

# **Affordability of Telecommunications Services**

**Frank Gumper**

**Vice President  
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## Affordability of Telecommunications Services

I would like to thank the members of the Joint Board for giving me the opportunity to speak with you today on this very important topic. The affordability of basic telephone service is an important policy issue to consumers and the nation as a whole.

Telephone service, for the vast majority of Americans, is affordable! Not only is it affordable, it is a bargain! For example, this past week, I bought two pizzas with two toppings, and it cost me \$20. In contrast, the average telephone bill for local service is \$21, and the average total bill is roughly \$54.<sup>1</sup> In fact, over the last ten years, local telephone service has only increased 17% whereas all other goods and services in the Consumer Price Index have increased by 41%. Furthermore, telephone service, as a percentage of personal income, has been about 2% since the mid-eighties, and this has remained constant regardless of race, age, or geographic area. Even the latest Statistics on Telephone Penetration rates estimate that 94.1% of all households in the United States have telephone service, and penetration has remained relatively stable over the last several years. All of this information points to the fact that telephone service is inexpensive.

This gives state regulatory bodies the flexibility to address other policy issues without fear of making phone service unaffordable. Opening up local markets to competition will put pressure on implicit subsidies in telephone companies' rates. In some cases, states will have to step up to the challenge of restructuring rates to bring them closer to costs. Some states, like Idaho, Maine, and Montana, have already begun to face this challenge. Local rates, and even Subscriber Line Charges (SLCs), may have to increase. However, these

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<sup>1</sup> First Quarter 1998, PNR and Associates, Inc database.

rate increases will not reduce subscribership. Basic telephone rates will remain affordable, and there is little need for major restructuring of the current universal service mechanisms.

**What is the problem?**

While a majority of Americans have phone service, there are certain segments of society and places in the nation where that may not be the case. One area where subscribership is lower than the national average is among the economically disadvantaged. For this segment of society, the Federal-State Joint Board significantly enhanced, and expanded the availability of, the Federal Lifeline and Link-Up programs. As of August 1998, there were 5.1 million Lifeline participants, and for the first eight months of this year, there were 1.3M participants requesting Link-Up assistance. Currently, these programs are growing at an average rate of almost 2% per month.

In a recent study performed by Jorge Schement and Scott Forbes presented at the Telecommunications Research Policy Conference earlier this month, their findings suggest that the issue of telephone penetration is very complex and probably can not be solved at the federal level.<sup>2</sup> While their study looks at such things as race and income and identifies pockets of people without telephone service, it is not always clear what the underlying causes are of lower subscribership.

For instance, New York and California have two of the most aggressive low-income programs in the nation. Yet, when you look at telephone penetration rates by race for some of the counties in these two states, you see vast differences in telephone penetration rates.

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<sup>2</sup> Schement, Jorge Reina, and Forbes, Scott C., **The Persistent Gap in Telecommunications: Toward Hypotheses and Answers**, presented at the Annual Meeting of the Telecommunications Policy Research Conference, Alexandria, Virginia, October 1998.

For example, in California's San Joaquin County, telephone penetration rates for whites are 2.5% less than that of African-Americans, yet in Yuba County; telephone penetration rates for whites are roughly 37% greater than for African-Americans. In New York's Genesee County, telephone penetration rates for whites is roughly 2% higher than it is for African-Americans, while in Jefferson County, telephone penetration rates for whites is over 41% higher than for African-Americans.<sup>3</sup> These types of differences can not be simply explained nor can they be solved with one national solution. To quote from this paper,

"If we wish to solve the mystery of the [telephone service] gaps, we will have to look beyond the data that has guided us in the past. We must go below national data [that will uncover] a complex array of factors more particular to localities than to the country as a whole."<sup>4</sup>

This information indicates that the reasons that people do not have a phone may go beyond price and affordability. To effectively address these problems, further study must be done, and solutions must be developed and implemented at the state and local level.

Another reason for reduced telephone penetration is that the cost of wiring sparsely populated rural areas of the nation can be cost prohibitive. For example, wireline costs can easily exceed \$10,000 per loop in remote parts of the country. Many of these areas are like developing countries, and as such, we should be looking to wireless technologies to provide them with cost effective alternatives to landline telephone service. For example, Southwestco Wireless (a wholly owned subsidiary of Bell Atlantic Mobile) is serving a 3,000 square mile Indian Reservation (The Tohanna Otum Indian Tribe) as well as other remote areas in Arizona. In addition, Western Wireless is serving Antelope Valley in Nevada where the population density is low and landline service is very limited, because it

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<sup>3</sup> Schement and Forbes, Tables 2 and 3.

<sup>4</sup> Schement and Forbes, p 21.

is too expensive to provide. For the 58 customers that reside in Antelope Valley, it was estimated to cost \$1.3M to provide landline services compared to the \$100,000 spent to provide wireless. It does not make sense to invest in wireline service in such remote areas. Instead, the Joint Board should be looking at ways to provide the incentives for the deployment of the most cost effective technologies, like wireless infrastructure in these remote areas.

In closing, let me say that telephone service is a bargain and will remain affordable as local competition and technology develops. However, states and the FCC must address the implicit support in their rates that will not be viable with increasing competition. Some states will not have the resources to solve their own high cost problem. For these states, and only these states, a small targeted federal fund can provide assistance to those states to ensure that their rates remain affordable. The distribution of these funds within a state and the need for intrastate support programs are more effectively addressed at the state and local levels. However, the Joint Board must continue to monitor these issues as we move forward to detect if additional policy intervention is warranted.

I thank you for this opportunity, and I will be glad to answer your questions at this time.

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Mr. Gumper is Vice President-Regulatory and Long Range Planning at Bell Atlantic. He was appointed to that position with the merger of Bell Atlantic and NYNEX. He is responsible for the identification of future public policy issues and the development of Bell Atlantic's positions on critical public policy issues.

He is also responsible for the development of telecommunications regulatory policy in the federal jurisdiction and the management of Bell Atlantic's FCC Docket filings and the stakeholdering of these issues within the industry. Mr. Gumper represents Bell Atlantic on the USTA Regulatory Policy Committee that seeks to create consensus on local exchange carrier (LEC) positions.

Mr. Gumper is a Board Member of the Universal Service Administrative Company (USAC) and the Schools and Library Corporation (SLC), and he is Bell Atlantic's Representative on the Advisory Board at Columbia University's Institute for Tele-Information.

Mr. Gumper has a B.S. Degree from Rensselaer Polytechnic Institute and a M.A. Degree in Geophysics at Columbia University. In addition, he completed the Master's Degree Program for Executives at Columbia University's Business School. Mr. Gumper has spent most of his 26 year career working for NYNEX in various regulatory, revenue analysis and forecasting functions.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
EN BANC HEARING ON AFFORDABILITY OF TELECOMMUNICATIONS SERVICES

October 29, 1998

STATEMENT OF JOHN C. METTS

CHIEF EXECUTIVE OFFICER AND GENERAL MANAGER  
PENASCO VALLEY TELEPHONE COOPERATIVE  
ARTESIA, NEW MEXICO

I Introduction

A Personal Introduction

1. Background
2. Responsibilities at Penasco Valley Telephone Cooperative (PVTC)
3. Responsibilities as Board Member of National Telephone Cooperative Association (NTCA)

B Description of PVTC and NTCA members

C Purpose of Remarks: Provide Perspective of Rural High Cost Company

II Affordability Standard Is Generally Being Met Today In Rural Areas

- A. Agree with FCC and Joint Board conclusions on affordability in Universal Service Order, but emphasize that it is only one of the standards in the Act, FCC must also consider comparability and reasonableness.
- B. Rates today are within range of most people as shown by high percentage of subscribership nationally, and in service area of PVTC and other NTCA member rural telephone companies. Note calling scope difference means evaluation of affordability must include intraLATA toll and/or EAS surcharges.
- C. Service is affordable in high cost, low density areas as a result of a combination of federal and state access charge revenues, jurisdictional separations rules and universal service support mechanism. Also important is the availability of financing and support from Rural Utilities Service and specialized rural financial entities. Prior to establishment of these factors, rural service was often unavailable at any price.
- D. Exception to general availability exists in those areas where high aid-to-construction and other connect fees price service out of reach of many Indian Reservations are the most extreme examples

**III To Ensure That Goal of Affordability Continues To Be Met, Commission Must Adopt Policies Which Continue to Balance Cost Recovery Between Toll and Local Services**

- A. The Act requires the federal universal service mechanism to meet the goals of affordability, comparability and reasonableness, therefore the 25/75% federal/state responsibility plan must be abandoned**
- B. Universal service support must first ensure that local service rates are affordable, the purpose of Section 254 is not reduce access charges to interexchange carriers**
- C. Flat rate "universal service surcharges" and the pass through of PICC charges have the same effect as increases in the subscriber line charge. they affect affordability the same as local rate increases FCC must enforce toll rate averaging requirements of the Act.**
- D. Any "proxy" model must be verified by testing the output, rather than the inputs, to the model to determine if it reasonably replicates the real world. Rural telephone companies have grave doubts that this is possible**

## BUSINESS BIOGRAPHY

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John C. Metts is presently Chief Executive Officer/General Manager of Peñasco Valley Telephone Cooperative, Inc. (PVT) of Artesia, New Mexico. PVT serves 2,600 members in six (6) exchanges in southeastern New Mexico. Its wholly-owned subsidiary company is PVT NetWorks, Inc.

John's career in rural telecommunications spans 38 years. Born and raised in eastern Montana, he held positions with Mid-Rivers Telephone Cooperative and Nemont Telephone Cooperative until 1978, at which time he became involved in telecommunications consulting. In 1981, he formed ITELCO, a consulting firm in Colorado Springs, Colorado, and was its President until joining PVT in 1990.

John has become well known throughout the industry and has conducted numerous seminars and presentations for NTCA, RUS and telecommunications groups.

He presently serves as Secretary Treasurer of the Board of Directors of the National Telephone Cooperative Association (NTCA), is a national Director for National Telecom Corporation, the property insurance arm of NTCA, and is a Director for the National Rural Telecommunications Cooperative (NRTC).

PVT NetWorks, Inc. is a partner in two (2) cellular partnerships and one (1) PCS partnership, operates a cellular and DBS retail store, provides leased fiber optic facilities to IXC's, provides Internet services on a regional basis, and owns a LMDS license.

John and wife Judy have five (5) children and seven (7) grandchildren residing in Colorado and New Mexico.

**TESTIMONY OF MICHAEL J. TRAVIESO  
ON BEHALF OF  
THE MARYLAND OFFICE OF PEOPLE'S COUNSEL  
BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

**EN BANC HEARING ON CONSUMER ISSUES AND EDUCATION  
OCTOBER 29, 1998**

Good Afternoon Chairman Kennard and Commissioners. Thank you for inviting me to appear before you today regarding consumer education efforts.

As People's Counsel for the State of Maryland, one of my roles is to advocate for programs and policies which inform residential consumers about their choices in the emerging competitive telecommunications market. Consumers need information to effectively participate in the market so that they may ultimately benefit from competition. Obviously, educated consumers are consumers who will make the best economic choice for themselves.

In order to ensure that consumers are adequately informed, I believe that the following principles should be followed:

- **Federal and State Regulators Should Continue to Share Primary Responsibility For Educating Consumers.**
- **Regulators Should Continue To Inform Consumers about Harmful Practices of Telecommunications Providers.**
- **Federal and State Regulators Should Work Together to Develop a Clearinghouse For Consumer Information.**

If competition is to work effectively for all customers, consumers need to be able to make rational decisions based upon complete information. While there are many entities who might believe that they will do the best job of presenting this information, I believe that it is primarily the responsibility of government to do this. By "government", I specifically refer here to Federal and State regulators. All participants in the market will claim that they educate their customers or potential customers; however, far too often this company-provided "education" is simply marketing. Companies have an understandable bias toward attempting to either retain their current market share or to promote their own services. For this reason, the FCC and state commissioners must take the responsibility for implementing a comprehensive public education program.

If our goal is to inform rather than to merely promote, then I believe that state and federal regulators should take the primary responsibility for providing clear, concise, unbiased and accurate information to consumers through a variety of methods and media. By saying that regulators should take the primary responsibility, I do not mean to imply that there should be no role for others. Indeed, I foresee a large role for education efforts on the part of other entities with an interest in consumer protection issues. For example, I would welcome consumer education efforts on the part of various non-profits, community organizations, religious groups, educational organizations and other governmental agencies. My own office has already begun to provide information and education services to residential customers in Maryland through our local newspapers and through speaking engagements.

Our goal should be to target the broad base of Residential consumers with information about the market for telecommunications services. A major outcome should be minimization of customer confusion about the changes in the telecommunications industry. We should include appropriate targeted messages to low-income consumers, the elderly and disabled, rural customers, and consumers for whom English is a second language. Many methods can be used to reach these consumers: Tollfree Information hotlines staffed by regulatory staff, websites, bill inserts, public service announcements, direct mail and consumer forums.

Of course, a broad-based consumer education effort on the state and national level costs money. It is beyond the scope of my comments to discuss the costs and funding for these programs; however, I think it goes without saying that education creates the potential need for additional funding not only for the FCC but the various State Commissions. The educational campaigns in states undergoing electric restructuring are typically funded through tax revenues or assessments on utilities which are flowed back to customer in their rates or prices.

As a Commission, you currently have before you slamming, cramming and truth-in-billing issues. Consumers have the right to be protected from fraudulent and abusive practices of various providers and I commend your efforts in this regard. The actions you propose to take will likely help prevent some customer confusion and curb some unfair and deceptive trade practices.

I believe that the best way for consumers to be protected from these practices is for them to be educated about how to protect themselves in the first place. For example,

in order to combat cramming or slamming, customers need to be educated about how to carefully review their bills, to be able to determine whether their company has been changed or whether they are being billed for unauthorized charges, to be able to determine whether the charges are regulated or unregulated, to determine the correct company or agency to contact and to determine the proper type of complaint to raise to protect themselves. Each step in this process requires that consumers have access to the appropriate information. Thus, I agree fully with the statements in your Notice of Proposed Rulemaking (NOPR) in the Truth-in-Billing and Billing Format docket<sup>1</sup> that telephone bills currently fail "to provide end-user customers with necessary information in a clear and conspicuous manner, so as to allow the consumer to understand readily the precise nature of charges appearing on these bills" and that "consumers must have adequate information about the services they are receiving, and the alternatives available to them, if they are to reap the benefits of a competitive market." NOPR, p. 2.

I would support federal and state regulations which require the disclosure of specific information. I recommend that at a minimum, regulators should adopt efforts to notify consumers of collection practices, including billing error rights and procedures along the lines of those in the Truth and Lending Act<sup>2</sup> and the billing error provisions of the Telephone Disclosure and Dispute Resolution Act.<sup>3</sup> For example, under those Acts, customers must be notified of the following rights at least annually:

- the right to dispute any charge appearing on their telephone bill;

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<sup>1</sup> In the matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170 (Sept. 17, 1998).

<sup>2</sup> 15 U.S.C §1666 et seq.

<sup>3</sup> 16 C.F.R. part 308.

- the right to request a billing review within 60 days of receiving a bill with an error;
- the right to not be penalized for nonpayment of a disputed item or charge until the review is completed;
- the right to be informed (in writing) of the company's review procedures; and
- the right to a response within 60 days documenting the basis for the decision by the billing entity.

Additionally, efforts should be made to accurately inform consumers of what acts constitute unfair and deceptive trade practices. This information can be disseminated through the approaches I noted previously or by Commission mandates that every telephone company give this information to every new customer and to its existing customers annually. Finally, each Commission should issue alerts about any unauthorized or fraudulent companies attempting to do business in its state. The FCC could likewise issue alerts for companies engaging in wrongdoing on an interstate basis.

I believe that most Commissions also have the ability at present to make the following information available to consumers upon request:

- Lists of licensed/authorized telephone companies for basic local exchange and interexchange service,
- Information on service quality,
- Information about price comparisons, and
- The total number and type of complaints filed against particular companies as well as the resolution of those complaints..

I propose that State and Federal Regulators work together to create an information clearinghouse to collect and share information with each other and with consumers on the following topics:

- Companies providing telecommunications services.
- What services are considered to be telecommunications services
- What services are considered "basic" in each jurisdiction
- What services are deregulated by jurisdiction
- What companies are authorized to provide services in particular states
- How to choose a provider
- What pricing options are available
- How to compare prices among providers
- What does the "obligation to serve" mean to consumers
- What universal service programs are available
- How to spot fraud or deceptive practices
- How to read your bill (i.e., what do all those acronyms mean?)
- Where to go for help for particular problems or complaints
- What information must be given in a complaint
- Whether regulatory action (fines, loss of operating authority) has been taken against a particular company.

I believe this kind of clear, unbiased and accurate information disseminated as widely as possible to consumers will help to create an environment in which all consumers can benefit from the competitive market.

Thank you for inviting me to testify this afternoon. I have enjoyed being here and I will be happy to answer any questions you may have.

## MICHAEL J. TRAVIESO

Michael J. Travieso was appointed Maryland People's Counsel by Governor William Donald Schaefer in August of 1994 and reappointed by Governor Parris N. Glendening in April of 1995. Prior to that time, Mr. Travieso was in the private practice of law for eleven years as a partner in a Baltimore, Maryland law firm where his practice included state and federal regulatory matters and commercial and business litigation. Mr. Travieso has also served as an Assistant Attorney General providing advice to various State regulatory boards and commissions.

Mr. Travieso began his law career as a law clerk to United States District Court Judge James R. Miller, Jr., and also spent four years as a federal prosecutor in the United States Attorney's Office of the District of Maryland.

Mr. Travieso graduated, cum laude, from Washington College in Chestertown, Maryland. He attended graduate school at Tulane University where he pursued a degree in English Literature. He received his law degree in 1975 from the University of Maryland where he graduated with honors and was a member of the Order of the Coif.

Since becoming People's Counsel, Mr. Travieso has litigated cases involving electric, gas, and telephone utilities, including electric utility merger cases and price cap regulation for Bell Atlantic Maryland. He has testified on numerous occasions before the Maryland legislature on utility matters; before the House Judiciary Committee on the anti-trust aspects of electric deregulation; before the Maryland Public Service Commission on gas and electric deregulation issues; and has been featured as a guest speaker on utility issues before such groups as the United States Telephone Association; the AARP and on local Baltimore radio and television stations.

Mr. Travieso is a member of the Executive and Telecommunications Committees of the National Association of State Utility Consumer Advocates (NASUCA). Mr. Travieso also is currently serving as a member of the Consumer Energy Council Research Foundation Utility Convergence Forum. Additionally, he serves on the Maryland Legislative Task Force's Advisory Group on electric restructuring and the Competition Policy Institute Advisory Committee.

## BIOGRAPHY

### JOHN W. STANTON

John W. Stanton is Chairman and Chief Executive Officer of Western Wireless Corp. (NASDAQ:WWCA) and has played an active role in the growth of the wireless communications industry. He co-founded the companies which were combined in 1994 to become Western Wireless Corp., based in Issaquah, Washington. Western Wireless operates cellular systems in 89 rural markets in 17 Western states covering 7.7 million people. The company acquired PCS licenses through its VoiceStream subsidiary, and now operates systems in 10 states covering approximately 14 million people, and is continuing to aggressively develop its network. The company continues to grow at a dramatic rate as a result of its continued commitment to quality and customer service. Western Wireless International operates wireless systems through partnerships in Latvia, Georgia, Iceland and Ghana and is constructing systems in Ireland, Haiti and Croatia.

Stanton was a co-founder of McCaw Cellular Communications, where he served as Chief Operating Officer (1985 - 1988) and Vice Chairman (1988 - 1991) until forming his own companies. Stanton serves as a board member of Advanced Digital Information Corporation, Columbia Sportswear, Pacific Science Center, Hong Kong - based SmarTone Telecommunications; as Chairman of the Cellular Telecommunications Industry Association (CTIA) and as a Trustee of Whitman College. A Seattle area native, Stanton received a BA in political science from Whitman College in Walla, Walla Washington and a MBA from Harvard Business School.

**STATEMENT OF JOHN STANTON  
CHAIRMAN AND CEO OF WESTERN WIRELESS CORPORATION**

My name is John Stanton. I am Chairman and Chief Executive Officer of Western Wireless Corporation, a wireless telecommunication service company that provides cellular telephone service to consumers in rural areas. I also am Chairman of the Cellular Telecommunications Industry Association or CTIA, which is an industry association that represents the interests of Commercial Mobile Radio Service ("CMRS") providers.

First, I would like to thank the Universal Service Joint Board for reaching out to the wireless industry for their thoughts on critical universal service issues, such as consumer education and the affordability of basic telecommunications service. Consumer education is clearly a critical issue that needs to be addressed as we move towards a competitive universal service market.

Briefly, I would like to highlight some of Western Wireless' universal service initiatives aimed at bringing the benefits of competition to consumers located in rural, high-cost areas. Western Wireless is already demonstrating the unique capabilities of wireless carriers to provide "universal service" by serving approximately 50 customers in a remote region of Nevada unserved by the local exchange carrier. These customers receive local dialtone service at a flat-rated \$10.00 per month. The difference between this rate and Western Wireless' costs is recovered through a state rural improvement fund.

To expand its universal service offerings, Western Wireless recently filed petitions in 13 states seeking designation as an Eligible Telecommunications Carrier ("ETC"). As an ETC, Western Wireless intends to provide competitive local telephony service to consumers located in rural, high-cost areas. The public interest benefits of a wireless carrier providing universal service are significant; namely, wireless carriers have the ability to provide high-quality basic and advanced telecommunications services to many consumers more efficiently than wireline carriers. To realize these public interest benefits, Western Wireless is sponsoring a

wireless cost model and is working with federal and state regulators to establish an affordable universal service system that is competitively and technologically neutral. We also want to express our appreciation to the Joint Board for appointing a representative of our company as a member of the Rural Task Force. We look forward to working with other members to establish a competitively neutral universal service system in areas served by rural telephone companies.

Turning to the issue of consumer education, I strongly believe that *three principles* should guide the development of a consumer education program. First, we should *empower the consumer to decide* which carrier best serves individual telecommunications needs and what services are included in a universal service offering, provided that the service meets the basic definitions of universal service. Second, we should *educate consumers on the benefits of competition*. Lastly, we should *eliminate any barriers to a competitive universal service system* that would harm the public. In adopting universal service policies, the Joint Board should first ask whether the policy is in the consumer's interest. By focusing policy initiatives on the consumer, the public interest will be served.

### ***Principle One: Empowering The Consumer***

The consumer, not the regulator, should be the decision maker in a competitive environment. The Joint Board recommended, and the FCC adopted, a list of services that must be provided by an ETC. Beyond these mandated services, the consumer should be empowered to decide who provides the service, how the service is provided, and what additional services are offered. The consumer should decide whether the service is mobile or fixed, whether unlimited local usage is included in the offering, whether the service includes a large or small local calling area, and whether other services and features are included in the offering.

In other words, the Joint Board and the FCC need to work together to ensure that the universal service system is *competitively and technologically neutral*. To make sure consumers get the full range of choices, regulators must take care to avoid inadvertently creating pitfalls for new entrants, particularly wireless carriers. For example, the definitions of which services are supported should be broad enough to enable consumers to make

their own choices about what type of universal service they want and need. There is no need for regulators to define in advance the number of free local calling minutes that must be included in any particular rate plan, or the size of the calling area that is considered "local." Instead, consumers should have the right to choose from different calling plans offered by different carriers -- that is what competition is all about. As long as all carriers get the same amount of support per month, no carrier would have any unfair advantages over others, and consumers' choices will not be distorted by skewed regulations.

***Principle Two: Educating Consumers On The Benefits and Pitfalls of Competition***

A competitive universal service system will present to the consumer the ability to make certain telecommunications decisions. It is therefore important that consumers are fully informed of their rights and telecommunications options. If history is any lesson, and I believe that it should be, the introduction of competition in the long distance market presented the public with a choice of long distance carriers and services, but created much confusion for the general public. To ensure that history is not repeated in the emerging universal service market, it is imperative that consumers are educated about their choices and understand their rights.

For many consumers, the establishment of a competitive universal service system will be the first time they have had a choice of local service providers. As a starting point for educating consumers on universal service offerings, the universal service provider is required to advertise the availability and rates of the services offered as a condition for designation as an Eligible Telecommunications Carrier or ETC. In addition, the Joint Board may want to encourage ETCs to further educate consumers about the comparative benefits of differing services or technologies. For example, CTIA's web site includes information on how to choose a wireless service and how to choose and use a wireless phone, as well as information on driving safety, wireless fraud, and disabilities access.

It will also be important for regulators to inform consumers that they will benefit from the increased competitive choices for local telecommunications service. Indeed, regulators can cite to the positive

experience of wireless subscribers with new competitive entry -- many wireless consumers have already experienced the benefits of lower calling rates, more minutes of use, and higher quality service. The Joint Board and state commissions could sponsor public forums to educate consumers about the new competitive environment and new technologies, highlighting the benefits to consumers. Western Wireless testified at such a recent public event, hosted by the Nebraska state commission, focusing on consumer concerns regarding extended area service. Regulators and consumers also need to recognize the role that competitively neutral universal service policies play in making local competition possible in high cost and rural areas.

Wireless carriers have the ability to offer consumers an attractive universal service offering. And the consumer, not the regulator and not the incumbent carrier, should decide which services are needed and which carrier is the best service provider.

***Principle Three: Elimination of Barriers To A Competitive Universal Service System***

Wireless carriers such as Western Wireless are eager to provide universal service to consumers in high-cost areas. But they will not be able to do so unless the Joint Board, the FCC, and the states eliminate barriers to entry.

The most significant barrier to entry is the differing amounts of support available to different classes of carriers. How can a new entrant hope to compete against an incumbent if the incumbent is getting hundreds of dollars per line in subsidies, while the new entrant can qualify for only a small fraction of that amount?

Regulators must ensure that universal service support is fully *portable* -- that is, that competitive carriers receive the same dollar amount of support as incumbents for each line that they serve. This basic principle should be applied both to *implicit* and *explicit* subsidies. For example, the FCC has stated that rural telephone companies will continue to receive subsidies under the historic system until 2001. We would prefer to see the new forward-looking universal service system implemented sooner. But if

that is not possible, regulators should consider at least distributing universal service support to new competitive entrants based on a forward-looking model. This support would roughly match the *implicit* subsidies that the rural telephone companies receive. This would ensure that all Americans, including consumers in rural areas, have access to the same array of competitive options as those in urban areas.

More broadly, a critical step will be to remove inequities that result from the enormous amount of *implicit subsidies* that currently flow to incumbents, but not to new entrants. These implicit subsidies, hidden in inflated access charges and other quirks in the phone companies' rate structures, represent an enormous amount of money. The FCC and the states must work hard to eliminate these implicit subsidies, as the Telecom Act requires, as rapidly as possible. And until that important, but difficult, process is completed, regulators should try to level the playing field somewhat, by giving new entrants access to some revenue flow corresponding to the implicit subsidies that the incumbents receive.

Even the *explicit* universal service support mechanism needs to be revised to ensure portability of subsidies. Western Wireless filed a petition two weeks ago to remedy the FCC's universal service rules, which impose a delay of up to two years on new entrants' ability to receive explicit support, and distribute funding to new entrants based on line counts that may be two years out of date. The FCC should act immediately to treat new entrants in the same way as incumbent carriers, and let them start receiving universal service funding right away based on up-to-date information about the number of customers they serve.

Similarly, state commissions should not provide radically different amounts of explicit intrastate universal service support funds to incumbents and new entrants. Unfortunately, the Kansas commission did just that. While we have asked the FCC to preempt this aspect of the Kansas universal service policy, we are also working with the Kansas commission to remedy this policy. We are also working closely with other states in this regard.

## ***Conclusion***

Ensuring a competitive marketplace will require an enormous effort from all of us -- regulators in particular. This should not be an insurmountable task, however, as long as we all stay focused on the fundamentals: (1) empowering consumers to make decisions, (2) educating consumers about the benefits of competition, and (3) fixing the universal service system to remove explicit and implicit barriers to competition.

Thank you very much.

**FEDERAL COMMUNICATIONS COMMISSION EN BANC HEARING  
OCTOBER 29, 1998  
THE AFFORDABILITY OF TELECOMMUNICATIONS SERVICES AND  
CONSUMER-EDUCATION ISSUES  
CC Docket No. 96-45**

Remarks of

**William R. Gillis  
Commissioner  
Washington Utilities and Transportation Commission**

I appreciate your kind invitation to join the discussion this afternoon on a topic of substantial importance. My perspective is that of a state regulator in the trenches, challenged with the complex task of implementing the 96 Federal Telecommunications Act. I am a member of the NARUC Communications Committee and have been particularly active in the area of high cost universal service issues. I serve as Vice Chair of the NARUC Ad Hoc Consumer Affairs Committee and chair the Rural Task Force..

My purpose in appearing before you this afternoon is to provide a representative view of state regulators struggling with our appropriate role in helping consumers be effective and knowledgeable participants in a telecommunications industry which offers an expanding array of choices. However, I offer the usual disclaimer that these remarks are my own and are not intended to convey policy positions on behalf of either my colleagues in NARUC or my own commission.

**Informing Consumers on Competition and Universal Service Issues**

Without a doubt, a successful transition from a telecommunications industry formed of regulated monopolies to one relying primarily on competitive market forces has the potential to create tremendous consumer benefits including lower prices, expanded consumer choice, more rapid innovation and improved service quality. However, from the perspective of many consumers there is a trade-off. Along with greater consumer choice come new consumer burdens: Some which are real and some which are simply perceived as new burdens. Some which take the form of unwanted hassle and others which expose consumers to new and unwanted financial risks.

From public hearings and letters received by my commission, I hear repeatedly from customers concerned about marketing phone calls at dinner, services appearing on their bill for which they did not subscribe and simply the complexity of sorting through the diverse array of telecommunications choices. Washington was one of the early states to adopt a policy of promoting telecommunications choice at the local level. From the inception, organized consumer representatives were among the strongest supporters of competitive reforms: In more recent years, I sense the level of support for competitive reforms from consumers has significantly declined. The apparent reason is a growing perception that real choice for

residential customers may be a long ways off and the hassle factor associated with what competitive choice is available—primarily in the long distance market-- erodes the perceived benefit. Disclosing to consumers the complex realities of universal service reform including the need to make historical implicit subsidies explicit to support fair and efficient competitive entry has created additional consumer confusion and a perception that they must pay a "new tax" to receive a benefit that will only come in the future, if at all.

A lesson to be learned from these early experiences is that the primary beneficiaries of competitive reforms--consumers--are not likely to be supporters of necessary reforms unless we do a better job of making competitive policies both understandable and consumer friendly.

### **Recognizing Consumer's Expectations**

Without the support of consumers, the task of transitioning to competitive local telecommunications markets will be difficult indeed. We must put in place policies which minimize the hassle and risk to consumers who make competitive choices and aggressively inform consumers of their rights and responsibilities in the marketplace. We must help consumers understand that competitive telecommunications options take time and develop unevenly but eventually can be delivered to everyone. We must respect consumer's desire that they not be made worse off and hopefully better off as a result of competition.

The last point is the most relevant to the work of the FCC and Joint Board in the development of an appropriate national universal service policy. Many residential and small business consumers, particularly in high cost rural locations fear they will actually be made worse off as a result of competition. This fear is not without grounds and results from experience as deregulation of other industries such as airlines, railroads and postal delivery have left residents and small businesses located in the nations more remote locations with less service and higher prices, while higher volume users particularly those in urban locations gained the benefits of competition. In passing the 96 Federal Telecommunications Act, Congress apparently shared this concern as they required a universal service fund that is predictable and sufficient in size to ensure telecommunications services remain affordable at prices and quality which are comparable between low-cost, high-demand urban markets, and high-cost, sparsely populated rural and insular markets.

With a few notable exceptions, only the largest business customers currently have the opportunity to benefit from competition in the local telecommunications markets. Most economists predict residential and small business customers in high cost locations will be among the last to have an opportunity to choose among alternative local providers. It is my personal view that universal service is inaccurately characterized by some as a subsidy or social welfare program. In the context of competitive restructuring, universal service is more correctly characterized as a mechanism to share the benefits of competition broadly across the nation.

Appropriately sized and administered, a universal service fund enables those with competitive options to be better off without making those lacking competitive options worse off. Both federal and state regulators in developing universal service policies must to the extent possible

recognize and respond to consumer expectations that they not be made worse off as a result of competition. If this expectation is not addressed both in policy substance and the information we provide to the public, it is difficult to visualize broad support for either competitive restructuring or universal service.

**Preparing Consumers for Change**

For some time, state regulators have recognized the growing importance of consumer protection and education. The consumer policy committee is one of the more active policy subgroups of the NARUC Communications Committee. In 1996, NARUC established a special Ad Hoc Committee on Consumer Affairs and will consider establishing this committee as a full standing committee within NARUC at our upcoming annual conference in Orlando.

The NARUC adopted a set of principles promoting consumer awareness and protection at its summer conference in Seattle. These policy principles developed jointly by the Communications Committee and the Ad Hoc Committee on Consumer Affairs are:

- the promotion of consumer education and information is an important part of consumer affairs policies,
- the use of plain, understandable language is key for consumers to make the most of a competitive marketplace,
- protection of consumers from deceptive practices is an integral part of consumer protection, and
- consumers should understand both their rights and their responsibilities when entering into an agreement to purchase telecommunications services.

These principles are further explored then in a white paper which sets forth a draft course of action in developing templates for consumer education packages. The NARUC website now contains some new templates for just this purpose as well, providing policy makers with a ready-made set of material useful for educating consumers about their choices in the long distance market. Consumers need to know what is happening, why, and what their personal choices are.

In addition to these basic principles, NARUC has adopted a resolution advocating that content of customer bills provide accurate information to consumers. In drafting our state universal service rule, The Washington Utilities and Transportation Commission has adopted this basic principle and gone a step further. Our draft rules set forth requirements for accurate full disclosure of carrier information about the proposed state universal service program, and the flow of dollars as it relates to the consumer's bill. Our proposed definition of full disclosure includes informing consumers not only of the amount paid into the fund by consumers but the amount of benefits received.

## **NARUC as a Clearinghouse**

The FCC recently implemented its nationwide 800 number service for taking in real time, consumer complaint inquiries. I applaud this effort, and recommend that we continue to plan to span the media with print, radio, and television advertisements. Information on the world wide web is also very useful, but is limited in reaching out to "real consumers"

As I have indicated issues of consumer protection and education are increasingly taking a high priority within the work of NARUC and most state commissions. State regulators are experimenting with variety of new approaches to develop better linkages with consumers in our individual states. Examples include consumer newsletters, creating consumer focused web pages, holding consumer roundtables, conducting consumer surveys and developing working relationships with grass roots consumer organizations.

The NARUC Ad Hoc Consumer Affairs Committee was formed specifically to support state regulators in developing more effective consumer protection and education programs. The committee provides a forum to share successful methodologies among states and provides a clearinghouse on consumer concerns and issues common among the states. Because states are well positioned close to the consumer, it may be appropriate that we provide an additional role in sharing information learned with our counterparts at the FCC. In establishing its workplan for the next two years, the Ad Hoc Consumer Affairs Committee has identified expanding information flow on consumer issues between states and our federal counterparts as a priority objective. As Vice Chair of the Ad Hoc Committee I would welcome the opportunity to explore further with members of the FCC and the Joint Board how we might best be of service in this regard.

## **Summary**

Without the support of consumers, making the transition from a telecommunications industry formed of regulated monopolies to one relying on competitive markets will be difficult if not impossible. Competition and universal service policies which minimize consumer burdens in making choices and recognize the expectation that consumers not be made worse off as a result of competition are a necessity. A focused effort on consumer education by federal and state regulators not only will aid in the development of appropriate policies, but will provide for consumer confidence and be a building block for the successful transition to competitive local telecommunications markets.

***William Gillis*, Commissioner**

William Gillis was appointed to the WUTC by former Gov. Mike Lowry in October 1994. Gillis serves as a member of NARUC's Communications Committee and is vice chair of the Ad Hoc Committee on Consumer Affairs. Gillis chairs the Rural Telecommunications Task Force advising the Federal-State Joint Board on Universal Service on public policy issues that would maintain affordable telephone service in rural areas. Gillis is a co-chair of a Western Conference of Public Service Commissioners working group in charge of developing guidelines for states to ensure electric customers are accurately informed of alternative power-supply choices. An economist, Gillis served as president of a private economic development and transportation planning firm in Eastern Washington. He also served as the director of the Center for Rural Pennsylvania and was an associate professor of Agricultural Economics at Penn State University.

WHITE PAPER ON  
"NO SURPRISES PACKAGE"  
REGARDING CUSTOMER INFORMATION ABOUT TELECOMMUNICATIONS  
SERVICES

Adopted by the National Association of Regulatory Utility Commissioners  
July, 1998, Seattle Washington

**BACKGROUND**

Increased competition in the telecommunications market has changed the way in which customers secure telephone service, and it has changed the way in which customers are treated within the industry. As more and more companies offer more and more choices to consumers, two themes emerge as critical pieces of an effective telecommunications market - - the need for consumer information and the need for consumer protection.

The "No Surprises Package" work group, comprised of members of the NARUC Ad Hoc Committee on Consumer Affairs, the NARUC Staff Subcommittee on Consumer Affairs, the NARUC Communications Committee Staff, and the NARUC Communications Committee Consumer Issues Policy Subgroup Staff, offers the following proposals for states to consider in providing appropriate consumer protections and consumer education about telephone service.

**GUIDING PRINCIPLES**

Underlying the information and suggestions presented within this paper are several guiding principles that staff referred to as the foundation for its findings. These guiding principles include:

- The promotion of consumer education and information is an important part of a state commission's consumer affairs policies.
- The use of plain, understandable language is key for consumers to make the most of a competitive marketplace.
- Protection of customers from deceptive practices is an integral part of consumer protection.
- Consumers should understand both their rights and their responsibilities when entering into an agreement to purchase telephone services.

**ISSUES**

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## **CUSTOMER RIGHTS AND RESPONSIBILITIES**

### **Problem Statement:**

With more and more choices for consumers in the telephone industry, customers are often confused about those choices. There is a mass of some information as companies inundate the advertising medium with claims about price and service. Yet there is an absence of information about a customer's rights and responsibilities once they accept services. Part of a "No Surprises" package must include the kind of information that is key for consumers to make truly informed choices.

### **Proposed Solution:**

In order for consumers to understand the choices they make, they must also understand the policies of the company they choose for service. At the time they sign up for service, customers should be provided the following information:

- The company's responsibility to provide service, if one exists (i.e., for local monopoly service).
- How to order service from the company, and what that service will include.
- How billing will be made; and the company's expectation about the customer's responsibility to pay for service. This would include a clear statement about the kinds of services that may be billed (i.e., service connection fees, deposits, charges for service); and how undercharges and refunds are made.
- How company charges will appear on the bill and what rights, if any, a customer has to block billing by companies other than the LEC.
- Information about inside wire maintenance agreements, if applicable, and the purchase and/or

lease of equipment.

- Information about operator services.
- Information about choosing a long distance carrier.
- How to avoid disconnection of service and, in the event of disconnection, how to restore service.
- How to resolve problems or disputes with the company; and the customer's choice to contact the state's commission in the event the dispute cannot be resolved with the company.

## **CLARITY ON THE CUSTOMER'S BILL**

### **Problem Statement:**

An important part of a "No Surprises" telecommunications policy must include clear billing that customers can easily read and understand. In many cases, this is not true of current telecommunications company bills, particularly those that come from the local exchange company (LEC).

The confusion around bill statements stems from three major concerns:

- 1) Customers' bills include charges from a variety of companies. A customer's bill may contain charges from the LEC, an interexchange carrier, a billing aggregator and/or other parties. While the LEC generally does a good job of providing a contact number for the customer for questions, concerns or disputes, this is not always true of other billing parties. Billing aggregators make it virtually impossible to tell, from the bill, who the company is and how to get in contact with them. The customer believes the bill comes from the LEC, so the LEC is the contact for all problems. Customers with billing problems become frustrated when the LEC is not able to assist them because the disputed charges are for another company and the customer is not able to figure out who the other company is or how to contact them.
- 2) Customer bills can include charges for a broad range of services or products. It may include charges for local telephone service, for toll calls, calling cards, PIC changes, voice mail, caller ID, travel club memberships, and on and on. Customers become very confused when they are billed for services or products they do not recognize.
- 3) Descriptions of services or products included in the billing are not clear. In many cases, the line item description printed on the bill does not allow the customer to clearly understand what the charge is for. For example, many customers are currently receiving pass-through charges from companies for recovery of universal service charges. Customers do not

understand, nor do their bills explain, what these charges do.

These three problems, taken together, cause considerable confusion for customers and, in many ways, accommodate the practice of cramming. Because customers cannot clearly read and understand their bills, questionable companies can get away with adding unauthorized charges. In many cases, customers will pay the charges only because they do not realize these are not proper charges.

**Proposed Solution:**

In order to reduce confusion and frustration about customer bills, those bills must be clear and include the following elements:

- The name and toll-free telephone number of the LEC.
- The date of the billing; the date payment is due; the date the bill is considered delinquent; and late payment fees, if applicable.
- An explanation of how partial payments are allocated; and which services are/are not in jeopardy by making a partial payment.
- Clear descriptions of all billed charges, including the rates at which charges are calculated, whether those charges are for products, services, taxes or other charges (i.e., universal service charges).
- The name of the company requesting billing, if that company is not the LEC; and a toll-free telephone number where the customer may call with billing questions.
- An explanation of the dispute resolution process, including the toll-free telephone number of the company and the jurisdictional state commission.

In addition, the LEC should provide all new customers, through the use of a welcome packet, and all existing customers on an annual basis, through bill insert or special mailing, with the following information:

- The name and toll-free telephone number of the LEC.
- An explanation of how billing arrangements work between the LEC and other companies; examples of the types of products or services the LEC may bill on behalf of other companies; and how the customer can contact those other companies (i.e., through the toll-free number provided on the bill) with questions or complaints.
- An explanation of taxes and other similar charges on customer bills. These charges would include local, state, and/or federal taxes; funding for programs such as low-income assistance, telecommunications relay services for the hearing impaired, emergency services; federal line subscriber and/or universal service charges; and any other charges that regularly appear on the customer's bill.

Additionally, the LEC needs to take more responsibility for the charges it allows on customer bills. While it is true the LEC is not directly responsible for originating all of the charges on the customer bills, the LEC does enter into billing agreements with those companies who originate the charges, and the LEC receives payment from those companies. That payment should include funding a policy where the LEC is able to give every customer a name and toll-free number for any charge on his/her bill originating from another company; and where the LEC freely recourses charges which the customer claims are unauthorized.

## **AREA CODES AND LOCAL CALLING CAPABILITY**

### **Problem Statement:**

As new area codes are implemented, consumers become confused by how the new codes affect their dialing patterns. New subscribers need to be made aware that these changes can occur, and when changes are made, consumer information needs to be plentiful and understandable. Area code changes often include the need to dial 10-digits for local calls, making it difficult for consumers to know the difference between a local and a toll call. Consumers placing calls are not able to tell when they will be charged for a long distance call, and when the call is part of their flat-rated local service.

### **Proposed Solution:**

Consumers should be provided clear and easy to understand tables in their phone books showing local calling capabilities by prefix, prefixes by exchange, and an easy to read map depicting the physical boundaries of the affected area codes and exchanges. This information should also be provided to new customers at the time they order service, and to existing customers when area codes change.

Dialing instructions and a description of the types of notification consumers will hear when they place their calls should also be provided both in the phone book, at the point of sale, and when area codes change. These instructions should include when a customer must dial 1+, when toll charges apply, and what the various busy, fast-busy, and other tones played to callers mean. The information provided should also set forth notification of the application of rates on local calls and calls between area codes to clarify the information and provide consumers with the information necessary to enable economical choices in calling patterns and providers.

## **- NOTIFICATIONS**

### **Terms**

Two categories of purchases are addressed for notification purposes. Notifications of changes in terms, rates or conditions of service are addressed separately. The two categories are:

- 1) purchases made "within placing a call" purchases, referred to herein as point of purchase telecommunications services and
- 2) purchases made through subscription to a carrier or signing up for a specific service product, referred to herein as pre-ordered telecommunications services.

Examples of point-of-purchase services which can often lead to unexpected charges are operator handled and calling card calls, Information Services calls (e.g. 900/976, 800 to 900, etc.), per-call billed enhanced features, directory assistance (DA), DA call completions, or toll calls dialed 1-0-XXX or 1-800. Examples of pre-ordered services are custom calling services, specific rate plans, Primary Interexchange Carrier (PIC) changes, or voice mail.

### **Problem Statement for Point-of-Purchase Services**

Customers often incur costs when placing phone calls that are unexpected and not determinable in advance of making the call without some clear notification.

Often customers are confused by the billings for these unexpected charges. The confusion generally comes from unclear bill detail information that obfuscates the nature or origins of the charges or the location where they were incurred, or that identifies the service, charges or carrier differently from the information given in placing the call.

**Proposed Solution**

The following should be generally accepted standards for charging point of purchase telecommunications services:

- Provide accurate and pertinent rate information for the call being placed
- Provide accurate and pertinent bill detail for the call placed
- Identify the billing instrument for the call
- Clearly state the common, legal name of the provider and the billing entity and d/b/a name of the provider if pertinent to the billing.
- Use common, understandable and consistent language and terms in oral, electronic and written notifications, promotions, advertisements and bills.

**Specific example:**

Customers need to be provided information prior to making these calls alerting them to the charges that will be incurred and how they will be billed. They also need to be provided with understandable information on how to determine the level of charges for the call. This information would best be provided in the form of a preamble that the customer hears prior to connecting the call.

**Problem Statement for Pre-Ordered Services**

Customers often are confused or misled regarding the nature of the contract between them and their current or prospective telecommunications service provider in general or with regard to a specific service. Further customers generally do not know how or where to get this information, or how to properly terminate the contract relationship. Further, customers are often requested by providers to make a purchase decision over the phone in the absence of written, verifiable and complete information on rates, terms and conditions for the contract.

Changes to the Primary Interexchange Carrier for a line, and now local carrier, are often disguised as checks in the mail or prize contests or give-aways. Further, the PIC change form has no instructions to the customer about rights and responsibilities in the change process. An example would be the need to notify the current carrier of the change to end billing for services with monthly fees.

This notification problem statement may, in part, address slamming and cramming issues, but it is not intended to comprehensively address these problems.

### **Proposed Solution**

The following should be generally accepted standards for taking orders for pre-ordered telecommunications services:

- Provide accurate and pertinent rates, terms and conditions for the service(s) being ordered and where and how to obtain this information in written form
- Provide accurate and pertinent bill detail for the service ordered
- Identify the means of billing for the service
- **Clearly state the common, legal name of the provider and the billing entity and d/b/a name of the provider if pertinent to the billing.**
- Use common, understandable and consistent language and terms in oral, electronic and written notifications, promotions, advertisements and bills
- Have third party verification for all carrier changes done over the phone
- Standardize the form for PIC change
- Only allow ties of PIC change forms with sales or promotions of the providers telecommunications services or equipment and, then, only if the PIC change form remains primary.

### **Problem Statement for Changes in Rates, Terms and Conditions and Surcharges**

Customers subscribing to a carrier's services, or simply using them as the "provider of last resort," are often caught unawares about changes to the rates, terms and conditions of the services. As stated above, often the customer does not know the nature of the contract for service to begin with and is confused that the rates or terms have changed, often with insufficient, unclear or no notice. When presented with the bill or notice, the customers may not know what their options are, if any, to avoid the higher rates, a surcharge or any unacceptable terms or conditions.

In recent years customers have been faced with various surcharges on their bills to recoup new financial obligations of the carrier. In many cases the recovery mechanism and level of the charge is not approved or authorized by regulatory bodies; they are designed by the carrier. Whether government authorized or carrier imposed, the customer needs an explanation of any surcharges when they are first applied or changed.

### **Proposed Solution**

The following steps are intended to bring telecommunications providers into conformance with other service industries, and pave the way for competitive markets:

- A plain language notice should precede, by 30 days, any change in rates, terms or conditions of a carrier's offering or the application of a surcharge to those rates.
- A plain language notification should accompany the first billing where the change in rates, terms or conditions or surcharge have an effect on customers' bills.
- Both the notice and the bill notification should have reminder language regarding the nature of the contract for the service. (For example the notice could announce that an introductory rate period has lapsed and the new rates are just one of many optional plans offered, or that the general contract or tariff for service allows the carrier to pass through certain new costs as a surcharge.)

## **CHOICE OF PROVIDERS**

### **Problem Statement:**

As competition increases, consumers are offered more and more choices, both in terms of the provider they may choose, and in terms of the services they may select. However, many consumers are simply not aware of the choices they can make, and many are confused when they try to make choices.

Additionally, once a choice is made, it is not always absolute. Slamming has become one of the major problems in the telecommunications industry, especially in the long distance market. Increasing competition at the local level may well move slamming to local service providers as well. Most customers are not aware of the potential of slamming until it has happened to them; thus, they are not in a position to protect themselves before it happens.

### **Proposed Solution:**

There should be information in the phone book and at the point of sale explaining the choices available to consumers in terms of the various providers for local exchange service, long distance service, features, and unregulated services, including Internet service providers and voice mail service. The information should include the references to information pages in the phone book or yellow pages where all of the providers are listed for contact.

Information about slamming should also be available, providing consumers with information about their rights when switching service providers; and providing information about how consumers can protect themselves before slamming occurs.

To come: testimony from Joel Lubin, AT&T

*BIOGRAPHY*

**JOEL E. LUBIN**

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**Joel E. Lubin is Regulatory Vice President in the Law and Public Policy Organization at AT&T. He is responsible for developing public policy at the Federal and State levels. In particular, he formulates regulatory policies associated with access issues, universal service, local exchange competition and LEC regulation.**

**Prior to his present assignment, Joel held various positions in Federal Regulatory, Marketing, Service Cost and Rates, Long Lines and Bell Telephone Laboratories.**

**Joel received a BA degree in Mathematics from Wilkes College in 1969, an MS in Operations Research from Columbia University in 1972, and an MBA from Fordham University in 1976.**

DAVID J. GILLES

David J. Gilles is an Assistant Attorney General in the Wisconsin Department of Justice Office of Consumer Protection. He graduated from the University of Wisconsin Law School in 1974.

Dave has prosecuted deceptive practice cases, and participated in multi-state enforcement actions. During 1993 and 1994 Dave coordinated the National Association of Attorneys General, Consumer Protection Committee, Telecommunications Subcommittee, which was chaired by Wisconsin Attorney General James Doyle. He continues to actively participate in subcommittee efforts to deal with consumer protection concerns regarding telecommunications issues.

Dave is a co-author of "Consumer Protection Against Slamming: Disconnecting Fraudulent and Deceptive Practices" CommLaw Conspectus Vol. 4, 1996.

###

## Consumer Education Efforts

David J. Gilles  
Wisconsin Department of Justice  
October 26, 1998

I am pleased to be here today to discuss consumer education issues in the telecommunications marketplace. As an Assistant Attorney General in the Wisconsin Department of Justice I have been responsible for prosecuting consumer fraud enforcement actions and recently have been involved with civil enforcement actions against companies engaged in "slamming" and "cramming."

I have also worked with my counterparts in other states through the National Association of Attorneys General to advocate for legislative and regulatory measures that afford more protections for consumers against abusive and unfair practices increasingly prevalent in the sale of telecommunications services.

There are two points I would like to address related to consumer education issues: First, I will describe consumer efforts in Wisconsin. Second, I will provide some observations regarding the limits of these efforts in curbing fraudulent and deceptive practices.

Consumer complaints about telecommunications services have been on the increase over recent years. In August, 1996, Wisconsin Attorney General Doyle petitioned the Public Service Commission to take steps to ensure that consumer had access to clear, accurate and useful information about new telecommunications services. A direct result of the petition was the formulation of a comprehensive public information campaign, announced in March 1998, which included the following:

- Radio and television public service announcements;
- Buyers' Guide and brochures about telecommunications services;
- Distribution through libraries and community service organizations;
- On-line access to information.

The object of the Buyers' Guide and related materials is to provide a source of competitively neutral, accurate and useful information about telecommunications services. Professional marketing experts were consulted and preliminary drafts were reviewed by industry and consumer advocates. In the last six months, over 50,000 have been distributed.

In addition to educating consumers about changes in the telecommunications marketplace and how to avoid fraud, the Wisconsin Public Service Commission in cooperation with Ameritech is testing an individualized consumer education approach for the subscriber who is faced with service disconnection for non payment. On a limited, trial basis, Ameritech customer service representatives are providing specific, detailed information such as the availability of Life line rates and other measures intended to help subscribers in jeopardy of losing local phone service. Preliminary reports are that these targeted efforts have demonstrated some success in lowering service disconnections.

In the second part of these remarks, I would like to report that consumer complaints about telecommunications services have stopped as a result of these consumer education efforts, but they have not. This year the Attorney General's office filed two civil actions against long distance sellers and another action against a billing aggregator for deceptive marketing practices. One action has been resolved with the entry of an injunction, restitution and payment of \$50,000 in forfeitures. The other cases remain pending, as do active investigations regarding a number of other companies.

There are a number of factors which will continue to create a marketplace which attracts providers seeking to profit from deception instead of provision of a reliable service such as the following;

- Many consumers - - particularly those targeted by unscrupulous sellers - - still believe that phone services are closely regulated by government agencies
- There is a real coercive effect of including charges with a bill for local phone service - - direct and implicit threat of disconnection of essential phone service;
- Consumers believe that computer generated billings are infallible and lack an ability to independently verify charges
  - residential phones do not generate call detail information;
  - bills provide cryptic and, in certain cases, misleading information about charges;

What must be done to stop these abusive practices, ensure that consumers enjoy the benefits of a competitive marketplace and provide a firm basis for the growth and development of a competitive marketplace?

First, long established principles of fair competition and consumer protection should govern the development of competition in telecommunications services. What is needed is not so much a new set of rules for telecommunications services, but the application of long standing principles consumer protection law which prohibit practices such as deceptive telemarketing claims, negative enrollment plans, collecting for unordered services.

Second, cooperative efforts between state and federal enforcement authorities must be supported and strengthened.

Third, consumer education efforts by government agencies and industry must continue to inform the public of the changes in the telecommunications market place.

Thank you very much.

FCC - State Partnership in Consumer Protection and Enforcement

Talking Points

Dorothy Attwood  
Chief of Enforcement Division  
Common Carrier Bureau  
Federal Communications Commission

- I. Cultivate the shared principle and goal of consumer protection.
    - A. Exploit the common purpose, avoid jurisdictional divides.
      - For example, FCC opinion letter that state consumer protection laws can be consistent with Federal anti-slamming rules (see attachment).
      - The more cops on the beat the better.
    - B. Coordination of state and federal enforcement actions against common problem carriers.
      - Early communication of emerging fraudulent practices.
      - Improving and coordinating consumer alerts.
      - Consolidating shared resources and data.
    - C. Proactive Joint Consumer Protection
      - Truth in Billing rulemaking and state participation
      - Joint consumer education and literature
      - web links
  - II. Swift and strong enforcement of universal service obligations.
-

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

IN REPLY REFER TO:  
Lawrence E. Strickling

August 12, 1998

DA 98-1383

David J. Gilles, Esq.  
Assistant Attorney General  
State of Wisconsin  
Office of Consumer Protection  
123 West Washington Avenue  
P.O. Box 7857  
Madison, WI 53707-7857

RE: *State of Wisconsin v. Minimum Rate Pricing, Inc. and Thomas N. Sulzarno*, Case No. 98CV1228.

Dear Mr. Gilles:

This is in response to your May 13, 1998 letter requesting an informal staff opinion regarding the preemptive effect of the provisions of the Communications Act (Act)<sup>1</sup> and related federal regulations on the State of Wisconsin's above-captioned suit against Minimum Rate Pricing (MRP). The State alleges that MRP has used deceptive and misleading oral representations to induce prospective customers to agree to change presubscribed long distance providers. The complaint charges that the defendants have violated various state consumer protection statutes and regulations in the course of telemarketing sales efforts directed at Wisconsin residents. We interpret your letter as seeking an informal staff ruling regarding only the preemptive effect of the Commission's regulations and Section 258 of the Act<sup>2</sup> on the state laws at issue in your proceeding. For the reasons discussed below, and subject to the limitations noted, we conclude that the Act and the Commission's rules do not appear to have any preemptive effect on these state statutes.

**Background**

The Commission has rules in place to prevent unauthorized changes in primary interexchange carriers (PICs), a practice commonly known as "slamming." Commission rules and orders require, *inter alia*, that interexchange carriers (IXCs) verify changes of subscribers' long distance service carriers. IXCs must either obtain a signed letter of agency (LOA) or, if using telemarketing, undertake one of four telemarketing verification procedures before submitting PIC-

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<sup>1</sup> 47 U.S.C. § 151, *et seq.*

<sup>2</sup> 47 U.S.C. § 258.

charge requests to local exchange carriers (LECs) on behalf of consumers.<sup>3</sup> The telemarketing verification options are: (1) obtaining an LOA from the subscriber; (2) receiving confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming change orders electronically; (3) using an independent third party to verify the subscriber's order; or (4) mailing an information package, also known as the "welcome package," that includes a postage-paid postcard which the subscriber can use to deny, cancel, or confirm a service order, and waiting 14 days after mailing the packet before submitting the PIC change order.<sup>4</sup>

In July 1997, the Commission proposed rules and sought comment on the implementation of Section 258, which was added to the Act as part of the Telecommunications Act of 1996.<sup>5</sup> Section 258 makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."<sup>6</sup> The section further provides that a telecommunications carrier that violates the Commission's verification procedures and that collects charges for telephone service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation.<sup>7</sup> The Commission is currently considering the adoption of new rules in response to the comments received.

The Commission thus has taken substantial steps to protect consumers and legitimate competition from slamming by regulating carriers' PIC change practices. These actions, however, have not been intended to displace complementary state efforts. In fact, as a general proposition, the Commission welcomes state efforts to prevent slamming.<sup>8</sup> In general, the Commission will make a formal determination about whether specific state laws are preempted only after the development of an adequate record that clearly describes the specific state law to be preempted and precisely how that state law conflicts with federal law or obstructs federal objectives.<sup>9</sup>

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<sup>3</sup> See 47 C.F.R. §§ 64.1100, 64.1150.

<sup>4</sup> See 47 C.F.R. § 64.1100.

<sup>5</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10,674 (1997) (FNPRM).

<sup>6</sup> 47 U.S.C. § 258(a).

<sup>7</sup> 47 U.S.C. § 258(b).

<sup>8</sup> See *Policies and Rules Concerning Unauthorized Changes of Consumer's Long Distance Carriers*, 10 FCC Rcd 9560, 9583 (1995) (*LOA Order*) (declining to preempt state laws regarding slamming because state action appeared to be consistent with that of the Commission).

<sup>9</sup> See, e.g., *id.* (stating that specific preemption questions would be determined on a case-by-case basis since state action regarding slamming appeared to be consistent with that of the Commission); *Motion for Declaratory Ruling Concerning Preemption of Alaska Call Routing and Interexchange Certification Regulations as Applied to Cellular Carriers*, Memorandum Opinion and Order, 12 FCC Rcd 13987, 13991 (1997); Letter from Mary Beth Richards, Deputy Chief, Common Carrier Bureau, to Elliot Burg, Assistant

Because you have requested an informal staff opinion regarding federal preemption, however, we next consider the Wisconsin state laws at issue in your complaint against MRP.

### The Complaint

The State filed its complaint in Dane County Circuit Court, State of Wisconsin. In the complaint, dated May 13, 1998, and attached to your letter to the Commission, the state alleges that MRP has utilized untrue, deceptive, or misleading oral telemarketing in order to induce Wisconsin consumers to agree to subscribe to MRP's long distance service. The first claim for relief in the complaint alleges that MRP's sales statements and practices are in violation of Wisconsin's Telecommunications Sales Law.<sup>10</sup> The second claim for relief in the complaint alleges that MRP's telemarketing sales program is in violation of Wisconsin's Home Solicitation Selling Law.<sup>11</sup> The third claim for relief in the complaint alleges that MRP's failure to obtain affirmative orders for telecommunications services before billing for such services is in violation of Wisconsin's Telecommunications Sales Law.<sup>12</sup>

### Analysis

State law may be preempted by Congress through the proper exercise of its legislative powers, or by a federal agency acting pursuant to its congressionally delegated authority.<sup>13</sup> Preemption may occur where state law conflicts with federal law or obstructs federal objectives, or where compliance with both federal and state law is physically impossible.<sup>14</sup> Our interpretation of the Commission's regulations leads us to conclude that the state laws at issue in Wisconsin's complaint against MRP do not appear to conflict with the Commission's rules. The Commission's rules deter slamming by imposing specific verification requirements on interexchange carriers who submit orders to change consumers' long distance carriers. It appears that the Wisconsin laws at issue seek to deter slamming and other harmful actions through the regulation of marketing rather than through verification procedures. Therefore, based upon the information that you have provided, we find nothing in the language of any of the state law provisions named in the complaint that imposes specific verification requirements on carriers or otherwise contradicts Commission regulations.

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Attorney General, State of Vermont, 11 FCC Rcd 1899 (1995); cf. *California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California Pursuant to Section 253(d) of the Communications Act of 1934*, 12 FCC Rcd. 14191 (1997) (Commission denied petition for preemption under Section 253 because petitioner failed to present sufficient record demonstrating barrier to entry); *TCI Cablevision of Oakland County, Inc.*, 9 Comm. Reg. (P&F) 730 (1997) (petitioner seeking preemption under Section 253 bears burden of proof to demonstrate that it is entitled to such relief).

<sup>10</sup> Wis. Stat. § 100.207 (1993).

<sup>11</sup> Wis. Admin. Code § ATCP 127 *et seq.* (1993).

<sup>12</sup> Wis. Stat. § 100.207 (1993).

<sup>13</sup> See *Louisiana PSC v. FCC*, 476 U.S. 355, 368-69 (1986).

<sup>14</sup> *Id.*

The first and third claims for relief in the complaint are based on Wisconsin's Telecommunications Sales Law. In the first claim for relief, Wisconsin alleges that MRP's sales statements and practices are in violation of Sections 100.207(2), 100.207(3)(a), and 100.207(4)(b) of Wisconsin's Telecommunications Sales Law. In the third claim for relief, Wisconsin alleges that MRP's failure to obtain affirmative orders for telecommunications services before billing for such services is in violation of Section 100.207(3)(a) of Wisconsin's Telecommunications Sales Law.

Wisconsin's Telecommunications Sales Law prohibits unfair and deceptive practices generally with regard to the provision of telecommunications service.<sup>15</sup> Section 100.207(2) of the Wisconsin Telecommunications Sales Law is entitled "Advertising and Sales Representations" and states in pertinent part: "[a] person may not make . . . any statement or representation with regard to the provision of telecommunications service . . . which is false, misleading or deceptive, or which omits to state material information with respect to the provision of telecommunications service that is necessary to make the statement not false, misleading, or deceptive."<sup>16</sup> Section 100.207(3)(a) is entitled "Sales Practices" and states in pertinent part: "[a] person may not bill a customer for any telecommunications service that the customer did not affirmatively order unless that service is required to be provided by law, the Federal Communications Commission or the public service commission."<sup>17</sup> Section 100.207(4)(b) is entitled "Collection Practices" and states in pertinent part: "[a] person may not unreasonably refuse to provide a detailed listing of the charges for telecommunications service upon request of a customer."<sup>18</sup> Because these provisions of the Wisconsin law regulate marketing practices rather than impose verification requirements, compliance with both state and federal law is not impossible and there is no basis for federal preemption of the Wisconsin Telecommunications Sales Law.

The Wisconsin Home Solicitation Selling Law, specifically Sections ATCP 127.02(1), ATCP 127.03(2)(b), and ATCP 127.03(3), is the basis for the second claim for relief in the complaint. Wisconsin's Home Solicitation Selling Law regulates generally the manner in which goods or services are sold at the residence or place of business of the buyer.<sup>19</sup> Section ATCP 127.02(1) states in pertinent part: "[i]n a home solicitation sale every seller shall, at the time of initial contact or communication with the buyer, clearly and expressly disclose: the seller's individual name, the name of the business firm or organization he or she represents, and the identity or kind of goods or services he or she offers to sell."<sup>20</sup> Section ATCP 127.03(2)(b) states in pertinent part: "[n]o seller engaged in making a home solicitation sale shall misrepresent . .

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<sup>15</sup> Wis. Stat. § 100.207 (1993).

<sup>16</sup> *Id.* at § 100.207(2).

<sup>17</sup> *Id.* at § 100.207(3)(a).

<sup>18</sup> *Id.* at § 100.207(4)(b).

<sup>19</sup> Wis. Admin. Code § ATCP (Agriculture, Trade, and Consumer Protection) 127 *et seq.* (1993).

<sup>20</sup> *Id.* at § ATCP 127.02(1).

[t]he savings which will be accorded or made available to the buyer."<sup>21</sup> Section ATCP 127.03(3) states in pertinent part: "[n]o seller engaged in making a home solicitation sale shall use any false, deceptive or misleading representations to induce a sale, or use any plan . . . which misrepresents the true status or mission of the person making the call . . ."<sup>22</sup> The above-mentioned provisions place restrictions on the manner in which home solicitations are conducted, and do not appear to impose verification requirements, which, under Section 258, are within the authority of the Commission to promulgate. Because the state law provisions do not conflict with federal law, and compliance with both federal and state law is not impossible, preemption of the Wisconsin Home Solicitation Selling Law would not appear to be warranted.

Furthermore, the Wisconsin statutes at issue do not obstruct the Commission's objectives. The State has alleged that, due to the defendants' oral statements and policies, the defendants have misled customers into switching their long distance carriers. As described above, the Commission's rules prohibit switching consumers' long distance carriers without proper authorization. Both state and federal law in this case have the effect of preventing slamming and, while utilizing different means to do so, are not incompatible. Therefore, these state statutes appear to promote rather than frustrate Commission objectives.

Preemption may also occur when Congress, in enacting a federal statute, expresses a clear intent to preempt state law.<sup>23</sup> Section 258 of the Act states that "[n]o telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."<sup>24</sup> Section 258, however, does not express intent to preempt all state laws with regard to slamming. Section 258 states merely that, "[n]othing in this section shall preclude any State Commission from enforcing [the Commission's verification] procedures with respect to intrastate services,"<sup>25</sup> and does not, by its terms, appear to address the efforts of states to regulate the marketing of intrastate services. We conclude that the language of Section 258 does not preempt state efforts to prevent unfair and deceptive marketing practices that also have the effect of preventing or deterring slamming.

## Conclusion

In sum, the staff's informal view is that the Commission's slamming rules do not appear to conflict with these Wisconsin laws that are designed to protect consumers from potentially deceptive practices relating to the marketing of telecommunications services, nor does Section 258 itself express an intent to preempt such laws. Accordingly, based on the information provided, we see no apparent justification for preemption of the state laws forming the basis of Wisconsin's suit against MRP.

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<sup>21</sup> *Id.* at ATCP 127.03(2)(b).

<sup>22</sup> *Id.* at ATCP 127.03(3).

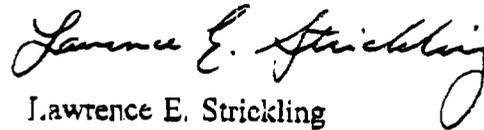
<sup>23</sup> *Louisiana PSC v. FCC*, 476 U.S. 355, 368-69 (1986).

<sup>24</sup> 47 U.S.C. § 258(a).

<sup>25</sup> 47 U.S.C. § 258(a).

I hope this information is helpful and thank you for your interest in this matter. Please let us know if we can be of further assistance.

Sincerely,



Lawrence E. Strickling  
Deputy Chief  
Common Carrier Bureau

## **DOROTHY TYNE ATTWOOD**

Dorothy Tyne Attwood is Chief of the Enforcement Division. Since joining the Commission in 1996, Attwood has served in the Policy and Program Planning Division of the Bureau, on a detail from the Office of General Counsel, where she was involved in rulemakings implementing the 1996 Act. Prior to joining the Commission, Attwood was a partner with the Philadelphia-based law firm of Cozen and O'Connor, specializing in commercial litigation. She graduated Magna Cum Laude from the University of Pennsylvania Law School in 1987, where she was named Order of the Coif, and also received an M.S. from the Wharton School. She received her undergraduate degree from Brown University in 1981.

**SAMPLE QUESTIONS**  
**FOR EN BANC HEARING ON UNIVERSAL SERVICE/CONSUMER ISSUES**  
**October 29, 1998**

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**I. Affordability**

1. Are telephone rates affordable today? If not, at what point would they be considered affordable (i.e., how do you measure affordability)? If they are affordable, what is the basis for that determination?

2. The Joint Board found that rates today are affordable. What can the Commission and the states do to ensure that rates for telephone service remain affordable? Are there certain instances or circumstances where rates are not affordable? How do we measure affordability?

3. Have carriers helped make rates affordable (e.g., by passing through to consumers cost reductions, such as access charge reductions)?

4. Have the Commission and the states been successful in addressing instances of low or declining subscribership levels? What could they do differently or in addition to current efforts to address declining subscribership?

5. Has the Commission's expanded Lifeline program made telecommunications more affordable for low-income consumers? Is there widespread knowledge about state and federal programs for low-income consumers?

6. Are there other non-rate factors (besides local calling area size, income levels, cost of living, and population density) that should be evaluated to determine rate affordability?

7. Has the expansion of universal service support (e.g., to schools and libraries and rural health care providers) affected the affordability of rates for consumers?

8. How strong is the link between rates and subscribership levels? What other factors may affect subscribership?

9. What is the impact on consumers of the new surcharges (e.g., universal service surcharges, PICCs) on bills? Do they affect the affordability of telephone service?

10. What steps can federal and state regulators take to monitor the affordability of telephone service?

**II. Consumer Education**

1. Are federal and state regulators adequately informing consumers of the issues surrounding the new competitive marketplace?

2. What have been the main sources of confusion for consumers with regard to the new competitive marketplace, specifically with regard to universal service?
3. Are there policies that the Joint Board should consider recommending that encourage better communication between regulators and consumers regarding the new universal service support mechanisms?
4. Are low-income consumers sufficiently informed about the federal low-income telephone programs (i.e., Lifeline and Link-up)? What should be done to better inform them?
5. Are carriers responding sufficiently to consumer inquiries regarding universal service charges on telephone bills? If not, what could they do better respond to consumers?
6. Are regulators responding sufficiently to consumer inquiries about universal service charges on bills and other issues related to universal service?
7. Would it benefit regulators if there were a single contact point where they could obtain information on what other states are doing to handle or respond to certain issues or problems (e.g., a clearinghouse of information)? (Could NARUC handle this function?) How can regulators best learn and benefit from the experiences of other states and federal regulators? Should such a single contact point also be accessible to consumers?
8. What steps should federal and state regulators take to monitor the extent to which consumers may be confused about their telephone bills, particularly regarding charges that recover universal service contributions?
9. What questions about telephone service do consumers most need answered?

October 27, 1998

**UNIVERSAL SERVICE  
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