, 492 U.S. 469, 109 S.Ct. 3028, 106 L.Ed.2d 388 (1989), and concluded that the validity of restrictions on commercial speech should not be judged by standards more stringent than those applied to expressive conduct entitled to full First Amendment protection or to relevant time, place or manner restrictions. *Id.*, at 477-478, 109 S.Ct., at 3033-3034. We made clear in *Fox* that our commercial speech cases require a fit between the restriction and the government interest that is not necessarily perfect, but reasonable. *Id.*, at 480, 109 S.Ct., at 3034. This was also the approach in *Posadas*, *supra*, 478 U.S., at 344, 106 S.Ct., at 2978.

We have no doubt that the fit in this case was a reasonable one. Although Edge was licensed to serve the Elizabeth City area, it chose to broadcast from a more northerly position, which allowed its signal to reach into the Hampton Roads, Virginia, metropolitan area. Allowing it to carry lottery ads reaching over 90% of its listeners, all in Virginia, would surely enhance its revenues. But just as surely, because Edge's signals with lottery ads would be heard in the nine counties in North Carolina that its broadcasts reached, this would be in derogation of the substantial federal interest in supporting North Carolina's laws making lotteries illegal. In this posture, to prevent Virginia's lottery policy from dictating what stations in a neighboring State may air, it is reasonable to require Edge to comply with the restriction against carrying lottery advertising. In other words, applying the restriction to a broadcaster such as Edge directly advances the governmental interest in enforcing the restriction in nonlottery States, while not interfering with the policy of lottery States like Virginia. We think this would be the case even if it were true, which it is not, that applying the general statutory restriction to Edge, in isolation, would no more than marginally insulate the North Carolinians in

the North Carolina counties served by Edge from hearing lottery ads.

In *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989), we dealt with a time, place, or manner restriction that required the city to control the sound level of musical concerts in a city park, concerts that were fully protected by the First Amendment. We held there that the requirement of narrow tailoring was met if "the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation," provided that it did not burden substantially more speech than necessary to further the government's legitimate interests. *Id.*, at 799, 109 S.Ct., at 2758. In the course of upholding the restriction, we went on to say that "the validity of the regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interest in an individual case." *Id.*, at 801, 109 S.Ct., at 2759.

[9] The *Ward* holding is applicable here, for we have observed that the validity of time, place, or manner restrictions is determined under standards very similar to those applicable in the commercial speech context and that it would be incompatible with the subordinate position of commercial speech in the scale of First Amendment values to apply a more rigid standard to commercial speech than is applied to fully protected speech. *Fox*, *supra* 492 U.S., at 477, 478, 109 S.Ct., at 3033, 3033. *Ward* thus teaches us that we judge the validity of the restriction in this case by the relation it bears to the general problem of accommodating the policies of both lottery and nonlottery States, not by the extent to which it furthers the Government's interest in an individual case.

This is consistent with the approach we have taken in the commercial speech context. In *Ohralik v. Ohio State Bar Assn.*, 436 U.S., at 462, 98 S.Ct., at 1921, for example, an attorney attacked the validity of a rule against solicitation "not facially,

but as applied to his acts of solicitation." We rejected the appellant's view that his "as applied" challenge required the State to show that his particular conduct in fact trespassed on the interests that the regulation sought to protect. We stated that in the general circumstances of the appellant's acts, the State had "a strong interest in adopting and enforcing rules of conduct designed to protect the public." *Id.*, at 464, 98 S.Ct., at 1923. This having been established, the State was entitled to protect its interest by applying a prophylactic rule to those circumstances generally; we declined to require the State to go further and to prove that the state interests supporting the rule actually were advanced by applying the rule in Ohralik's particular case.

Edenfield v. Fane, 507 U.S. —, 113 S.Ct. 1792, 123 L.Ed.2d 543 (1993), is not to the contrary. While treating Fane's claim as an as applied challenge to a broad category of commercial solicitation, we did not suggest that Fane could challenge the regulation on commercial speech as applied only to himself or his own acts of solicitation.

C

[10] We also believe that the courts below were wrong in holding that as applied to Edge itself, the restriction at issue was ineffective and gave only remote support to the Government's interest.

As we understand it, both the Court of Appeals and the District Court recognized that Edge's potential North Carolina audience was the 127,000 residents of nine North Carolina counties, that enough of them regularly or from time to time listen to Edge to account for 11% of all radio listening in those counties, and that while listening to Edge they heard no lottery advertisements. It could hardly be denied, and neither court below purported to deny, that these facts, standing alone, would clearly show that applying the statutory restriction to Edge would directly serve the statutory purpose of supporting North Carolina's antigambling policy by excluding in-

itations to gamble from 11% of the radio listening time in the nine-county area. Without more, this result could hardly be called either "ineffective," "remote," or "conditional," see *Central Hudson*, 447 U.S., at 564, 569, 100 S.Ct., at 2350, 2353. Nor could it be called only "limited incremental support," *Bolger v. Youngs Drug Product Corp.*, 463 U.S. 60, 73, 103 S.Ct. 2875, 2884, 77 L.Ed.2d 469 (1983), for the Government interest, or thought to furnish only speculative or marginal support. App. to Pet. for Cert. 24a, 25a. Otherwise, any North Carolina radio station with 127,000 or fewer potential listeners would be permitted to carry lottery ads because of its marginal significance in serving the State's interest.

Of course, both courts below pointed out, and rested their judgment on the fact, that the 127,000 people in North Carolina who might listen to Edge also listened to Virginia radio stations and television stations that regularly carried lottery ads. Virginia newspapers carrying such material also were available to them. This exposure, the courts below thought, was sufficiently pervasive to prevent the restriction on Edge from furnishing any more than ineffective or remote support for the statutory purpose. We disagree with this conclusion because in light of the facts relied on, it represents too limited a view of what amounts to direct advancement of the governmental interest that is present in this case.

Even if all of the residents of Edge's North Carolina service area listen to lottery ads from Virginia stations, it would still be true that 11% of radio listening time in that area would remain free of such material. If Edge is allowed to advertise the Virginia lottery, the percentage of listening time carrying such material would increase from 38% to 49%. We do not think that *Central Hudson* compels us to consider this consequence to be without significance.

The Court of Appeals indicated that Edge's potential audience of 127,000 per-

sons were "inundated" by lottery advertising. The District Court found that the radio listening in the area was directed at stationary advertising.⁴ In addition, the District Court found that American adults spend less time listening to television than to radio. The evidence before it showed that four of the nine counties in the area receive 75% of all television advertising at Virginia stations; the figure was between 50% and 75% in the remaining two counties. Even if it is assumed that all stations carry lottery advertising, it is likely that a great many residents of the county area are exposed to lottery advertising. Virginia newspapers in Edge's area, 10,400 copies on Sundays, hardly ensure pervasive exposure to lottery advertising on the unlikely assumption that all those newspapers read the lottery ads. The Court observed only that "the number of residents in the area listens to" Virginia radio stations and reads newspapers. App. to Pet. for Cert.

[11-15] Moreover, the courts below assumed that 1307 would have to exclude Carolina residents from lotteries to advance the State's interest. As the Court says, the statutes were "not intended to keep North Carolina free of the Virginia Lottery for the sake of the State's interest in discouraging participation in lotteries, but to moderate the counterproductive effects of the lottery States. Reply Brief at 10. Within the bounds of the Constitution provided by the Const

4. It would appear, the evidence showed, that listening time in the

sons were "inundated" by the Virginia media carrying lottery advertisements. But the District Court found that only 38% of all radio listening in the nine-county area was directed at stations that broadcast lottery advertising.⁴ With respect to television, the District Court observed that American adults spend 60% of their media consumption time listening to television. The evidence before it also indicated that in four of the nine counties served by Edge, 75% of all television viewing was directed at Virginia stations; in three others, the figure was between 50 and 75%; and in the remaining two counties, between 25 and 50%. Even if it is assumed that all of these stations carry lottery advertising, it is very likely that a great many people in the nine-county area are exposed to very little or no lottery advertising carried on television. Virginia newspapers are also circulated in Edge's area, 10,400 daily and 12,500 on Sundays, hardly enough to constitute a pervasive exposure to lottery advertising, even on the unlikely assumption that the readers of those newspapers always look for and read the lottery ads. Thus the District Court observed only that "a significant number of residents of [the nine-county] area listens to" Virginia radio and television stations and read Virginia newspapers. App. to Pet. for Cert. 25a (emphasis added).

[11-15] Moreover, to the extent that the courts below assumed that §§ 1304 and 1307 would have to effectively shield North Carolina residents from information about lotteries to advance their purpose, they were mistaken. As the Government asserts, the statutes were not "adopt[ed] . . . to keep North Carolina residents ignorant of the Virginia Lottery for ignorance's sake," but to accommodate non-lottery States' interest in discouraging public participation in lotteries, even as they accommodate the countervailing interests of lottery States. Reply Brief for Petitioners 11. Within the bounds of the general protection provided by the Constitution to commercial

speech, we allow room for legislative judgments. *Fox*, 492 U.S., at 480, 109 S.Ct., at 3034. Here, as in *Posadas de Puerto Rico*, the Government obviously legislated on the premise that the advertising of gambling serves to increase the demand for the advertised product. See *Posadas*, 478 U.S., at 344, 106 S.Ct., at 2978. See also *Central Hudson*, *supra*, 447 U.S., at 569, 100 S.Ct., at 2353. Congress clearly was entitled to determine that broadcast of promotional advertising of lotteries undermines North Carolina's policy against gambling, even if the North Carolina audience is not wholly unaware of the lottery's existence. Congress has, for example, altogether banned the broadcast advertising of cigarettes, even though it could hardly have believed that this regulation would keep the public wholly ignorant of the availability of cigarettes. See 15 U.S.C. § 1335. See also *Queensgate Investment Co. v. Liquor Control Comm'n*, 69 Ohio St.2d 361, 366, 433 N.E.2d 138, 142 app. dism'd for want of a substantial federal question, 459 U.S. 807, 103 S.Ct. 31, 74 L.Ed.2d 45 (1982) (alcohol advertising). Nor do we require that the Government make progress on every front before it can make progress on any front. If there is an immediate connection between advertising and demand, and the federal regulation decreases advertising, it stands to reason that the policy of decreasing demand for gambling is correspondingly advanced. Accordingly, the Government may be said to advance its purpose by substantially reducing lottery advertising, even where it is not wholly eradicated.

Thus, even if it were proper to conduct a *Central Hudson* analysis of the statutes only as applied to Edge, we would not agree with the courts below that the restriction at issue here, which prevents Edge from broadcasting lottery advertising to its sizable radio audience in North Carolina, is rendered ineffective by the fact that Virginia radio and television programs

4. It would appear, then, that 51% of the radio listening time in the relevant nine counties is

attributable to other North Carolina stations or other stations not carrying lottery advertising.

can be heard in North Carolina. In our view, the restriction, even as applied only to Edge, directly advances the governmental interest within the meaning of *Central Hudson*.

D

Nor need we be blind to the practical effect of adopting respondent's view of the level of particularity of analysis appropriate to decide its case. Assuming for the sake of argument that Edge had a valid claim that the statutes violated *Central Hudson* only as applied to it, the piecemeal approach it advocates would act to vitiate the Government's ability generally to accommodate States with differing policies. Edge has chosen to transmit from a location near the border between two jurisdictions with different rules, and rests its case on the spillover from the jurisdiction across the border. Were we to adopt Edge's approach, we would treat a station that is close to the line as if it were on the other side of it, effectively extending the legal regime of Virginia inside North Carolina. One result of holding for Edge on this basis might well be that additional North Carolina communities, farther from the Virginia border, would receive broadcast lottery advertising from Edge. Broadcasters licensed to these communities, as well as other broadcasters serving Elizabeth City, would then be able to complain that lottery advertising from Edge and other similar broadcasters renders the federal statute ineffective as applied to them. Because the approach Edge advocates has no logical stopping point once state boundaries are ignored, this process might be repeated until the policy of supporting North Carolina's ban on lotteries would be seriously eroded. We are unwilling to start down that road.

IV

Because the statutes challenged here regulate commercial speech in a manner

that does not violate the First Amendment, the judgment of the Court of Appeals is *Reversed*.

Justice SOUTER, with whom Justice KENNEDY joins, concurring in part.

I agree with the Court that the restriction at issue here is constitutional, under our decision in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980), even if that restriction is judged "as applied to Edge itself." *Ante*, at 2706. I accordingly believe it unnecessary to decide whether the restriction might appropriately be reviewed at a more lenient level of generality, and I take no position on that question.

Justice STEVENS, with whom Justice BLACKMUN joins, dissenting.

Three months ago this Court reaffirmed that the proponents of a restriction on commercial speech bear the burden of demonstrating a "reasonable fit" between the legislature's goals and the means chosen to effectuate those goals. See *Cincinnati v. Discovery Network, Inc.*, 507 U.S. —, —, 113 S.Ct. 1505, 1510, 123 L.Ed.2d 99 (1993). While the "fit" between means and ends need not be perfect, an infringement on constitutionally protected speech must be "in proportion to the interest served." *Id.*, at —, 113 S.Ct., at 1510, n. 12 (quoting *Board of Trustees of State Univ. of New York v. Fox*, 492 U.S. 469, 480, 109 S.Ct. 3028, 3034, 106 L.Ed.2d 388 (1989)). In my opinion, the Federal Government's selective ban on lottery advertising unquestionably flunks that test; for the means chosen by the Government, a ban on speech imposed for the purpose of manipulating public behavior, is in no way proportionate to the Federal Government's asserted interest in protecting the antilottery policies of nonlottery States. Accordingly, I respectfully dissent.

As the Court acknowledges, the United States does not assert a general interest in restricting state-run lotteries. Indeed, it

could not, as it has affirmed restrictions on use of the mails for the promotion of. See *ante*, at 2701. Rather, the interest in this case is entirely. By tying the right to broadcast regarding a state-run lottery to the State in which the broadcaster itself sponsors a lottery, the State sought to support nonlottery efforts to "discourag[e] public lotteries." *Ante*, at 2701.

Even assuming that nonlottery States are entitled to such assistance from the Federal Government—an assumption that is made without any supporting authority—I would hold that suppressing lottery advertising regarding a neighborhood lottery, an activity which is, in itself, perfectly legal, is a patently unconstitutional means of effectuating the State's asserted interest in protecting the welfare of nonlottery States. In light of that thought that we had so held in the past decades ago.

In *Bigelow v. Virginia*, 421 U.S. 809, 44 L.Ed.2d 600, 100 S.Ct. 2222, 44 L.Ed.2d 600 (1975), the Court recognized that a State's legitimate interest in protecting the welfare of its citizens as they venture across State's borders. *Id.*, at 824, 44 L.Ed.2d 623, 100 S.Ct. 2234. We flatly rejected the argument, however, that a State could effectuate its interest by suppressing truthful information regarding a legitimate activity in another State. We held that such a ban, not, under the guise of exercising police powers, bar a citizen.

1. At one point in its opinion, the Court stated that the relevant federal interest in North Carolina's laws making lottery advertising illegal. *Ante*, at 2705. Of course, North Carolina does not, nor, presumably, does it, prohibit its citizens from traveling across the State's borders to participate in the Virginia lottery. The Virginia law does not make the lottery illegal. I take the Court to mean that North Carolina's decision not to institute a lottery reflects its policy judgment that participation in such lotteries, even if sponsored by another State, is detrimental to the State's welfare, and that 18 U.S.C. § 13

could not, as it has affirmatively removed restrictions on use of the airwaves and mails for the promotion of such lotteries. See *ante*, at 2701. Rather, the federal interest in this case is entirely derivative. By tying the right to broadcast advertising regarding a state-run lottery to whether the State in which the broadcaster is located itself sponsors a lottery, Congress sought to support nonlottery States in their efforts to "discourag[e] public participation in lotteries." *Ante*, at 2701, 2707.¹

Even assuming that nonlottery States desire such assistance from the Federal Government—an assumption that must be made without any supporting evidence—I would hold that suppressing truthful advertising regarding a neighboring State's lottery, an activity which is, of course, perfectly legal, is a patently unconstitutional means of effectuating the Government's asserted interest in protecting the policies of nonlottery States. Indeed, I had thought that we had so held almost two decades ago.

In *Bigelow v. Virginia*, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975), this Court recognized that a State had a legitimate interest in protecting the welfare of its citizens as they ventured outside the State's borders. *Id.*, at 824, 95 S.Ct., at 2234. We flatly rejected the notion, however, that a State could effectuate that interest by suppressing truthful, nonmisleading information regarding a legal activity in another State. We held that a State "may not, under the guise of exercising internal police powers, bar a citizen of another

State from disseminating information about an activity that is legal in that State." *Id.*, at 824-825, 95 S.Ct., at 2234. To be sure, the advertising in *Bigelow* related to abortion, a constitutionally protected right, and the Court in *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 106 S.Ct. 2968, 92 L.Ed.2d 266 (1986), relied on that fact in dismissing the force of our holding in that case, see *id.*, at 345, 106 S.Ct., at 2979. But even a casual reading of *Bigelow* demonstrates that the case cannot fairly be read so narrowly. The fact that the information in the advertisement related to abortion was only one factor informing the Court's determination that there were substantial First Amendment interests at stake in the State's attempt to suppress truthful advertising about a legal activity in another State:

"Viewed in its entirety, the advertisement conveyed information of potential value to a diverse audience—not only to readers possibly in need of the services offered, but also to those with a general curiosity about, or genuine interest in, the subject matter or the law of another State and its development, and to readers seeking reform in Virginia. The mere existence of the [organization advertising abortion-related services] in New York City, with the possibility of its being typical of other organizations there, and the availability of the services offered, were not unnewsworthy. Also the activity advertised pertained to constitutional interests." *Bigelow, supra*, 421 U.S., at 822, 95 S.Ct., at 2232.²

1. At one point in its opinion, the Court identifies the relevant federal interest as "supporting North Carolina's laws making lotteries illegal." *Ante*, at 2705. Of course, North Carolina law does not, nor, presumably, could not, bar its citizens from traveling across the state line and participating in the Virginia lottery. North Carolina law does not make the Virginia lottery illegal. I take the Court to mean that North Carolina's decision not to institute a state-run lottery reflects its policy judgment that participation in such lotteries, even those conducted by another State, is detrimental to the public welfare, and that 18 U.S.C. § 1307 (1988 ed. and

Supp. III) represents a federal effort to respect that policy judgment.

2. The analogy to *Bigelow* and this case is even closer than one might think. The North Carolina General Assembly is currently considering whether to institute a state-operated lottery. See 1993 N.C.S. Bill No. 11, 140th Gen. Assembly. As with the advertising at issue in *Bigelow*, then, advertising relating to the Virginia lottery may be of interest to those in North Carolina who are currently debating whether that State should join the ranks of the growing number of States that sponsor a lottery. See *infra*, at —.

Bigelow is not about a woman's constitutionally protected right to terminate a pregnancy.³ It is about paternalism, and informational protectionism. It is about one State's interference with its citizens' fundamental constitutional right to travel in a state of enlightenment, not government-induced ignorance. Cf. *Shapiro v. Thompson*, 394 U.S. 618, 629-631, 89 S.Ct. 1322, 1328-1330, 22 L.Ed.2d 600 (1969).⁴ I would reaffirm this basic First Amendment principle. In seeking to assist nonlottery States in their efforts to shield their citizens from the perceived dangers emanating from a neighboring State's lottery, the Federal Government has not regulated the content of such advertisements, to ensure that they are not misleading, nor has it provided for the distribution of more speech, such as warnings or educational information about gambling. Rather, the United States has selected the most intrusive, and dangerous, form of regulation possible—a ban on truthful information regarding a lawful activity imposed for the purpose of manipulating, through ignorance, the consumer choices of some of its citizens. Unless justified by a truly substantial governmental interest, this extreme, and extremely paternalistic, measure surely cannot withstand scrutiny under the First Amendment.

No such interest is asserted in this case. With barely a whisper of analysis, the Court concludes that a State's interest in

3. If anything, the fact that underlying conduct is not constitutionally protected increases, not decreases, the value of unfettered exchange of information across state lines. When a State has proscribed a certain product or service, its citizens are all the more dependent on truthful information regarding the policies and practices of other States. Cf. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. —, —, n. 31, 113 S.Ct. 753, 792, n. 31, 122 L.Ed.2d 34 (1993) (STEVENS, J., dissenting). The alternative is to view individuals as more in the nature of captives of their respective States than as free citizens of a larger polity.

4. "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to

discouraging lottery participation by its citizens is surely "substantial"—a necessary prerequisite to sustain a restriction on commercial speech, see *Central Hudson Gas & Electric Corp. v. Public Service Comm'n.*, 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341 (1980)—because gambling "falls into a category of 'vice' activity that could be, and frequently has been, banned altogether," *ante*, at 2703.

I disagree. While a State may indeed have an interest in discouraging its citizens from participating in state-run lotteries,⁵ it does not necessarily follow that its interest is "substantial" enough to justify an infringement on constitutionally protected speech,⁶ especially one as draconian as the regulation at issue in this case. In my view, the sea change in public attitudes toward state-run lotteries that this country has witnessed in recent years undermines any claim that a State's interest in discouraging its citizens from participating in state-run lotteries is so substantial as to outweigh respondent's First Amendment right to distribute, and the public's right to receive, truthful, nonmisleading information about a perfectly legal activity conducted in a neighboring State.

While the Court begins its opinion with a discussion of the federal and state efforts in the 19th century to restrict lotteries, it largely ignores the fact that today hostility

pass and repass through every part of it without interruption, as freely as in our own States." *Passenger Cases*, 7 How. (48 U.S.) 283, 492, 12 L.Ed. 702 (1849).

5. A State might reasonably conclude, for example, that lotteries play on the hopes of those least able to afford to purchase lottery tickets, and that its citizens would be better served by spending their money on more promising investments. The fact that I happen to share these concerns regarding state-sponsored lotteries is, of course, irrelevant to the proper analysis of the legal issue.

6. See, e.g., *Cincinnati v. Discovery Network, Inc.*, 507 U.S. —, —, n. 13, 113 S.Ct. 1505, 1510, n. 13, 123 L.Ed.2d 99 (noting that restrictions on commercial speech are subject to more searching scrutiny than mere "rational basis" review).

to state-run lotteries is the exception rather than the norm. Thirty-four States in the District of Columbia now have lotteries.⁷ Three more States have established lotteries this year.⁸ Of the States, at least 5 States have considered or are currently considering establishing a lottery.⁹ In fact, 10 States, of North Carolina, whose citizens the Federal Government has banned are purportedly butting heads. This case, is considering establishing a lottery. See 1993 N.C.S. Bill No. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

to state-run lotteries is the exception rather than the norm. Thirty-four States in the District of Columbia now have lotteries.⁷ Three more States have established lotteries this year.⁸ Of the States, at least 5 States have considered or are currently considering establishing a lottery.⁹ In fact, 10 States, of North Carolina, whose citizens the Federal Government has banned are purportedly butting heads. This case, is considering establishing a lottery. See 1993 N.C.S. Bill No. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

The fact that the vast majority of States currently sponsor a lottery, and soon virtually all of them will, does not, of course, preclude any State from following a different path. It is tempting to discourage its citizens from partaking of such activities, but the fact that "the vast majority of States . . . prohibit[ed] casino gambling" purported to inform the Court in *Posadas de Puerto Rico v. Tourism Co. of Puerto Rico*, 476 U.S. 341, 106 S.Ct., at 2976, that the State had a "substantial" interest in discouraging such gambling, the national interest in the opposite direction in this case, undermines the United States' interest in discouraging their citizens from traveling across state lines and gambling in a neighboring State's lottery. The Federal Government and the States do not have an overriding or substantial interest in seeking to discourage gambling. In fact, the entire country is engaged in a lottery, certainly not an interest that justifies a restriction on constitutional rights.

7. Selinger, Special Report: Marketing Lotteries, City and State 14 (May 1993).

8. *Ibid.*

9. See, e.g., 1993 Ala.H. Bill No. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 30

state-run lotteries is the exception rather than the norm. Thirty-four States and the District of Columbia now sponsor a lottery.⁷ Three more States will initiate lotteries this year.⁸ Of the remaining 13 States, at least 5 States have recently considered or are currently considering establishing a lottery.⁹ In fact, even the State of North Carolina, whose antilottery policies the Federal Government's advertising campaign are purportedly buttressing in this case, is considering establishing a lottery. See 1993 N.C.S. Bill No. 11, 140th Gen. Assembly. According to one estimate, by the end of this decade all but two States (Utah and Nevada) will have state-run lotteries.¹⁰

The fact that the vast majority of the States currently sponsor a lottery, and that soon virtually all of them will do so, does not, of course, preclude an outlier State from following a different course and attempting to discourage its citizens from partaking of such activities. But just as the fact that "the vast majority of the 50 States ... prohibit[ed] casino gambling" purported to inform the Court's conclusion in *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S., at 341, 106 S.Ct., at 2976, that Puerto Rico had a "substantial" interest in discouraging such gambling, the national trend in the opposite direction in this case surely undermines the United States' contention that non-lottery States have a "substantial" interest in discouraging their citizens from traveling across state lines and participating in a neighboring State's lottery. The Federal Government and the States simply do not have an overriding or "substantial" interest in seeking to discourage what virtually the entire country is embracing, and certainly not an interest that can justify a restriction on constitutionally protected

speech as sweeping as the one the Court today sustains.

I respectfully dissent.



TXO PRODUCTION CORP., Petitioner

v.

ALLIANCE RESOURCES CORP., et al.

No. 92-479.

Argued March 31, 1993.

Decided June 25, 1993.

Joint venturer in oil and gas development project brought declaratory judgment action against lessor and lessees of development rights to clear purported cloud on title. Lessor and lessees counterclaimed, alleging slander of title. Jury awarded lessor and lessees \$19,000 in compensatory damages and \$10 million in punitive damages. The Supreme Court of Appeals of West Virginia affirmed, 187 W.Va. 457, 419 S.E.2d 870, and certiorari was granted. The Supreme Court, Justice Stevens, held that: (1) punitive damages award was not so "grossly excessive" as to violate due process, and (2) punitive damages procedure followed by trial court did not violate due process.

Affirmed.

Justice Kennedy filed opinion concurring in part and concurring in judgment.

1993 N.M.S. Bill No. 141, 41st Legislature—First Regular Sess.; 1993 N.C.S. Bill No. 11, 140th Gen. Assembly; 1993 Okla.H.Bill No. 1348, 44th Legislature—First Regular Sess.

7. Selinger, Special Report: Marketing State Lotteries, City and State 14 (May 24, 1993).

8. *Ibid.*

9. See, e.g., 1993 Ala.H. Bill No. 75, 165th Legislature—Regular Sess.; 1993 Miss.S. Concurrent Res. No. 566, 162d Legislature—Regular Sess.;

10. City and State, *supra*, n. 7.