Chapter 8[1]

From Telephones to Telecommunications - The History of Telephone Regulation in the District

I. Introduction

Although the economy of the United States is primarily a competitive, private enterprise system, there exists a class of companies where regulation, rather than the marketplace, is used to protect against unreasonable or discriminatory rates and poor service. These companies, often called “natural monopolies,” are thought not to be susceptible to marketplace pressures because there are substantial barriers to entry that result in the lack of any viable competitors. Moreover, these companies, although they are privately owned, are often affected with the public interest, that is, their activities are so important to society that they become subject to government regulation. Capital-intensive industries such as electricity, telephone, natural gas, and water have been thought of as natural monopolies and hence regulated “public utilities.”

Except that is no longer true in the case of telecommunications. The history of telephone regulation in the United States, and as we show in this chapter, in the District of Columbia, is a story of how technological change has enabled the creation of a competitive marketplace where one had not existed. The story of the introduction of competition in telecommunications and its impact on local rates and services is worthy of special attention in this book.

> *The first telephone lines in the District of Columbia were laid by the National Telephone Exchange in 1878 from the Evening Star office to the Senate wing of the Capitol. In 1883, the Chesapeake & Potomac Telephone Co. was established and consolidated with the successor to the National Telephone Exchange.*

Pictured above are Rotary Dial Telephones circa 1919 and 1929.

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The path to competition has not been a straight one. There have been twists and turns, switchbacks and diversions. And while the path can be generally said to have progressed in three phases - Rate Regulation, the Introduction of Competition, and the Protection of Consumers - those three phases have often melded into each other and become indistinct. We shall explore each of these phases chronologically, recognizing that the actions of the Commission do not easily fit into a timeline. For example, while in the Rate Regulation phase, the Commission considered consumer protection a prime responsibility. In fact, the very idea of rate regulation has as its foundation protection of the consumer against predatory monopoly rates. Similarly, in theory, competition is a form of consumer protection, one where the invisible hand of the marketplace replaces the visible hand of public utility oversight in protecting consumers against high rates.

It must also be recognized that the telecommunications infrastructure serves a vital function in the economic development and safety of the residents and businesses in the District. Thus, notwithstanding the drive for diminished regulation, the public interest may require regulatory action in order to ensure that the telecommunications infrastructure continues to fulfill its vital role. Nevertheless, with that caveat, we proceed to an examination of the three phases of telephone regulation in the District of Columbia, interrupted occasionally by an amusing oddity or tidbit of historical information.

> *"The telephone has been called our most democratic institution. It is used both by those with unlimited resources and those with only a few nickels. It requires neither signs nor symbols. It talks all languages. It can be used by a little child. It is not beneath the notice of the most intelligent nor beyond the intellectual grasp of the least educated. It fills an important social need and advances business and government. It plays a vital role during emergencies. It reaches out to everyone."*[2]

> *The significance of this quote as it relates to emergencies was tested soon after the March 4, 1913 creation of the Public Utilities Commission of the District of Columbia (PUC) when a fierce storm hit the District on July 30, 1913.*

> *"A combination of wind, hail, and rain swept the city, leaving death and destruction in its wake." Damage was estimated at $1.0 million. Transportation was paralyzed and at least 2,000 trees were damaged or uprooted. There were no reports of power outages because the power grid had not been established, but there were reports that telephone and telegram service was crippled. Most telephone plant damage was caused by falling trees. About 6,500 of the estimated 46,000 telephone stations were out of service, with the most serious damage to the telephone facilities at the main central office because rain had poured in, sweeping over the distributing frame. However, the operators stayed at their boards and worked without interruption. As a result, practically all trouble was cleared by early the next morning.*[3]

[2] Cromwell, Joseph H, *The C&P Story - Service in Action*, 1981, p. 11.
[3] Ibid., p. 17-18. & *Washington Post* article on August 12, 1913.

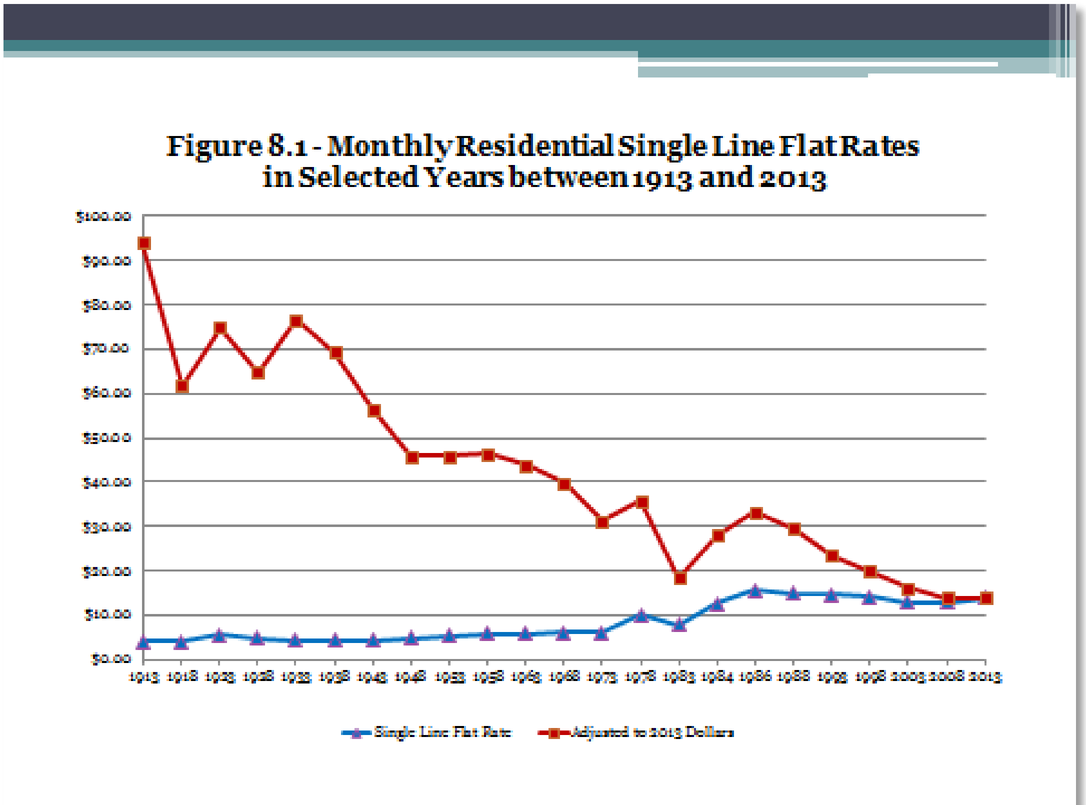
II. Rate Regulation

Table 8.1

Monthly Residential Single Line Flat Rates in Selected Years between 1913 and 2013[4]

Effective Year	Single Line Flat Rate	Adjusted to 2013 Dollars
1913	$4.00	$94.12
1918	$4.00	$61.71
1923	$5.50	$74.93
1928	$4.75	$64.71
1933	$4.28	$76.70
1938	$4.20	$69.39
1943	$4.20	$56.56
1948	$4.75	$45.91
1953	$5.25	$45.81
1958	$5.75	$46.35
1963	$5.75	$44.77
1968	$5.95	$39.83
1973	$5.95	$31.22
1978	$9.99	$35.69
1983	$7.88	$18.43
1984	$12.49	$28.00
1986	$15.61	$33.18
1988	$14.94	$29.42
1993	$14.60	$23.54
1998	$14.00	$20.01
2003	$12.78	$16.18
2008	$12.78	$13.83
2013	$13.78	$13.78

[4] Source: www.usinflationcalculator.com



Early Rate Regulation

On March 30, 1913, just days after the creation of the PUC,[5] its General Counsel, Edward H. Thomas, determined that telephone and telegraph corporations, including Western Union Telegraph Co., Postal Telegraph-Cable Co., and the Chesapeake & Potomac Telephone Company (C&P) were under the jurisdiction of the Public Utilities Commission.[6] C&P was a subsidiary of the American Telephone & Telegraph Company (AT&T),[7] providing local telephone service in the District of Columbia. Over the early period of PUC regulation, C&P's sister subsidiaries, also local operating companies, provided service over most of the United States, while long distance service

Original C&P logo, introduced in 1914.

[5] See 37 Stat. 977, ch.150, § 8, March 4, 1913 (the Act).

[6] Annual Report of the Public Utilities Commission of the District of Columbia for 1913, p.9. The focus of this chapter is the regulation of the telephone company rather than the telegraph companies.

[7] In 1913, AT&T settled its first anti-trust suit with a document called the Kingsbury Commitment. It established AT&T as a government sanctioned monopoly. In return, AT&T agreed to divest the controlling interest in the Western Union telegraph company, and to allow non-competing independent telephone companies to interconnect with the AT&T long distance network.

was provided by another AT&T subsidiary, AT&T Long Lines. The manufacturing of telephones and telephone equipment was handled by another AT&T subsidiary, Western Electric, and research into the science of telephony was conducted at yet another subsidiary, Bell Labs.

In the course of its early years, the Commission's regulation of telephone service focused on valuing the property of C&P, establishing a system of tariffs and rate schedules, determining depreciation rates, and considering changes in rates and services. In compliance with the Act creating the PUC, C&P, like the other utility companies, was required to file copies of all schedules of rates and charges, including joint rates in force as of March 4, 1913. Such schedules or tariffs were filed and, in further compliance with the provisions of the Act, were kept open for public inspection.

For example, C&P's tariffed flat rate for residential single line telephone service was $4.00 per month. To alter the existing rate, the Commission had to determine the appropriate methodology for calculating it. The methodology needed to be designed to allow the company an opportunity to earn a return on its investment. To accomplish this, it was necessary to estimate the fair value of the property of the utility used and useful in providing service and also to fix a fair return upon such value. By 1914, the PUC had not been able to establish new rates for telephone service because the valuations of C&P's property had not been completed.[8]

In 1915, the Commission prescribed the payment by all utilities of 5 percent interest on deposits required of customers.

In 1916, the Commission modified its rules for the filing of rates and tariffs. Each public utility was required to file schedules showing tolls and charges which were in effect at the date of filing and all rules and regulations that in any manner affected the rate charged or to be charged for any service. When any rate, tariff, or rules and regulations affecting any rate or tariff of any public utility were changed, the utility was required to file with the Commission, within 10 days after receipt by it of the order or permission to make such change, a revision of all the schedules affected."[9]

On May 2, 1917, the Commission opened a proceeding to determine the value of the property of C&P within the District of Columbia actually used and useful for the convenience of the public. The Commission noted that the hearings in this case were lacking in historical data due principally to the inability of the Commission's Valuation Bureau to secure sufficient details from C&P's records because they had been destroyed by a fire in Baltimore in 1904. The Commission also determined rates of depreciation in this case.

The Commission found the fair value of C&P within the District of Columbia as of July 1, 1914 to be $6,400,000. With net additions of $383,932.48 between July 1, 1914 to December 31, 1916, the value was set at $6,783,932.48 as of December 31, 1916. [10]

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[8] Annual Report of the Public Utilities Commission of the District of Columbia for 1914, p.10.
[9] 1916 PUC Annual Report, p. 33; Order No. 178, P.U.C. No. 1915/1, March 8, 1916.
[10] F.C. No. 57, Order No. 211, May 2, 1917

On November 30, 1917, the company requested revisions to certain of its rates and schedules. The PUC held hearings in December and they continued until July 31, 1918. At that time, the President of the United States issued a proclamation taking over the telephone and telegraph systems throughout the country and placing them under the jurisdiction of the Postmaster General, under authority of an Act of Congress approved on July 22, 1918. This emergency action was intended to ensure communications during World War I. After the Armistice, by the provisions of the Act of Congress, approved July 11, 1919, the United States relinquished control over telephone companies and the property of the companies was restored to the possession of the owners on August 1, 1919.[11]

While under the control of the Postmaster General, certain increases and changes in the C&P's rates and schedules had been made, including an increase in the rate for residential single line flat service to $5.00 per month. Once the Commission again began regulating C&P, it determined that it should consider whether changes in rates were justified by new conditions.[12] At a hearing held on November 3, 1919, C&P stated that it was not in a position to determine what rates would enable it to earn a fair return until it was able to ascertain what capital expenditures made during the wartime hiatus should properly be allocated to the Federal Government and what reimbursement the Federal Government would make to account for the extraordinary expenses incurred during the war. Accordingly, the PUC agreed to continue the existing rates until June 1, 1920.[13]

During a subsequent investigation of C&P's rates, tolls, and charges for the telephone service, the PUC increased the residential single line flat rate to $5.50 per month. The PUC also noted it had received numerous complaints regarding "failure of the company to install service for prospective subscribers" and inquired about "the plans of the company for extensions of its facilities. " The Commission determined that the company was "making every reasonable effort to furnish service … and that it is inadvisable to require the company to extend its lines to those sections where the cost would be approximately $700 per subscriber and the prospect of future business uncertain." In this same proceeding, the Commission noted that in previous cases, it had called attention to the large amounts the company was paying for the housing and caring for out-of-town operators who were brought to D.C. during the war emergency, and whose services were retained for a considerable time thereafter. Testimony was given that all of these operators had now gone and their places had been filled by native operators.[14]

On October 26, 1922, C&P filed for a reduction in the rate for residential single line flat rate service from $5.50 to $5.00 per month. The company sought the reduction because of an increase in the percentage of customers taking party line, versus single line, service. The Commission granted the request commenting that "the great increase experienced in the number of two-party line subscribers has created a harmful effect upon the quality and dependability of the service rendered by the telephone company"[15] The Commission intended that a rate

[11] 1917 PUC Annual Report, p. 8; PUC Annual Report 1918, p. 9.
[12]1920 PUC Annual Report, p. 8.
[13] Ibid., p. 9, Order No. 353, November 26, 1919.
[14] 1922 PUC Annual Report, p. 62.
[15] F.C. No. 133, Order No. 499, November 28, 1922

reduction would encourage consumers to return to single line flat rate service, rather than the less expensive, but lower quality, party line service.

> *A "party line" is a local loop telephone circuit that is shared by several telephone subscribers. Party lines were in use from the earliest days of telephone service and usually were billed at a discount from single line service. In 1956, Southern Bell officials refused to segregate party lines on a racial basis, after receiving requests from a commissioner on the Mississippi public utilities commission. E.K. Lumpkin of the Bell Telephone central Mississippi district said "A customer to us is just a customer, colored or white. We are a public utility." Washington Afro-American, May 1, 1956 at 20.*

In 1925, after prolonged hearings, submission of much testimony and data, and exhaustive study, the Commission again determined the fair value of the property of C&P.[16] C&P appealed the case to the Supreme Court of the District of Columbia, where an argument was made before Chief Justice Walter I. McCoy. The company assailed the valuation made by the Commission in practically every particular, each element of valuation being analyzed and questioned. The Chief Justice, after hearing the argument, took the matter under advisement.[17]

On May 13, 1925, the Commission found that C&P's present rates were unjust and unreasonable and approved a reduction in the rates of their two-party line and single line, residence service, effective June 10, 1925.[18] The new residential single line flat rate was $4.75 per month.

On May 17, 1927, Chief Justice McCoy handed down a decree to the effect that rates authorized by the PUC's May 13, 1925 Order No. 551 be continued in force and effect for the period of two years from June 1, 1927, and thereafter until changed or modified pursuant to law, with the valuation side of the case being left dormant during this period.[19]

> *The Commission held a formal public hearing on December 19, 1928 to consider the practice by utility companies of requiring deposits from consumers before making service connections. Mr. E.C. Riegel requested that C&P install a telephone in the offices of The Consumers Guild, 26 Jackson Place. He refused to make a deposit or give any references. C&P thereupon refused to install a telephone. The Commission determined that the action of C&P in refusing to give service to The Consumers Guild because that organization refused to answer any questions or pay a deposit was not unreasonable.*[20]

The first mention of "rate of return" occurred on May 2, 1932, when the Commission notified C&P that it had conducted an investigation of the Company's rates and charges and had become satisfied that sufficient grounds existed to warrant a formal hearing. The Commission noted "In order to determine whether or not the rates and charges of a utility are fair and just, it is necessary, among other things, to ascertain the rate of return which is the result of such rates and

[16] F.C. No. 153, Order No. 549, April 15, 1925
[17] 1925 PUC Annual Report, p. 4.
[18] F.C. No. 153, Order No. 551, May 13, 1925
[19] 1927 PUC Annual Report, p. 2.
[20] F.C. No. 22, Order No. 741, January 28, 1929

charges." Using its rate of return standard, on September 15, 1932, the Commission ordered a 10 percent discount on all bills of C&P rendered for telephone service, except private-branch-exchange service.[21] That reduced the residential single line flat rate to $4.28 per month.

A private branch exchange is a telephone switching center that serves a private organization.

In 1933, C&P appealed to the Supreme Court of the District of Columbia the 10% reduction in telephone rates ordered in 1932.[22] The Court sustained the PUC's order as of July 10, 1934. C&P appealed to the United States Court of Appeals in and for the District of Columbia and the PUC entered a cross appeal. The company and the PUC withdrew their respective appeals and the Company acquiesced in the orders of the PUC. Subsequently, all telephone rates were reduced by an amount in excess of 10 percent.[23]

In 1934, Congress passed and President Franklin D. Roosevelt enacted the Communications Act of 1934 that transferred regulation of long distance telephone rates and services from the Interstate Commerce Commission to the newly created Federal Communications Commission (FCC). The Act also codified the explicit goal of universal service.

On January 23, 1942, the Commission initiated an investigation to determine whether all or any part of the charges for telephone service on the premises of hotels, apartment houses, and clubs were within the jurisdiction of the Commission and what tariffs, if any, should have been filed with the Commission showing such charges. The FCC had issued its order of investigation on January 9, 1942 in Docket No. 6255, involving the same questions in relation to long distance service. The two commissions conducted joint hearings. The questions involved in the joint hearings were whether telephone service rendered by hotels, clubs and apartment houses, through the instrumentalities and facilities of C&P, constituted public utility service and whether such service was subject to regulation by the PUC or by the FCC.[24] In 1944, the Commission found that telephone services provided through C&P's facilities located within a guest room or apartment were subject to its jurisdiction and that any charge for local telephone service in excess of the applicable tariff charges for messages from a public pay telephone plus the applicable tariff charge for any equipment installed within any guest room or apartment was unjust, unreasonable, and unduly discriminatory.[25]

By the end of World War II, rates were near their 1913 levels as the number of subscribers had grown dramatically over the nearly 35-year period. However, the trend in rates would be upward, for varying reasons, at least until the end of the 1980s.

[21] F.C. No. 238, Order No. 1072, September 15, 1932
[22] Order No. 1230, March 31, 1934, Report to the Supreme Court of the District of Columbia, Equity Case No. 54850.
[23] F.C. No. 238, Order No. 1305, December 10, 1934
[24] 1942 PUC Annual Report, p. 9, F.C. No. 311
[25] F.C. No. 311, Order No. 2730, February 15, 1944

For example, the PUC approved three rate increases between 1948 and 1954. The first increase, to $4.75 per month for residential single line flat rate service, was attributed to a large increase in operating expenses due to rising labor costs after the war.[26] The second increase was in 1950, to $5.25 per month for residential single line flat rate service, because C&P needed to provide major capital infrastructure investments to meet the growing demand.[27] The third increase was in 1954 wherein the rate for residential single line flat rate service rose to $5.75 per month.[28]

In 1949, C&P filed tariff language covering the general rules under which service is furnished. Two consumers, Harry Katz and Bertha Katz objected. The Commission denied the Katz' petition, but required that C&P give notice to subscribers of their right to apply to the PUC for a determination of the applicability of a tariff provision.

On February 21, 1950, the Commission prescribed rates for annual depreciation accruals for use by C&P, effective January 1, 1950. These rates were the result of cooperative studies on the part of the staff of the FCC and the staff of the Commission, after a series of conferences with representatives of C&P.[29] This process would be repeated every three years.

Maturing Rate Regulation

By the late 1950s, the telecommunications environment had begun to change. In 1956, AT&T settled a civil antitrust suit that had been brought by the federal government in 1949. Under the settlement, AT&T and Western Electric were required to grant more patent licenses and to conform to certain accounting standards. Importantly, AT&T and its local operating companies, such as C&P, were enjoined from engaging in any business other than furnishing common carrier communications services and incidental operations (such as directory advertising).[30] In other words, AT&T was prevented from entering the computer and cable TV business

Another important change involved the increased demand fueled by the post-World War II economy. This high demand for services was coupled with significant technological developments, particularly in civilian use of wartime microwave technology. In 1959, the FCC allowed the operation of private microwave systems in the *Above 890 Mhz* decision, heralding the age of competition, in the provision of service.[31]

Also during this period, rate regulation was maturing. Early in 1962, an agreement was reached between a joint National Association of Regulatory Utility Commissioners (NARUC)-FCC committee, of which the Commission was a member, and the Bell Telephone system, of which C&P was a part, whereby certain modifications to the manual governing the separation of revenues and expenses into local and long distance jurisdictions would effect a net transfer of

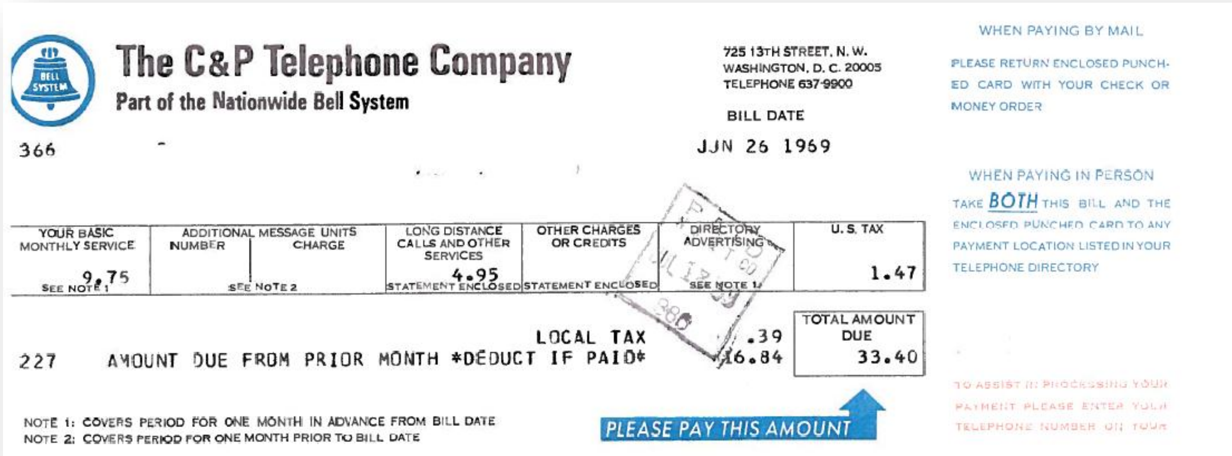
[26] F.C. No. 370, Order No. 3295, December 22, 1947
[27] F.C. No. 393, Order Nos. 3635 & 3640, February 20, 1950 and March 2, 1950
[28]F.C. No. 430, Order Nos. 4096 & 4103, July 29, 1954 and August 10, 1954
[29] P.U.C. No. 1630/14, Order No. 3637, February 21, 1950
[30] Phillips, *The Regulation of Public Utilities*, Public Utilities Reports, 1993, p. 757.
[31] *In re Allocation of Microwave Technologies Above 890 MHz*, 27 FCC 359 (1959), aff'd on rehearing 29 FCC 825 (1960).

approximately $46 million in annual revenue requirements from local to long distance operations on a nationwide basis. Of this total amount, it was estimated that the portion attributable to the District of Columbia would approximate $99,040 annually. While all of the member commissions were urged to reduce intrastate toll (local long distance) rates where appropriate, such a reduction in the District of Columbia was not possible due to the absence of intrastate toll rates. In order to conform to the suggested modifications to the separations manual by the NARUC committee, and after several discussions between representatives of the telephone company and the Commission, reductions were effected in local revenues by reducing certain message unit charges within the Washington metropolitan area, and reducing rates for certain specific telephone equipment. The total savings to local subscribers was estimated to be approximately $103,000 annually.[32]

On September 27, 1963, C&P filed for an increase in gross revenues of $10,500,000, including increases in monthly rates for residential single line flat rate service from $5.75 to $7.00 and business single line business service from $7.00 to $8.00. The hearing in this case was held in two phases. Phase I addressed whether the Commission should grant an increase in rates in order to increase C&P's revenues and what amount of increase in revenues would be considered reasonable, fair and just. Phase II addressed what increases in rates should be provided in order for C&P to earn the amount of increased revenues approved by the Commission.

The Commission rendered its decision in Phase 1 on December 22, 1964. The Commission noted that one of the most important aspects of this proceeding and the most difficult to establish was the determination of a reasonable and fair rate of return. The Commission determined that a rate of return of 6.25 percent was fair and reasonable.[33] Rates were approved in Phase II on August 2, 1965, effective August 7, 1965[34] that included an increase in the residential single line flat rate service to $5.95 per month. The PSC justified the rate increases, albeit less than what C&P proposed, on the findings that service had improved over the prior ten years since the previous rate increase, and high standards had been maintained. In addition, C&P needed to increase the number of employees to meet a growing number of

[32] 1962 PUC Annual Report, p. 25. *[No order found]*
[33] P.U.C. No. 3718, F.C. No. 494, Order No. 4887, December 22, 1964; Amended Order No. 4899, February 18, 1965
[34] P.U.C. No. 3718, F.C. No. 494, Order No. 4976, August 2, 1965



The C&P Telephone Company
Part of the Nationwide Bell System

725 13TH STREET, N. W.
WASHINGTON, D. C. 20005
TELEPHONE 637-9900

BILL DATE
JUN 26 1969

366

YOUR BASIC MONTHLY SERVICE	ADDITIONAL MESSAGE UNITS NUMBER	CHARGE	LONG DISTANCE CALLS AND OTHER SERVICES	OTHER CHARGES OR CREDITS	DIRECTORY ADVERTISING	U. S. TAX
9.75 SEE NOTE 1	SEE NOTE 2		4.95 STATEMENT ENCLOSED	STATEMENT ENCLOSED	SEE NOTE 1	1.47

LOCAL TAX .39

227 AMOUNT DUE FROM PRIOR MONTH *DEDUCT IF PAID* 16.84

TOTAL AMOUNT DUE 33.40

PLEASE PAY THIS AMOUNT

NOTE 1: COVERS PERIOD FOR ONE MONTH IN ADVANCE FROM BILL DATE
NOTE 2: COVERS PERIOD FOR ONE MONTH PRIOR TO BILL DATE

WHEN PAYING BY MAIL
PLEASE RETURN ENCLOSED PUNCHED CARD WITH YOUR CHECK OR MONEY ORDER

WHEN PAYING IN PERSON
TAKE BOTH THIS BILL AND THE ENCLOSED PUNCHED CARD TO ANY PAYMENT LOCATION LISTED IN YOUR TELEPHONE DIRECTORY

TO ASSIST IN PROCESSING YOUR PAYMENT PLEASE ENTER YOUR TELEPHONE NUMBER ON YOUR

customers. New services were also being offered, while higher wage costs and increased capital expenditures were reducing the company's rate of return. Despite the increase, C&P appealed the case to the US District Court and US Court of Appeals and both courts upheld the PUC's decision.

In 1964, a*fter 51 years, the name of the "Public Utilities Commission" was changed to the "Public Service Commission" by Act of Congress. The name change coincided with the addition of new responsibilities over the regulation of business securities in the District of Columbia.*

On January 29, 1965, the Classified Directory Subscribers Association complained that C&P was engaged in unreasonable, discriminatory and preferential practices in the rendition of its classified directory (Yellow Pages) services and that the Company demanded and received excessive rates for advertising services. C&P challenged the PSC's jurisdiction and the allegations made against it. The PSC determined that it had no jurisdiction over advertising rates as such; its role was to ascertain that there is no undue manipulation of advertising charges (which constituted a substantial portion of C&P's over-all revenues) so as to thwart the PSC's rate-making powers in those areas that were within its jurisdiction. The PSC dismissed the complaint filed by the Classified Directory Subscribers Association. However, it ordered that C&P shall not refuse or discontinue regular telephone service to any subscriber, solely by reason of the fact that said subscriber fails to pay charges fixed by contract for advertising in the classified directory.[35]

During 1967, the most significant of the Commission's activities in the field of telephone rates arose out of an FCC investigation of long distance telephone rates. The FCC entered an order on July 5, 1967, which, among other things, established new "separations" procedures for the telephone company. The new procedures decreed by the FCC were very detrimental to District of Columbia ratepayers. This Commission undertook vigorous efforts to have proper recognition given to the impact of the FCC's proposal upon the District of Columbia. As the

[35] F.C. No. 506, Order No. 5038, February 18, 1966

year ended, the FCC had delayed the impact of its new procedures upon the District of Columbia.[36]

On November 8, 1968, C&P filed a complaint and application for the purpose of obtaining a Commission determination of a fair return for the Company's local telephone operations in the District of Columbia. The Company also sought approval of such increases and changes in rates required to produce the approved overall revenue return. The Company had applied for relief of this nature on only two previous occasions in the last sixteen years, namely in 1954 and 1964, but this was because the company had been over-earning during the intervening years.

The Commission ruled that the hearings would be divided into Phases I and II. Once again, Phase I was to deal with the Company's total local revenue requirements and Phase II would deal with any individual rate changes that might be necessitated by the total revenue finding in Phase I. This case, F.C. No. 538, included a detailed explanation of the rate-making procedures the Commission would use:

The Commission concluded that its task was to determine the Company's future annual requirements, by analyzing operating results for a test period of actual operations and making necessary adjustments to revenues, expenses, and rate base. Then, a determination would be made of the fair rate of return, which the Company should earn. Adjusted test period results would next be compared with the rate of return determined to be appropriate and the revenue requirement would be computed.[37]

No change in rates resulted from this case because of a change in the separations methods C&P used to allocate expenses and plant. Specifically, the “Ozark” plan benefitted DC ratepayers by shifting 6 percent of costs from local to long distance service. Moreover, a 10 percent income tax surcharge expired on December 31, 1970, thereby eliminating a substantial expense, which ratepayers would have had to cover. In conclusion, changes in circumstances redounded to the benefit of ratepayers.

However, local telephone rates rose dramatically in 1976. In F.C. No. 631, the PSC approved a $7.411 million increase in C&P’s revenue requirement, that yielded a 28 percent increase in service connection charges, a 20 cents monthly fee on unlisted telephone numbers; a 40-cent monthly charge on unpublished telephone numbers; an increase in the per call rate for message rate service from 5 to 6 cents; and a 7 percent increase in monthly business rates. The rate for residential single line flat rate service rose to $9.99 per month and $12.01 if the customer had touch-tone service. Touch-tone phones (see pictures below) use buttons or keys for dialing telephone numbers. [38]

[36] 1967 PSC Annual Report, p. 2

[37] F.C. No. 538, Order No. 5460, March 29, 1971

[38] Touch-tone phones added network costs for carriers still using older electric-mechanical switches. However, by 1976, C&P had installed newer stored program switches. When connected to the newer switches, Touch-tone phones lowered network costs relative to older dial phones.

In the same case in 1976, the Commission found that discounts accorded members of the clergy and charitable institutions were unjustly discriminatory and unduly preferential and, accordingly, ordered that such discounts be reduced by 50% on January 1, 1977 and eliminated entirely on January 1, 1978. The Commission initially denied discounts for employees but later reversed that decision. [39]

HERE'S THE EVIDENCE

District Staff Manager-Revenue Requirements Vince Scott had to get a hand cart to deliver over 100 pounds of material the company provided the Public Service Commission to substantiate the rate request

On March 4, 1977, the Commission gave notice of C&P's application for authority to introduce a tariff imposing a separate charge for Directory Assistance Service. On June 7, 1979, the Commission authorized C&P to charge 10 cents for each call to the directory assistance operator and 20 cents for such requests made to the "0" operator. The Commission implemented a monthly free allowance of six calls per line, an exemption from the charge for disabled persons and coin phones, a monthly rate reduction of 34 cents per line for basic residential telephone service and it required monthly reporting of results for the next year. The PSC did not authorize C&P to offer any additional listing service in the printed directory.[40]

[39] F.C. No. 631, Order Nos. 5790, May 17, 1976 and 5796, May 28, 1976
[40] F.C. No. 668, Order No. 6095, June 7, 1979

Ratemaking in a New Era

In November 1981, C&P filed an application for authority to increase its rates and charges for telephone service in the District of Columbia. The Commission docketed the case as F.C. No.777. Included in the C&P proposal was an option for Local Measured Service, under which customers would pay a recurring charge that would include a monthly calling allowance and would pay an additional charge based on the time of day, the duration and the distance of the call.[41] After fierce public opposition, the Commission rejected C&P's request for approval of local measured service. The Commission also reduced the rate for residential single line flat rate service to $7.88 per month.

In this case, the Commission set out four public policy goals it sought to achieve: economic efficiency, equity, fair competition, and universal service. The Commission also recognized that these would sometimes be competing goals and that some balance among them would have to be achieved in developing a proper rate structure. The Commission's discussion of its efforts to balance these goals would set the stage for future rate proceedings, now all to take place in the context of a changing telecommunications environment, one in which competition would figure largely. The next section of this history will describe those changes in more detail.

Modified Final Judgment

On March 15, 1983, prompted by dramatic events affecting the entire Bell System, C&P filed with the Commission an application requesting authority to increase its schedule of rates and tariffs for telephone service in the District of Colombia and the Commission opened F.C. No. 798 to consider the filing. In 1973, the Department of Justice had filed an antitrust suit alleging that AT&T illegally limited the kinds of connections and services its competitors could get and illegally prevented manufacturers, other than Western Electric, from selling equipment to Bell companies.[42] By 1981, after almost a decade of tumultuous activity in telecommunications, AT&T and the Justice Department agreed upon a settlement.

In *United States v. Western Electric Co.*, the Court gave its final approval to the plan of reorganization required by the Modified Final Judgment (MFJ).[43] A major feature of the plan of reorganization and the MFJ was the divestiture from AT&T of the Bell Operating Companies, including C&P, to take place on January 1, 1984. Another major feature of the MFJ was that it freed AT&T to compete in all facets of the marketplace, including computers and computer-related and information services markets. In addition, the FCC's Computer II decision separated

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[41] F.C. No. 777, Application of the Chesapeake and Potomac Telephone Company for Authority to Increase and Restructure its Schedule of Rates and Tariffs, Order No. 7616, July 20, 1982.

[42] Weber, Joseph, *The Bell System Divestiture, Background, Implementation and Outcome*, 61 Fed. Comm. Law Journal 21 (December 2008) (Weber).

[43] 551 F. Supp. 131 (D.D.C. 1981) *aff'd sub nom., Maryland v. United States*, 103 S. Ct. 1240 (1983).

the provision of telephone service from the sale of telephones and other customer premise equipment allowing individuals to purchase their telephones in a competitive market. The loss of the profit associated with the sale of telephones also contributed to C&P's desire to request a rate increase.

In its 1983 application, C&P sought two modes of relief. First, it requested permission to increase its D.C. rates immediately. This immediate increase was required to restore C&P's financial health before it was divested by its parent, AT&T, so that it could qualify for the same AAA credit rating it had enjoyed for many years. Second, C&P sought authority to increase and restructure its schedule of rates and charges, including the pre-divestiture amount, in order to earn its allowed cost of capital after divestiture had taken place. This case would set the rates for C&P post-divesture and address many divestiture related questions.[44]

> *The divestiture resulted in the creation of seven Regional Bell Operating Companies -- nicknamed "Baby Bells." The Baby Bell covering the mid-Atlantic region was called Bell Atlantic and consisted of 7 companies as follows: New Jersey Bell, Bell of Pennsylvania, Diamond State Telephone, and the 4 C&P companies representing D.C., Maryland, Virginia, and West Virginia. In the mid-1990s, all of the operating companies took the Bell Atlantic name and C&P became Bell Atlantic-DC (BA-DC)*

The Commission determined the amount of revenues C&P should be authorized in Phase I (revenue requirement).[45] In Phase II (rate design), the Commission approved rate schedules to become effective January 7, 1984. The onset of divestiture certainly contributed to a substantial increase in local rates across the board. For example, the rate for residential single line flat rate service increased by 59 per cent from $7.88 to $12.49 per month. Contributing factors for the rate increases were the loss of profits from the sale of telephones and an increase in the rate of return due not only to extremely high interest rates, but also reflecting uncertainty and risk associated with divestiture. The agreement to divest AT&T's long distance services from C&P caused a shift in asset management that increased C&P's rate base and hence rates. To ensure C&P would not use revenue from its regulated services to subsidize its non-regulated services, the Commission determined that future C&P general rate filings must be accompanied by cost studies based primarily on incremental costs and supported with studies of sufficient sophistication and quality to give the Commission a sound basis for adopting the proposed rates.

Additionally, the FCC had recently rendered several decisions, which impacted jurisdictional rates and services, *e.g.* preemption of state and local Commission discretion on depreciation and its adoption of access charges. The Commission deemed it necessary and appropriate to commence an investigation for the purpose of fully determining the effect of the foregoing factors on local rates.

Therefore, on November 15, 1983, the Commission initiated an investigation in F.C. No. 814, into the impact of the AT&T divestiture required by the MFJ and certain FCC decisions on the rates and services provided to District of Columbia ratepayers by C&P.[46] On October 12,

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[44] F.C. No. 798, Order No. 7820, April 29, 1983
[45] F.C. No. 798, Order No. 7886, October 3, 1983
[46] See, e.g., FCC CC Docket No. 78-72.

1984, the Commission designated the issues to be addressed in this proceeding. Before considering these issues, the Commission addressed C&P's request for a rate increase. The Commission denied C&P any rate relief related to this proceeding, but made several findings as to the impact of divestiture. First, the Commission found that divestiture would increase C&P's revenue requirements, would decrease the number of C&P employees, and might have an impact upon District ratepayers because of the new business ventures that C&P (and its new parent Bell Atlantic) might pursue. Second, the Commission determined that various FCC proceedings would also have an impact on C&P's revenue requirements.[47] For example, the FCC made several separations changes that reduced interstate costs and caused an increase in intrastate costs. Specifically, the FCC required AT&T to reduce its long distance charges to reflect a reduction in its payments to local service providers.[48] The PSC allowed C&P to recover the consequential increase in local costs through a surcharge that was implemented over an 8-year period – 1981994.

With the prospect of rising rates after divestiture, the Commission reconsidered establishing a discount for low-income customers in F.C. No. 827, which was opened in 1984. The Commission had introduced Economy Service in 1972 at a flat rate of $3.95 (which included the equipment rental) plus 5 cents per message unit. Economy Service was directed toward satisfying the needs of those low-income or retired fixed income residents in the District of Columbia who require only to be reached by telephone, to make important outgoing calls with regard to jobs, medical assistance, and other emergencies and to make occasional social calls.[49] In 1985, the Commission changed the name of its Economy Service to "Economy I Service" and introduced an "Economy II Service" for which customers qualified on the basis of income and age. Economy II Service customers had to qualify under the federal Low Income Heating and Energy Assistance Program or Community Energy Assistance Program and register with the District of Columbia Energy Office. In the same case, the rate for residential single line flat rate service rose to $15.61 per month.

Ratemaking after Divestiture

On December 24, 1986, C&P filed a tariff to establish a Centrex Custom Service Tariff (also known as an Individual Case Basis (ICB) tariff) for the International Bank for Reconstruction and Development (World Bank). In Order No. 9028, the Commission decided that C&P's tariff filing was in the public interest, as Centrex, because of the large presence of the Federal Government, accounted for a substantial share of local telephone lines in the District.[50] C&P's central-office based Centrex lines were facing stiff competition from customer premise based PBX systems. The ICB tariffs were intended to allow C&P pricing flexibility in its service offerings in order for the company to retain these customers. The Commission was one of the first state regulators to allow pricing flexibility.

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[47] F.C. No. 814, Order No. 8229, April 15, 1985

[48] The FCC's switch from Part 67 to Part 36 separations rules and the move to the use of a general allocator (25 percent) from the Subscriber Plant Factor (SPF) (43.76 percent) substantially increased state costs and reduced interstate costs. See Order No. 8300, p. 140 – Subscriber Plant Factor Phase-Down.

[49] F.C. No. 570, Order No. 5523, August 2, 1972

[50] See TT87-4, Order No. 9028, June 3, 1988.

On May 20, 1987, the Commission authorized C&P to file ICB Custom Centrex tariffs and established a working group to develop an Individual Case Basis Cost Manual to be used by C&P when filing such tariffs. On July 6, 1987, C&P filed a proposed ICB Cost Manual. The Commission approved C&P's ICB Cost Manual on October 8, 1987.[51]

On December 22, 1987, C&P filed a tariff for Centrex Custom Service for the United States Senate. According to C&P, the proposed Senate ICB tariff "conform[ed] to the format contained in the approved ICB Cost Manual."

The deep discounts provided in these Centrex contracts, however, had an adverse impact on other local rates. C&P proposed that the residential rate should be increased to $23.42. Instead, the Commission resolved these pressures by increasing business and residential per call message rates rather than basic residential rates.[52]

On March 26, 1993, Bell Atlantic-DC -- the new name for C&P -- filed an application with the Commission requesting an increase of $39.6 million in additional revenues (later revised to $35.1 million). The rate increase request, docketed as F.C. No. 929, was based primarily on increases in public telephone services, business services, the custom calling services, and Bell Atlantic IQ services. Increases in the rates for residential services were not sought because the Commission ordered a three-year freeze on residential rates in January 1993 in Formal Case No. 814, Phase III, as part of an effort to consider an alternative regulatory methodology.

Faced with the desire to bring costs under control, the Commission reviewed the ratemaking process with the intent to eliminate or reduce unnecessary and costly filing requirements. The Commission recognized that any reduction in regulatory costs would ultimately relieve the financial burden borne by the District ratepayers. As part of the process, the Commission eliminated several routine filings no longer essential for the ratemaking process or monitoring functions, and a working group was directed to develop recommendations on other concerns.[53]

Alternative Regulation

From 1913 to 1992, the Commission had operated under some form of Rate Base Rate-of-Return (ROR) regulation. Under ROR regulation, the Commission essentially set telephone rates at a level that would allow the company to recover its prudently incurred costs and pay a Commission-authorized rate of return on its stock and debt.

By 1992, the increasingly competitive environment caused the Commission to reconsider its reliance on this monopoly era form of regulation. Bell Atlantic-DC (BA-DC) argued that it became difficult for it to effectively participate in an open market while it was still subject to monopoly-era rules.

[51] F.C. No, 828, Phase II, Order No. 8871, October 8, 1987
[52] Order No. 9927 in F.C. No. 850
[53] 1994 PSC Annual Report, p. 11.

On January 15, 1993, the Commission adopted an alternative regulatory plan for Bell Atlantic-DC in F.C. No. 814, Phase III. The alternative regulatory plan included a three-year freeze on basic services for residential customers, extended pricing flexibility to Bell Atlantic's high speed private line and Centrex intercommunication and feature services in all line sizes, and also granted BA-DC the right to make future requests for pricing flexibility under a screening process. The Commission also determined that because the compensation to ratepayers proposed by BA-DC was inadequate, directory advertising revenues and expenses should not be removed from BA-DC's regulated earnings.

The Commission adopted four screening criteria to use to determine whether certain services offered by BA-DC face sufficient competition to warrant pricing flexibility. In order to obtain pricing flexibility, the Company had to show that: (1) the service could be duplicated by customer premises equipment or some other technological medium or transmission service; (2) the service was non-essential; (3) the own-price elasticity of demand was high; and (4) the Herfindahl-Hirschmann Index of the market in which the service was offered was below 1800.[54] The Commission's decision did not require that all four criteria be satisfied simultaneously; the Commission emphasized that the more criteria the Company could demonstrate are met for a service, the greater the likelihood that the Commission would grant flexible pricing for that service.

The Commission believed that the adoption of its modified incentive regulation plan would enable BA-DC to respond expeditiously to competitive pressures in the marketplace. However, the Commission intended to ensure that the urge to respond to market pressure and flexibly price competitive services did not allow the quality of basic services to deteriorate.

To accomplish this purpose, the Commission instituted a Quality of Service Working Group. The Commission directed the Working Group to establish specific service quality standards, which BA-DC was required to achieve during the plan and to determine the precise nature of monitoring and reporting requirements necessary to ensure compliance with those standards. As a result, the Commission established 22 quality of service measures whereby it monitored BA-DC’s performance over the following years.

Price Cap Regulation

On January 31, 1995, BA-DC filed an application for the Commission to consider an alternative regulatory plan with price caps and pricing flexibility to replace the incentive regulation plan adopted in F.C. No. 814, Phase III. Under the plan, BA-DC proposed to cap the rates charged for basic residential services (i.e. essential services) at current levels until January 1, 2000. For other basic services, price increases would be limited to no more than half the rate of inflation. With respect to discretionary (optional) services, BA-DC proposed limiting price increases to no more than twenty-five percent annually. BA-DC also proposed removing

[54] F.C. No 814 (Phase III), *In the Matter of the Impact of the AT&T Divestiture and Decisions of the Federal Communications Commission on the Chesapeake and Potomac Telephone Company Jurisdictional Rates,* Order No. 10147, January 15, 1993, at 35.

competitive services (i.e., services that are provided by other companies) from traditional rate of return regulation.[55]

On February 28, 1996, a non-unanimous settlement agreement including a proposed price cap plan (First Price Cap Plan) was filed by BA-DC, OPC, American Association of Retired Persons (AARP), General Services Administration (GSA) and Consumer Utility Board (CUB). The parties to the First Price Cap Plan simultaneously filed a joint motion for the Commission to approve the First Price Cap Plan. On November 12, 1996, the Commission approved the Second Revised Non-Unanimous Full Settlement Agreement among BA-DC, OPC, CUB and GSA. The Commission also approved the First Price Cap Plan, including the clarifications and requirements adopted in the Order to replace and supplant the prior regulation of BA-DC as set forth in F.C. No. 814, Phase III, Order No. 10147.

Under the terms of the First Price Cap Plan, price caps were adopted, but basic exchange and access rates were frozen until the beginning of 2000 (except for a series of mandated rate cuts totaling $25.8 million). Other basic services had caps indexed to GDP-PI minus 3 percent. The rate for residential single line flat rate service was lowered to $12.78. Discretionary service rates could rise 15 percent a year. Competitive services and earnings were not regulated. The Second Price Cap Plan included a $4 million[56] contribution to a Telecommunications Infrastructure Trust Fund that was used to bring broadband Internet access and to train employees in all of the District's 147 public schools and in all libraries at no cost to the District Government. The Trust fund helped ensure that all District residents had affordable access to advanced telecommunications technologies that were becoming increasingly important in the District's efforts to promote education, opportunity, and economic growth. It was also a creative method of addressing the District's needs in this area that might otherwise not have been addressed because of scarce government resources.[57]

In 2000, Bell Atlantic merged with GTE, which operated telecommunications companies across most of the rest of the country that was not already in Bell Atlantic's footprint. The combined company elected to change its name to "Verizon," a portmanteau of veritas (Latin for "truth") and horizon. BA-DC became Verizon DC.

On September 2, 1999, OPC and BA-DC filed a joint motion and settlement agreement to extend the First Price Cap Plan, which was to expire on December 31, 1999, through December 31, 2001. The Commission approved this Second Price Cap Plan in Order No. 1145 issued on November 17, 1999.

On August 16, 2001, Verizon DC and OPC jointly filed a petition for approval of their Settlement Agreement relating to Verizon Price Cap Plan 2002, which would be Verizon's third Price Cap Plan. Verizon's Second Price Cap Plan was to expire on December 31, 2001. On April 1, 2002, the Commission approved Price Cap Plan 2002. The new Price Cap Plan 2002 was to expire on March 31, 2004.

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[55] F.C. No. 814, Phase IV, March 9, 1995, Order No. 10585
[56] BA-DC voluntarily contributed $3.0 million and $1.0 million came from the Subscriber Plant Factor (SPF) Refund.
[57] F.C. No. 814, Phase IV, Order No. 10877, November 12, 1996

In Price Cap Plan 2002, residential customers received a $2.0 million New Year's Bonus (or $7.66 per household) credit on bills in January 2003 and January 2004. Other features of Price Cap Plan 2002 that were beneficial to consumers were: $300,000 to implement 211 dialing for the District Government's "Answers Please! System," the wiring and equipping of eight recreational centers at a cost of $500,000 and the establishment of a technology center for $200,000. The monetary value of all benefits, including the rate reductions, was $4.0 million.[58]

On August 4, 2004, the Commission approved the Settlement between Verizon DC and OPC for Price Cap Plan 2004. (Price Cap 2002 had expired on March 31, 2004.) As with previous price cap plans, Price Cap Plan 2004 services were categorized into basic (residential and business), discretionary, and competitive service baskets. The two basic baskets were comprised of essential services and rates for services in those baskets were not increased. The discretionary basket contained services that were neither basic nor competitive. Competitive services included all business services, except those in the basic business basket, "Operators Services Connect Request," which was classified as discretionary, and any other service determined by the Commission to be competitive. Under Price Cap Plan 2004, rate increases for services in the basic basket could not exceed 10 percent a year, and rate increases for services in the discretionary basket were limited to no more than 15 percent a year. Verizon was free to increase rates for competitive services to the extent permitted by market forces.[59] Verizon was also allowed to provide Customer Specific Pricing for any service or combination of services, except those in the basic residential services basket. Verizon DC was required to file quarterly reports briefly summarizing these contracts.

On April 27, 2007, Verizon DC filed its petition for approval of a new Price Cap Plan, Price Cap Plan 2007. Verizon's proposal included specific limits for price increases in the basic and discretionary baskets and a provision that Verizon would be free to increase rates for competitive services to the extent permitted by market forces.

On March 5, 2008, Verizon DC and OPC submitted a Settlement Agreement, supplementing it with a Joint Motion on March 13, 2008. The Settlement Agreement included a new version of the Price Cap Plan. On September 8, 2008, the Commission indicated that several modifications to the Settlement Agreement were required in order for the Price Cap Plan to meet the statutory requirements in the District. Verizon DC and OPC submitted a joint response on September 19, 2008, which included a revised version, now referred to as Price Cap Plan 2008. On September 26, 2008, the Commission approved the Price Cap Plan 2008, which has no set expiration date.[60] Basic residential rates were frozen for 2 years until October 1, 2010. Annual increases thereafter were limited to 10 percent or $1.00. Accordingly, the rate for residential single line flat rate service was increased to $13.78 in 2010. The rate for Economy II service has remained the same under all of the Price Cap Plans since 1993 – at $1.00 per month for senior citizens and $3.00 per month for all others who meet the income qualifications.

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[58] F.C. No. 1005, Order No. 12368, April 1, 2002
[59] F.C. No. 1005, Order No. 13370, September 9, 2004
[60] F.C. No. 1057, Order No. 15071, September 26, 2008

Price cap regulation also had some unintended consequences. For example, it eliminated the relationship between earnings and investment that existed under rate of return regulation. As a consequence, C&P no longer had an incentive to invest in its wireline network infrastructure. The lack of that incentive contributed in part to a reduction in C&P's net investment from $635 million in 1996 to $340 million in 2007 and the trend continued after 2007. Intrastate investment alone decreased from $390 million to $211 million over the same period.[61]

III. Introduction of Competition

Origins of Telecommunications Competition

The very first stirring of competition in the provision of telephone service occurred even before the creation of the Commission in 1913. As early as 1896, only twenty years after the invention of the telephone, Congress was considering legislation to incorporate rivals to C&P in the District.[62] In 1898 the Telephone Subscribers Association of the District of Columbia, with a membership of several hundred, was formed to present to Congress its view that legislation should be enacted to "permit and promote" competition.[63] The petition also asked that conditions be imposed on C&P to prevent "the exorbitant and extortionate charges and unjust and oppressive limitations" suffered by C&P subscribers.[64] Congress did not act to limit C&P's exclusive franchise and fifty years would pass before changes in technology made the introduction of competition inevitable.

The strides made in technology after World War II were causing competitive pressure on the Bell System. After the *Above 890 Mhz* decision, large companies were able to build private microwave systems for internal communications.[65] In addition, FCC decisions loosening the restrictions on interconnection with the AT&T network allowed manufacturers other than Western Electric to sell communications equipment.[66] In addition to the pressures caused by technology and FCC decisions opening the equipment market, a significant factor leading toward competition was the very system of regulation that had prevailed for seventy years.

In 1907, Theodore Vail became President of AT&T and propounded the concept of "universal service" in which a basic telephone service would be provided to all citizens. To Vail, universal service and an AT&T monopoly were two sides of the same coin. Early Twentieth Century regulators saw great advantages to the AT&T monopoly, which controlled local telephone service (through the local operating companies, such as C&P), long distance service (through the AT&T Long Lines Department), equipment (through Western Electric) and research and development (through Bell Laboratories). The monopoly would be regulated under the federal system, by state regulators -- such as the PUC -- for local and long distance service, and by the Federal Communications Commission for interstate service.

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[61] Figures are publicly available in ARMIS reports. Data after 2007 are confidential.
[62] See *Washington Post*, March 26, 1896.
[63] See *Washington Post*, February 2, 1898.
[64] See *Washington Post*, February 2, 1898.
[65] Weber at 23.
[66] See *Hush-a-Phone Corp. v. United States*, 238 F. 2d 266 (D.C. Cir 1956); *Use of Carterphone Device in Message Toll Telephone Service*, 13 FCC 2d. 420 (1968)

Most importantly, before divestiture, long distance revenues covered a substantial portion of common costs to achieve universal service by keeping local rates relatively low. In a monopoly world, everything could work out in the end.[67]

But this is not only a classic economic distortion, it is an invitation for a competitor to undercut the price of long distance service. Enter Microwave Communications Inc., later called MCI. MCI could expand its private line services (made possible by the *Above 890 Mhz* decision) to provide long distance service as well, if it could achieve interconnection with the local telephone companies. Initially reluctant, the FCC eventually granted MCI interconnection privileges after losing two important court cases.[68] Thus began competition in the provision of long distance services. Within a few years, the divestiture of the local operating companies, and the passage of the Telecommunications Act of 1996, would see the emergence of competition in the provision of local service as well.

> *In 1975 MCI introduced Execunet service, calling it a private line communications network offering up to one third reduction in monthly communications expenses for small and medium-sized businesses. The key element of Execunet service was interconnectivity, so that a subscriber could access Execunet from any phone and reach any phone in a distant city served by MCI. The fact that a "private line" service had access to the "public switched network" caused considerable angst at the FCC.*

Early Stages of Competition in the District of Columbia

Even before these events, competition of a sort was emerging in the District of Columbia. On November 10, 1966, the Commission approved American Radio-Telephone Service, Inc.'s (ARTS) application to operate as a Common Carrier Communications Company in the District of Columbia.[69] On August 9, 1968, Washington Mobile Telephone Company (WMTC) sought permission to provide two-way radio and telephone service to be interconnected with the facilities of the local land-line telephone company. On October 11, 1968, ARTS opposed WMTC's application. The opposition raised the question of whether WMTC must make a showing of need for its service. The ARTS petition was denied. The Commission granted WMTC permission for the operation of a Mobile Telephone System on April 24, 1969. [70] At the time, few thought that mobile telecommunications could be considered as an alternative to local

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[67] Historically, state commissions, including the DC Commission, have set local rates using a residual pricing method wherein the commission first determined the amount of revenue the company needed in order to earn a fair rate of return, and then subtracted from the revenue long distance revenue. The remainder or residual revenue requirement was used as a basis for setting local rates. Since the amount of revenue derived from long distance service exceeded the cost of the service, the residual pricing method enabled commissions to keep residential service rates below cost in order to promote universal service. See "Four Approaches to Telecommunications Deregulation and Competition: The U.S., U.K.; Australia and New Zealand," by James R. Green & David J. Teece, p. 14.

[68] See *MCI Telecomm Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977) and *MCI Telecomm Corp. v. FCC*, 580 F.2d 590 (D.C. Cir. 1978). See also MCI Communications Corporate Records, Hagley Digital Archives, www.digital.hagley.org/cdm/ref/collection/p26800/coll28/id/5620.

[69] PSC No. CO 1-21, Order No. 5099, November 10, 1966.

[70] F.C. No. 540, Order No. 5211, April 24, 1969.

telephone service. Today, however, mobile telecommunications offered by cellular telephone companies successfully competes to provide local service.

Some years after the FCC decisions that presaged the interconnection of customer-provided equipment, the Commission considered the question. On May 21, 1973, C&P filed tariff amendments to establish regulations and rates for new connecting arrangements permitting the interconnection of certain kinds of customer-provided terminal equipment with C&P central office, Centrex or PBX stations. On March 20, 1974, the Company filed a further amendment providing for an additional connecting arrangement related to the provision of service to the District of Columbia. In Formal Case No. 609, the PSC dealt with the controversial issue of interconnection of customer provided equipment with the Telephone Company network.[71]

Throughout the late 1970s and 1980s, telecommunications policy makers, regulators and industry participants coalesced around the idea that competition was an attractive alternative to rate regulation.

BOX: *On October 6, 1988, a Working Group established in Formal Case No. 814, hosted a symposium at which academicians and officials of state regulatory agencies shared their perspectives on competition in and regulation of state telephone markets as an alternative to rate of return regulation. See photo below.* ***END BOX***

Shown above with Dr. Phylicia Fauntleroy, Director, Office of Economics, D.C. Public Service Commission, are from left to right, Dr. Raymond Lawton, NRRI; Dr. Manley Irwin, University of New Hampshire; Dr. Edythe Miller, former Chairman of Colorado PUC; and Dr. William Shepherd, University of Massachusetts-Amherst.

By 1990, it was clear to the Commission that in addition to competition in peripheral services like pay telephones, competition in the provision of local service was likely. Therefore,

[71] 1974 PSC Annual Report, p. 1, F.C. No. 609, Order No. 5637, April 9, 1974.

the Commission approved a set of criteria for judging competition for telecommunications service in District of Columbia based on traditional industrial organization theory. The first step in the process was defining the relevant market. To that end, C&P was required to address the substitutability of the service in question on the basis of cross-elasticity of demand studies, user surveys and/or other studies. The second step was to determine the extent of market power. Market share data, studies of economies of scale and scope, and incremental cost studies would be performed where possible. Other market criteria to be considered were mobility barriers, price discrimination, cross-subsidization and tying contracts. To facilitate the process, the Commission also established a new working group composed of C&P, PSC Staff and the Office of the People's Counsel to develop the methodologies for cost and demand studies.[72]

BOX: *The Commission established Formal Case No. 892 in 1990 to consider the applications for a "Certificate of Public Convenience And Necessity" of Teleport Communications Washington, D.C., Inc., Metropolitan Fiber Systems Of Washington, D.C., and The Institutional Communications Company. The three applications concerned proposals to construct and operate data networks in the District of Columbia.* **END BOX**

One of the intended benefits of the introduction of competition in local telephone markets was that it would stimulate innovation leading to the offering of many new services. That did indeed occur in the District. By 1994, the Commission had approved numerous new business and residential services. Among the new residential services and features were Call Block, Call Forwarding, Call Trace, Call Waiting, Caller ID, Connect Request, the Guardian Plan, Home Intercom, Identa Ring Distinctive Ringing, Intercom Extra, Long Distance Message/Call Restriction, Preferred Telephone Number Service, Residential Service Variety Packages that bundled several features into one pricing package, Reserved Telephone Service, Speed Calling, Ultra Forward, and 700 and 900 Service Blocking.[73] Many of these same services were and are offered to business customers.

Telecommunications Act of 1996

Throughout 1995, the United States Congress debated what was then hotly contested national telecommunications legislation. After much discussion and compromise in Congress, on February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 (1996 Act). On April 19, 1996 the FCC published its initial interpretation of the key features of the 1996 Act.

The 1996 Act imposed general duties upon local exchange carriers to interconnect with other telecommunications carriers and to install network features that permit access to persons with disabilities and that comply with guidelines for coordinated network planning.[74] The 1996

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[72] PSC Annual Report 1990, p. 26-27, Order No. 9503, F.C. No. 814, Phase II, June 25, 1990.

[73] Several key business services that were approved include Integrated Services Digital Network (ISDN), Frame Relay Service, Audiotex Service, Channel Services, Digital High Capacity Service, Digital Data Service, IntelLiinQ PRI Service and Switched Multi-megabit Data Service (SMDS).

[74] 47 U.S.C. S 251(a)

Act also imposed specific duties on all local exchange carriers and the incumbent local exchange carrier.

> *The 1996 Act codified the distinction between the Incumbent Local Exchange Carrier (ILEC) and Local Exchange Carriers, which became known as Competitive Local Exchange Carriers (CLECs). In the District, the ILEC was BA-DC and the Commission began to certificate CLECs in 1997. As of the end of 2013, 268 CLECs had been certificated. Of those, 106 have withdrawn their certification, leaving 162 CLECs currently certificated in the District.*

The 1996 Act provided for state public service commissions, such as the DCPSC, to implement the 1996 Act by regulating the duties of the local exchange carriers. Thus, the PSC would provide mediation and arbitration to requesting carriers, and would review the terms and conditions, which were generally offered by the incumbent carrier to fulfill its duties.[75] The 1996 Act also prohibited a state's statute or regulation from prohibiting, or from having the effect of prohibiting, the ability of any entity to provide any interstate or intrastate service.[76] The 1996 Act, however, preserved the states' rights to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.[77]

The 1996 Act significantly impacted how local state commissions regulated telecommunications service providers. Among other things, the Act removed barriers, which had limited competition in the local and long distance markets and opened the telecommunications market to full competition for new market entrants.

Long distance companies such as AT&T, MCI, and Sprint would now be allowed to compete with BA-DC for local telephone customers. Eventually, local companies such as BA-DC would be able to offer long distance service to District ratepayers. In the interim, both the FCC and local regulatory agencies such as the DCPSC had to issue rules and determine the details.

On May 13, 1996, the Commission ordered BA-DC to immediately file with the Commission all interconnection agreements entered into between BA-DC and any telecommunications company or carrier, including Bell Atlantic affiliates. This followed a petition filed on April 2, 1996, by AT&T requesting that the Commission direct BA-DC to file all interconnection agreements between BA-DC and all other carriers and telecommunications companies with the Commission. The petition stated that AT&T had sought the voluntary production of the agreements as part of its interconnection negotiations with BA-DC but BA-DC has declined to produce the agreements. The Commission determined that, pursuant to the Telecommunications Act of 1996, any interconnection agreements, including those negotiated-before the enactment of the Act, must be submitted for approval.[78]

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[75] 47 U.S.C. §252
[76] 47 U.S.C § 253(a)
[77] 47 U.S.C. § 253(b)
[78] F.C. No. 952, Order No. 10791, May 13, 1996

On June 3, 1996, the Commission opened a proceeding to address issues concerning the responsibilities of the Commission to enforce provisions of the 1996 Act. Certain provisions of the 1996 Act were designed to open the local exchange telecommunications market to competitive service providers. The Commission was committed to fulfilling its responsibilities under the provisions of the 1996 Act in a manner that would achieve their overall purpose as rapidly as possible. Other provisions of the 1996 Act gave the Commission certain responsibilities concerning universal service, Bell Atlantic's possible entry into the long distance market, and the promotion of advanced telecommunications technology.[79]

BOX: *On July 15, 1996, BA-DC and AT&T Communications of Washington, D.C, Inc. filed petitions for arbitration of interconnection agreements by the Commission pursuant to section 252 of the Telecommunications Act of 1996. On October 7, 1996, AT&T filed supplemental comments stating that a number of issues would likely require a decision by the Commission. The Commission commended the parties for their continuing efforts to negotiate a resolution of the disputed issues, however the time constraints imposed by the 1996 Act, required the Commission to act within a specified time period. The Commission appointed an Arbitrator and adopted a procedural schedule. A total of six other arbitrations followed. On October 15, the Commission approved a negotiated agreement between BA-DC and MFS Intelenet of Washington, D.C, Inc., which was submitted to the Commission for approval pursuant to section 252 of the Telecommunications Act of 1996. The Commission quickly approved fourteen other negotiated agreements.* **END BOX**

Local Service Competition in D.C.

On September 9, 1996, the D.C. Council enacted its own version of the federal law, the District of Columbia Telecommunications Competition Act of 1996.[80] (D.C. Law) On January 17, 1997, BA-DC filed a statement of generally available terms and conditions for interconnection and access to unbundled network elements, ancillary services, and resale of telecommunications services.

BOX: *On November 25, 1998, BA-DC announced that it would offer end users a Local Service Provider "Freeze" in order to prevent "slamming." Slamming is the unauthorized change in the designation of a customer's local exchange carrier. On April 19, 1999, the Commission instituted Formal Case No. 984 to determine whether the BA-DC Local Service Provider Freeze Policy was just and reasonable. Under the proposed Freeze service, BA-DC would not transfer the end user to another local service provider unless that end user had first contacted the local service provider, via telephone or written notification to remove the local service provider freeze. Several CLECs complained that the BA-DC policy was anti-competitive. The Commission closed Formal Case No. 984 in 2000 without reaching a conclusion as to the value of the Freeze.* **END BOX**

Availability of Advanced Telecommunications Services in the District

[79] F.C. No. 954, Order No. 10806, June 3, 1996
[80] D.C. Law 11-154, 43 D.C. Reg. 3736 (1996)

On March 2, 2000, D.C. Councilmember Sharon Ambrose referred to the Commission a letter she received from a local business customer who was dissatisfied with BA-DC's explanation as to why BA-DC could not connect his business to a competitor's DSL service. That same day, OPC filed a petition requesting that the Commission open a proceeding to determine the availability of BA-DC and other competitive providers' advanced telecommunications services.

On April 6, 2000, the Commission opened a proceeding to study the availability of advanced telecommunications services in the District of Columbia. In order to develop strategies to encourage the deployment of advanced telecommunications services, the Commission needed to determine first the current state of deployment. The Commission scheduled informational hearings in October 2000.[81] Subsequent to opening this proceeding, the FCC released several decisions removing broadband issues from the jurisdiction of state commissions. Due to the lack of jurisdiction over broadband services, the Commission closed F.C. No. 992 effective June 15, 2007.

Fostering Competition

To facilitate the introduction of competition in the local telecommunications industry in the District, on November 9, 2001, the Commission established service quality standards governing Verizon's Operation Support Systems (OSS) service to competitive carriers that need access to Verizon's network in order to serve their retail customers. These Carrier-to-Carrier Guidelines were based on New York State Guidelines, but adapted to take into account DC-specific systems and processes. The Commission also adopted a "change management" procedure for the adoption of amendments to the Guidelines.[82]

One of the principal ways to foster competition in the local telephone market is to allow potential competitors, such as CLECs, to lease elements of Verizon's network at wholesale rates and then combine these elements to offer telephone service to retail residential and business telephone customers. To this end, the Commission had to set the wholesale rates that CLECs would pay Verizon for Unbundled Network Elements (UNEs).

After litigation of numerous issues, on December 6, 2002, the Commission established the resale discount rate, the cost of capital, and depreciation rates and permanent, cost-based recurring and non-recurring UNE rates in compliance with a methodology that had been mandated by the FCC.[83] However, several parties (OPC, Verizon DC and AT&T) to the proceeding filed motions for reconsideration. In the meantime, while the Commission was considering these motions, the FCC subsequently issued a decision in its Triennial Review Order (TRO), in August 2003, which raised the question of whether modifications needed to be made in the UNE rates the Commission had established. Parties also filed appeals of the FCC's TRO in the courts. In August 2003, the Commission requested comments from the parties on the

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[81] F.C. No. 992, Order No. 11722, June 30, 2000; Order No. 11731, July 7, 2000.
[82] F.C. No. 990, Order No. 12230, November 9, 2001.
[83] F.C. No. 962, Order 12610, December 6, 2002

impact of the FCC's decision on the UNE rates in the District of Columbia.[84] As the year ended, the Commission had received the comments and was planning to issue a decision on whether it should proceed with a final order on the UNE rates, in light of the motions for reconsideration, or whether the proceeding should be halted until more definitive decisions were made on the FCC's TRO by the courts.

The TRO also required all state public service commissions to make detailed, fact-specific findings as to whether competitors can lease certain portions of the local telephone company's network at reduced prices. The Commission opened a proceeding on September 26, 2003 to address these issues. On November 17, 2003, the Commission ruled that Verizon DC was not required to lease its local switching facilities to competitors serving the business market.[85]

In March 2004, the Court of Appeals for the District of Columbia Circuit vacated several portions of the FCC's TRO. In response, the Commission extended a stay of its UNE Order and sought comments from the parties on the effect of this decision on the UNE rates in the District. Meanwhile, on August 20, 2004, the FCC released its Interim Unbundling Order, which froze the rates, terms, and conditions under which local telephone companies such as Verizon offered access to certain UNEs. The same order set a six-month schedule for the FCC to consider and establish permanent unbundling rules.

On September 21, 2004, Verizon DC asked the Commission to hold its consideration of the pending motions for reconsideration in abeyance on the grounds that the FCC's Interim Unbundling Order constrained the Commission's discretion in the UNE proceeding by imposing a mandatory floor on certain rates. Upon deliberation, the Commission, on November 24, 2004, continued the stay on the grounds that the Commission's rate setting authority is limited by the rules established by the FCC and those rules could have a potential impact on significant portions of the Commission's UNE order.[86]

> *Section 271 of the 1996 federal Act required each state PSC to provide a consultative report to the FCC within six months of a request by a local exchange carrier to offer long distance service in the local jurisdiction. On July 12, 2002, Verizon filed a request to be allowed to offer long distance services in the District. OPC and several CLECs participated in the proceeding, which included a hearing held on November 19 and 20, 2002. The Commission timely filed its consultative report to the FCC on January 9, 2003. In the Report, the Commission found that Verizon DC had generally met the 14 point checklist conditions specified by the FCC. The principal condition was that there was adequate competition in both the residential and business markets in the District as reflected in the fact that there were competitors providing services "either exclusively or predominantly over their own facilities to residential and business customers." Subsequently, the FCC approved the Verizon DC request to enter the long distance market.*

[84] F.C. No. 962, Order No. 12898, August 27, 2003
[85] F.C. No. 1024, Order No. 12992, November 17, 2003
[86] F.C. No. 962, Order No. 13435, November 24, 2004

On October 12, 2006, the Commission requested input from the parties on the next steps to be taken to revise the UNE rates.[87] On November 1, 2006, OPC filed its comments. OPC's recommended position was that the Commission should order Verizon to submit new cost studies to determine permanent UNE rates to encourage and facilitate the development of robust and effective competition in the District. On November 21, 2006, the CLEC parties filed reply comments recommending that the Commission direct Verizon to implement Total Element Long Run Incremental Cost (TELRIC) based rates for UNEs approved by the Commission. The CLEC parties further recommended that the Commission should adopt the "interim" UNE rates offered by Verizon's December 18, 2002 Industry Letter. On November 22, 2006, Verizon DC filed reply comments in which it stated that the Commission should vacate Order No. 12610. The stay continues to date.

Current Status of Competition

During the period between 1998 and 2004, AT&T and MCI were the major competitors in the residential market. These companies leased local network facilities and bundled local service with their long distance services. Following changes in FCC policy that limited the types of facilities that could be leased and increased the rates for some network configurations, AT&T and MCI were no longer active in the local residential market. In fact, Verizon purchased MCI and SBC purchased AT&T. Independent CLECs began serving mostly small and medium-sized businesses. These CLECs, for the most part, lease Verizon's copper wires to serve customers. Additionally, Comcast, by upgrading its network from a one-way video distribution network to a two-way video, voice, and data network, is now the major competitive provider of telecommunications service in the District.

Verizon DC and some CLECs are now deploying fiber networks, which can provide both traditional and new services to consumers. The deployment of these new networks may lead to the retirement of copper networks, which will change telecommunications competition once again in the District of Columbia.

IV. Protecting Consumers

At the heart of the Commission's mission is protection of consumers. Throughout its history, from the early focus on rate regulation, through the development of competitive markets, the Commission has encouraged citizen and public participation in its proceedings through a growing variety of measures. Consumer protections have remained an issue in recent years, as the Commission has addressed public concerns regarding service quality, privacy and safety, and specific, transparent universal service while the industry is undergoing major infrastructural changes.

> *In 1915, a special examination was made of the service of the Telephone Company. The object of the observations and tests was to determine whether the equipment, switchboard capacity, and the operating force were sufficient to handle the traffic at all times with reasonable facility. Tests were made primarily to show the elapsed time between taking down the receiver by the subscriber and the first answer by the operator. The*

[87] Order No. 14086

investigation showed that the service rendered compared favorably with that rendered in other large cities.

Universal Service

From the beginning, universal service has been a Commission goal in its regulation of telephone service in the District. In 1913, when the Commission was created, there were 46,000 telephones in the District, but most were likely to have been in businesses rather than homes.[88] According to the FCC, 13.6 percent of the population had access to a telephone, which was higher than the national average of 9 percent. [89] By 1983, before the advent of divestiture, the rate for D.C. was 94.7 percent, which was well above the U.S. average of 91.4 percent.[90]

"*The Transmitter, C&P's employee publication, made its initial appearance January 1, 1913… In one of its first feature articles, The Transmitter described telephone equipment and use in the White House: [President Taft used the telephone sparingly; he did not have one in his bedroom, but in his study adjoining, there was an ordinary desk-set over which he talked occasionally to his most intimate associates.] Only one operator was needed then to operate the White House switchboard; by 1923, three operators were on duty simultaneously during busy hours.*"[91]

For several decades (1940s through 1960s), the Commissioners themselves were responsible for ruling on requests to restore telephone service after service had been disconnected, often for alleged illegal activities such as gambling. The minutes of Commission meetings are filled with such examples. A number of prominent attorneys in Washington represented the clients. In addition, in one instance, Chairman James Washington actually conducted his own investigation by visiting the residence with the Executive Secretary before approving the restoration of service.

However, Theodore Vail's idea of universal service, achieved through cross-subsidies in a monopoly environment, was not viable in a competitive market. In 1985, concerned about a possible reduction in the percentage of households with telephone service in the District because of the significant increase in local rates and charges associated with the divestiture of AT&T and the creation of separate Bell Operating Companies, the Commission mandated C&P to provide a discounted local telephone service, called Economy II service, to qualified low-income District residents. The initial Economy II rate was $4.00 per month with a 60 free call allowance, a 50 percent discount on service connection charges, and a reduction in the customer access line charge. The Commission also began tracking the percentage of households in the District that had a telephone based on the Telephone Penetration Index (TPI) produced three times a year by the U.S. Bureau of the Census and the FCC for each state and the District of Columbia. The Commission viewed the new Economy II service as a way to keep people "on the network."

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[88] 1913 PUC Annual Report

[89] FCC, U.S. Telephones and Teledensity by State in 1912, Census of Telephones, 1912, Table 5

[90] See Alexander Belinfante, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, "Telephone Subscribership in the United States," Released October 1999, p.5.

[91] Cromwell, Joseph H. *The C&P Story - Service in Action*, 1981, p. 16.

The Commission also saved low-income customers money by excluding Economy II participants from paying a newly created Subscriber Line Charge (SLC). The SLC is a federally imposed fee on telephone users by the local telephone companies so they can partially recover their costs for processing long distance calls through their networks. The FCC first implemented the fee in 1984 with the divestiture of the Bell System as a way to reduce long distance rates that had previously subsidized local rates. In 1989, the Commission filed a petition requesting that the FCC reduce the SLC for the District of Columbia because its subscribers were paying more of the costs of access to the long distance network than was justifiable since the local loops upon which the SLC is based are shorter in the District than the national average. Subsequently, C&P filed a tariff to reduce the SLC in the District from $3.14 to $3.08. The FCC approved the reduction and directed C&P to make other adjustments that reduced the SLC further to $3.04. The Commission and C&P continued to seek and obtain SLCs lower than the national rates going forward.

By the early 1990s, despite the Economy II service program, the TPI for the District had fallen below 90 percent and below the national average.[92] In response, the Commission, as first proposed by Chairman Howard C. Davenport on the record in Formal Case No. 850, approved, after comments were received, changes to Economy II service such as removing the restriction on the number of calls, establishing a $1.00 monthly rate for customers 65 and older, and reducing the rate for customers under age 65 to $3.00 per month. [93] Those same rates continue today, more than 20 years later, as customers, who recertify annually, save $200 a year if they are aged 65 and over and $175 per year if they are under age 65.

> In 1993, d*uring the Commission's proceedings in F.C. No. 850, a C&P rate case, 2 children were killed in an apartment fire in the Mount Pleasant neighborhood when their mother left them alone, locked in the apartment. The fire started because the family's electric and telephone service had been disconnected for non-payment of bills. Instead, the family used candles for lighting. On Monday, December 6, while the mother left the children alone, a fire started and the children could not call for help because there was no telephone service.*[94]

Chairman Davenport's efforts to assist consumers and prevent situations like what occurred above, did not stop with reducing Economy II service rates. In the Commission's vigilance to ensure that all District residents are afforded every opportunity to subscribe to telephone service, in Telephone Tariff (TT) 94-3, the Commission approved a new service, called "B" or Message B service, which allowed residential telephone customers disconnected or about to be disconnected for nonpayment up to 24 months to pay outstanding telephone charges and at the same time retain phone service. Effective June 6, 1994, the monthly rate for the service for non-Economy II service customers was $7.47 while Economy II service customers paid only the low-income discount rate. All Message B customers received a 60 free call allowance, after which they were charged 6.5 cents per call within the local metropolitan area. Participants could not subscribe to long distance service, however, they could make such calls if

[92] In 1992, the TPI for D.C. had fallen to 88.7 percent, well below the national average of 93.8 percent.
[93] See F.C. No. 850, Order No. 9927, January 27, 1992.
[94] Harris, Hamil R. and Santiago O'Donnell, "Couldn't Save Girls in NW Fire," *Washington Post*, Tuesday, December 7, 1993, p. B3.

they had separate arrangements with a long distance company or purchased cash cards to make long distance calls. BA-DC proposed the service as a result of a survey of disconnected households and as part of the Commission's efforts to increase the TPI in the District. According to the Commission's 1994 Annual Report, "The initial participation numbers were encouraging. In fact, BA-DC reported that by the end of 1994, 3,759 customers had subscribed to "B" Service."[95] Message B service continued until 2011 when the Commission discontinued it, finding that Message B service was no longer necessary because the Commission had barred the termination of local exchange service for non-payment of unregulated services, including long distance service.

The Commission also tasked the 3 utility companies as well as Commission Staff, OPC, and DCEO to find ways to increase participation in Economy II service as well as the similar electric and natural gas low-income discount programs called the Residential Aid Rider (RAR) and Residential Essential Service (RES), respectively. Representatives from these stakeholders formed a Multi-Utility Discount (MUD) Working Group to promote awareness of the three District of Columbia Utility Discount Programs (UDPs). The Working Group first prepared a joint application form that was used at all of their individual outreach events so someone screened for one program would automatically be considered for the other two programs without having to reapply. Moreover, in 1991, also during Chairman Davenport's tenure, an unprecedented outreach program, both at the Commission and perhaps in Commissions in other states, was undertaken not only for increasing awareness of the UDPs, but also for the energy conservation programs the Commission had approved. In addition, over the 20-year period through 2011, the MUD Working Group sponsored Joint Utility Discount Days (JUDDs), coupled with extensive radio and print advertising, which became a forum for thousands of eligible District residents to sign up for utility discounts each year and learn about ways to save energy and money on their bills.

On November 21, 2011, the Commission discontinued JUDD. A new UDP Consumer Education Program (CEP) Working Group, which replaced the MUD Working Group, was created and tasked to develop a broader Consumer Education Program to educate D.C. consumers about the UDPs. The Commission determined that the new CEP would provide more outreach opportunities than what had become a one-day JUDD event, so the Commission replaced JUDD with the CEP beginning with Fiscal Year 2012.[96] The Commission approved a yearlong educational program and established deadlines to evaluate the current and future CEPs.[97]

The Telecommunications Act of 1996 established a new kind of universal service in which there would be only specific and predictable support mechanisms.[98] On May 8, 1997, the FCC issued regulations to implement the provisions of the 1996 federal Act relating to universal service. Beginning on January 1, 1998, only eligible telecommunications carriers, designated by state commissions, could receive federal universal service support, including support for Lifeline and Link Up. Lifeline was a program that made certain basic services available to qualifying

[95] 1994 PSC Annual Report, pp. 10 & 27
[96] F.C. No. 988, Order No. 16615, November 21, 2011
[97] F.C. No. 988, Order No. 16615, November 21, 2011
[98] See 47 U.S.C. § 254.

low-income consumers at a reduced rate. Link Up was a program under which qualifying low-income consumers could receive service connection at a reduced charge. State commissions, upon their own motion or upon request, were required to designate a common carrier that met the FCC's eligibility requirements to receive federal universal service support for a service area designated by the Commission.[99]

On December 17, 1998, the Commission designated Bell Atlantic-DC as an eligible telecommunications carrier and reaffirmed the Commission's approval of BA-DC's current advertising and outreach efforts for Economy II Service and Lifeline Connection Assistance (Link Up) programs.[100]

On January 31, 2000, the Commission opened a new proceeding to consider universal service issues. On February 13, 2001, the Commission adopted a Universal Services Issues List and established a Universal Service Working Group charged with proposing Universal Service Standards and a Universal Service Trust Fund.[101] With the advent of competition in the local telephone market, there was a need to establish a fund so all local telephone service providers, not just the incumbent exchange carrier, could offer discounted rate programs for low-income residents in an effort to ensure universal telephone service in the District. The fund would also support the provision of Telephone Relay Service (TRS) to the deaf and hard-of-hearing.

On January 14, 2002, the Commission established universal service regulations and a Universal Service Trust Fund (DCUSTF). In addition, the Commission issued a Request for Proposal (RFP) to select an administrator for the fund. After considering the bids, the Commission selected NECA, the National Exchange Carriers Association, as the first administrator.[102]

Following the establishment of the DCUSTF, there was a need to remove the costs of providing low-income (Economy II) service and TRS from Verizon DC's rates. In April 2005, Verizon submitted its initial proposal to implement this "rate rebalancing." Following comments and reply comments filed by OPC, the Commission rejected Verizon's proposal and ordered the DCUSTF Working Group to convene and develop a rate rebalancing proposal that followed parameters established by the DCUSTF and Price Cap Plan 2004. The DCUSTF Working Group submitted its report on November 4, 2005. After reviewing comments, the Commission approved the Working Group report on December 20, 2005.[103]

On December 2, 2008, the Commission filed reply comments with the Federal Communications Commission in support of its proposal to expand the federal Lifeline and Link-Up telecommunications service programs for low-income consumers to also include broadband Internet services. The Commission specifically agreed that the proposed $900 million, three-year national pilot program to subsidize monthly broadband service charges and to provide for subsidized equipment to access the Internet

[99] F.C. No. 962, Order No. 11073, October 16, 1997
[100] F.C. No. 962, Order No. 11265, December 17, 1998
[101] F.C. No. 988, Order No. 11916, February 13, 2001
[102] F.C. No. 988, Order No. 12301, January 14, 2002
[103] F.C. No. 988, Order No. 13842, December 20, 2005

was an important initiative to enable low-income consumers in the District to obtain access to broadband Internet services.

Consumer Bill of Rights

In 1975, OPC petitioned the Commission to adopt rules that would govern the standards of conduct and billing practices of the telephone, electric and gas utility companies within the District of Columbia. After investigation of the need for such rules, the Commission proposed the Consumer Bill of Rights (CBOR) on June 10, 1977. All parties to this case offered extensive comments. The Commission issued its Notice of Final Rulemaking on the Consumer Bill of Rights on May 18, 1979. The Commission prepared a handbook for District of Columbia residential customers to help them understand the practices of utility companies, such as billing payment standards, security deposits, termination and reconnection rules and service procedures. This Bill of Rights expanded consumers' rights and set up a model for the relationship between the utility company and the ratepayer. It also promulgated uniform rules which govern the standards of conduct and billing practices of the gas, electric and telephone companies in the provision of residential utility service in the District of Columbia.[104]

On December 3, 2004, the Commission published proposed amendments to the Consumer Bill of Rights in order to broaden its applicability beyond the three utility companies, Pepco, Washington Gas, and Verizon DC, to include the competitive electric and gas suppliers and the CLECs that were serving the District. In an effort to facilitate public input, the Commission created a CBOR Working Group, comprised of representatives from OPC, Advisory Neighborhood Commissions (ANCs), civic associations, utility companies, competitive suppliers/providers, and the Commission staff. Because of this cooperative effort over several years, the Commission adopted final rules with an effective date of January 1, 2009. Subsequent to the adoption and publication of the new CBOR, the parties filed various motions noting their inability to comply with the effective date. The Commission set a new effective date of September 25, 2009.[105] The 2009 CBOR remains in effect.

Additional Consumer Protections

The Application of C&P to offer Return Call and Caller ID on October 2, 1989, initiated a policy discussion on the issue of privacy and the telephone network. Specifically, these services allow the called party to automatically obtain the calling party’s telephone number without securing the calling party’s permission. To address public privacy concerns, the Commission not only held hearings and obtained expert testimony, but also solicited citizen's views at two community hearings.

On July 20, 1990, the Commission approved the implementation of Return Call and Caller ID service within the District of Columbia, on the condition that Caller ID service would only be offered with per-call blocking, and upon approval by the Commission as to the rates,

[104]1979 PSC Annual Report, p. 4; F.C. No. 662, Order No. 6084, May 18, 1979.

[105] F.C. No. 712, Order No. 15128, November 26, 2008

terms and conditions for the per-call blocking feature.[106] The Commission approved Caller ID on January 30, 1990.[107]

The Commission continued to demonstrate its firm commitment to residential ratepayers. In 1991, the Commission directed C&P to reduce rates for flat residential service, touch-tone service, and the 911 surcharge. In addition, in May, the Commission directed the initiation of TRS in the District of Columbia for the deaf and hard of hearing.[108]

The Commission established a pay telephone consumer complaint process that required owners to post a hotline number to the Commission on their phones and enabled ANCs to testify on the placement and removal or relocation of pay telephones in their communities.

On January 16, 1996, BA-DC announced plans to close its D.C. Payment Center, located at 722 12th Street, N.W. According to information from the Company, the D.C. Payment Center provided service to a substantial number of BA-DC customers, both business and residential. In lieu of the central payment center, BA-DC planned to provide payment services through Traveler's Express agents and Crestar Banks located throughout D.C. Due to the potential impact on customer services, the Commission instituted an investigation to insure that the Company's contemplated action was in the best interests of the ratepayers of the District of Columbia.[109] On June 25, 1996, the Commission approved the closing of the D.C Payment Center effective July 19, 1996 provided that Verizon DC established other types of payment centers in the District. The Commission continues to monitor the alternative payment centers, which are required in each ward.[110]

Quality of Service Standards

With the advent of local telephone competition, there was a need to have retail quality of service standards that cover all of the providers, not only Verizon. After more than a year of deliberations, in May 2005, the Local Exchange Carrier Quality of Service Working Group filed its Report to the Commission with recommendations on the types of retail standards the Commission should adopt. The recommended new metrics were adapted from the metrics originally established for BA-DC in F.C. No. 814. After requesting and receiving comments on the Report, the Commission, on October 19, 2005, established an initial list of retail quality of service standards that would be applicable to all local telecommunications providers. The Commission reaffirmed its decision that symmetrical retail quality of service standards protect District consumers by ensuring all providers offer the same minimum quality of service.[111]

The Commission established retail quality of service standards for Verizon and CLECs on September 5, 2006. The new quality of service standards measure the percentage of

[106] F.C. No. 891, Order No. 9506, July 20, 1990
[107] F.C. No. 891, Order No. 9644, January 30, 1990
[108] 1992 PSC Annual Report, p. 4.
[109] F.C. No. 950, Order No. 10754, February 1, 1996
[110] F.C. No. 950, Order No. 10811, June 25, 1996
[111] F.C. No. 990, Order No. 13789, October 19, 2005

installation commitments met, the number of trouble reports per 100 lines, and the out of service clearing time. They are applicable to all non-Voice over IP (VoIP) companies that have more than 10,000 access lines in the District of Columbia. As of the end of 2013, there were 4 companies that were required to file such reports; two of the companies served residential customers and all 4 served business customers.[112] These companies must collect data on these three quality of service measures monthly, reporting their results on a quarterly basis and if necessary, provide a remedial plan explaining why particular measures were missed as well as the corrective actions taken going forward.

Another aspect of service quality is billing practices. On July 21, 2006, OPC filed a petition requesting the Commission to open an investigation in Verizon DC's billing system's practices and procedures, alleging that Verizon DC did not inform either the Commission or OPC of a billing error affecting some of its customers. The Commission determined that it needed to develop rules for telecommunications service providers so that that they could inform the Commission and OPC of any billing problems. On May 4, 2007, the Commission issued proposed requirements for billing error reporting and notification. On November 30, 2007, the Commission adopted "Billing Error Reporting and Notification Requirements for Telecommunications Service Providers operating in the District."[113]

The Commission initiated an investigation of Verizon's service quality in 2007 after establishing standards in 2006 and requiring the Company to file quarterly reports. Over the ensuing years, the Commission required Verizon to file and amend its remedial plans and the Commission monitored the Company's progress in improving its quality of service performance. Those reports showed significant improvements over time, such that on September 7, 2012; the Commission closed the investigation, while continuing to require quarterly reporting and compliance with the remedial plan.[114]

On August 26, 2011, OPC filed a petition to investigate the reliability of Verizon DC's telecommunications infrastructure. After receiving input from the parties, the Commission opened Formal Case No. 1090 and established an issues list on January 26, 2012.

On December 9, 2013, the Commission addressed seven issues related to the reliability of Verizon DC's telecommunications infrastructure. Based on the record in this quasi-legislative and quasi-judicial proceeding, the Commission determined that service degradation for Verizon DC should be determined using the current retail quality of service metrics and in applying those metrics that no service degradation exists for Verizon DC. However, the Commission also found that Verizon DC was not meeting two of the commitments it had made during the Price Cap Plan 2008 proceeding. The Commission directed Verizon DC to file remedial plans to improve its performance in reducing repeat problems and trouble repair times. The Commission further concluded that a new retail quality of service rulemaking proceeding was warranted to determine whether certain changes in the existing retail quality of service metrics should be made.[115]

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[112] The quality of service standards and requirements are not applicable to Comcast because it provides local VoIP-based local telephone service.
[113] Order No. 14644
[114] F.C. No. 990, Order No. 16891, September 7, 2012
[115] F.C. No. 1090, Order No. 17313, December 9, 2013

On January 17, 2013, the Commission opened a proceeding (F.C. No. 1102) to investigate Verizon DC's continued use of its copper infrastructure for the provision of telecommunications services and to determine whether, and under what circumstances, the Company plans to transition customers from the telecommunications services provided over copper facilities to telecommunications services provided over fiber facilities.[116] Evidentiary hearings on the nine issues in this proceeding were held on January 22 and 23, 2015. On September 1, 2015, the Commission issued Order No. 17952, describing its findings. Among the major findings was that Verizon DC's new fiber network does not provide electric power, so the customer is now responsible for that power. In cases of power outage, customers must rely on battery backup for telephones connected to the fiber network to work. The Commission also found that one of the voice services offered over Verizon DC's new fiber network, FiOS Digital Voice, is, a VoIP service, which the Commission cannot regulate. In Order No. 17952, the Commission directed Verizon DC to file new tariffs and update customer service and technician materials to ensure that consumers are provided with accurate information should they choose voice service provided over copper facilities. The Commission stressed that consumers who want to retain voice service provided over copper facilities should be allowed to do so. Verizon DC and OPC have petitioned for reconsideration of different findings in Order No. 17952. In Order No. 18051, issued on December 4, 2015, the Commission clarified some of these findings and once again directed Verizon DC to file its new tariffs and customer service materials.

E911 Emergency Service

The E911 dialing code allows the public to access the District Government's public safety services. Originally, E911 service was classified as a basic service, which required Commission approval of any rate change. However, as part of a joint settlement between Verizon and OPC in connection with Verizon's 2002 Price Cap Plan, E911 service was moved to the competitive service basket, where no Commission approval of rate changes is required. On May 16, 2002, Verizon filed an E911 service tariff to increase substantially the rate charged to the District Government for the service. The District Government, which had not participated in the 2002 Price Cap Plan proceeding, countered that the service was not competitive, because no other company was providing the service and no other company had the technical capability and resources to provide the service. On September 11, 2002, the District Government filed a motion to reclassify E911 service back to a basic service. The Commission encouraged Verizon and the District Government to negotiate a resolution. However, after settlement attempts failed, the Commission held a hearing in late 2003.

On June 3, 2005, the Commission determined that Verizon DC's E911 rate to be charged to the District Government should be determined through a rate proceeding. The Commission scheduled a pre-hearing conference and directed Verizon DC and the District Government to submit proposed issues and a procedural schedule. Subsequently, the Commission directed the parties to engage in settlement discussions. On January 3, 2007, the parties filed a report indicating that they had reached an impasse. During March 2009, the Commission held evidentiary hearings. On September 30, 2009, the Commission found that Verizon could charge

[116] F.C. No. 1102, Order No. 17294, November 8, 2013

the District Government for two components of E911 service.[117] The Commission approved Verizon DC's new E911 tariff, incorporating those findings, to be effective on November 12, 2010.[118]

Participation in Policy Making

The Commission has participated in policymaking activities in the service of consumer protection for many years. At the FCC, the Commission has offered comments and proposed solutions in several dockets. These include cases involving the designation of TracFone as an Eligible Telecommunications Carrier, the collection of broadband mapping data, the deployment of advanced telecommunications capability and the methodology for determining universal service contributions. In addition, the Commission has been an active participant in NARUC and the Mid-Atlantic Conference of Regulatory Utility Commissioners (MACRUC) and has sponsored many telecommunications resolutions.

BOX: *Chairman Patricia Worthy served as a Commissioner and Chair from 1981-1990. During that time she became the first D.C. Commissioner to chair a NARUC Committee, the Telecommunications Committee. She was an outspoken advocate for the newly created Bell Operating Companies to provide their local telephone services through "separate subsidiaries."*[119] *In addition, the Commission, through her leadership, filed numerous comments with the FCC on alternative regulation proposals for AT&T. Her efforts to assure consumer protections in the dramatic period after divestiture, in testimony and speeches before the FCC and other national policy makers, demonstrated her leadership and the commitment of the Commission.* **END BOX**

A particularly important example of the Commission's participation in policy-making occurred in 2011. That year, the FCC created a new Access Recovery Charge (ARC) in its *USF/ICC Transformation Order and FNPRM* (released November 18, 2011). The Commission filed a Petition for Reconsideration of 47 C.F.R. § 51.915(e) (3) on December 29, 2011. In that filing, the Commission objected to the portion of this rule that permitted price cap local exchange carriers to recover lost inter-carrier compensation revenues on a holding company, instead of study area, basis. Alternatively, the Commission sought a waiver of this rule for jurisdictions that had no intrastate access charges, since the ARC is designed to recover those lost intrastate access charges. On February 21, 2012, the Commission filed a Reply to Oppositions responding to arguments filed by entities that did not support the Petition for Reconsideration. In the Reply, the Commission urged the FCC to change the ARC rule.

On June 18, 2012, Verizon DC filed its proposed ARC for 2012 with the FCC. The tariff filing indicated that the residential ARC would not be imposed in Virginia, but that the ARC

[117] F.C. No. 1040, Order No. 15563, September 30, 2009
[118] F.C. No. 1040, Order No. 16049, November 12, 2010
[119] See *For Whom the Bells Toll: The Case For Separate Subsidiaries*, June 1990, which is available on the Commission's website.

would be imposed in the District of Columbia. On June 25, 2012, the Commission filed comments on the proposed tariff, raising two arguments: (1) that the FCC should prohibit the calculation of the ARC on a holding company basis, as articulated in the December 2011 Commission Petition for Reconsideration; and (2) that Verizon improperly calculated its ARC by excluding all Virginia residential customers from the imposition of the ARC.

On July 2, 2012, the FCC's Wireline Competition Bureau (the Bureau) released the *2012 Suspension Order*, which suspended for one day and set for investigation the ARCs contained in the 2012 annual access charge tariff filings. The *2012 Suspension Order* did not address the Commission's argument regarding the correct calculation of the Verizon ARC.

In light of the issues raised by the *2012 Suspension Order*, on July 30, 2012, Betty Ann Kane, Chairman of the Commission, acting as an individual Commissioner, submitted a Petition for Suspension of the Verizon DC's ARC Tariff, arguing that Verizon DC's ARC improperly charges District of Columbia customers while it excludes all Virginia residential customers from the same charge. The Bureau issued an *Order on Reconsideration* on August 1, 2012, permitting Verizon DC's ARC to become effective. Chairman Kane filed an Application for Review on August 31, 2012 seeking full FCC review of a Bureau decision to approve Verizon DC's new ARC without considering arguments that the Verizon ARC was improperly calculated.

On September 14, 2012, Verizon opposed the Application for Review. The Staff of the Virginia State Corporation Commission (VA SCC) also filed an Opposition on September 17, 2012, objecting to any argument that Virginia ratepayers should pay an ARC.

On September 24, 2012, Chairman Kane filed a Reply to the Verizon and VA SCC Oppositions, arguing that the Application for Review correctly noted that the Bureau did not make a decision that Verizon could exclude all Virginia residential customers from paying ARCs. Because of this inaction, Verizon was able to interpret 47 C.F.R. § 51.915(e) (3) in such a way that led to inequitable ARCs in Verizon's other jurisdictions.

On September 20, 2012, the Delaware Public Service Commission (DE PSC) filed an *ex parte* letter in support of the PSC's Application for Review. The Pennsylvania Public Utilities Commission (PA PUC) also filed a Petition for Clarification in support of the Application for Review. Verizon DC objected to the PA PUC filing on both procedural and substantive grounds on October 12, 2012. On October 19, 2012, the Maryland Public Service Commission (MD PSC) filed a letter in support of the DC PSC Petition for Reconsideration, the Application for Review, and the PA PUC filing, reiterating the arguments expressed in those filings.

On December 3, 2012, the FCC denied the Application for Review. However, the Commission has monitored Verizon DC's ARC filings and has been satisfied that Verizon DC is not imposing an ARC on D.C. residential and single line small business customers. Therefore, despite the FCC's denial, the strenuous advocacy was successful in demonstrating that the Commission would be vigilant in protecting D.C. consumers.

Deployment of Verizon's FiOS Service in the District

On May 3, 2010, OPC filed a petition for the Commission to establish a proceeding to monitor the deployment of Verizon DC's FiOS service in the District. FiOS is the Verizon brand name for television, voice, Internet, and other services to be provided using a Fiber-to-the Premise (FTTP) Telecommunications Network. Previously, in 1993, Bell Atlantic (now Verizon DC) promised to invest $11 billion in fiber systems in its 20 largest cities and complete the fiber networks by 2000. In 1994, Verizon won the right to provide cable service in a court case that focused on its first amendment rights.[120] However, Verizon DC did not begin building its fiber network in the District until after it negotiated a franchise agreement with the Office of Cable Television that became effective in May 2009. Verizon DC's first proposal would have left portions of Anacostia without fiber service. After a city council hearing, Verizon DC revised its proposal. The delay in deploying fiber and its FiOS service package provided Comcast with the opportunity to enter the local telecommunications market in the District and attract a significant number of residential customers.

Verizon DC's provision of non-telecommunications services over the network is offered pursuant to legislation passed by the D.C. Council in 2009 and a franchise agreement negotiated with the Office of Cable Television that became effective in May 2009. OPC argued in its pleading that the FiOS infrastructure will carry basic regulated telephone service in addition to unregulated services and Verizon's regulated telephone service has been sub-par, hence the Commission needed to investigate Verizon's infrastructure. On May 13, 2010, Verizon DC filed its response to OPC's petition. After denying OPC's allegations, Verizon DC moved for dismissal of the petition because FiOS is outside of the jurisdiction of the Commission. On June 2, 2010, the Commission dismissed OPC's petition. The Commission concluded that nothing in connection with the establishment of FiOS services has undermined the Commission's existing authority over the Verizon DC FTTP network, and that OPC has not provided any evidence that Verizon had violated the franchise agreement or deployed FiOS in a way that affects the development of a smart grid. Moreover, the Commission determined that OPC had not demonstrated a need for the Commission's involvement in the monitoring of the FTTP network.[121]

Disconnect for Non Payment of Long Distance Service Policy (DNP)

On February 18, 2010, the Commission determined that the long-standing policy that allowed local telephone companies to disconnect basic local service of consumers for non-payment of other services (called DNP) was not in the public interest and that the practice should be discontinued. Verizon and other affected carriers were required to discontinue the practice of DNP within six months. In the same Order, the Commission requested comments on how this policy would affect bundled services or combinations of local service with other services, products and features. On April 2, 2010, the Commission determined that disconnection of local service for nonpayment of other charges is permissible as part of a bundle, provided however, that the consumer has been given reasonable opportunity to modify service subscriptions so as to allow the continuation of local service. The Commission required all affected carriers to report on their progress in implementing the new policy.[122] As of October 29, 2010, Verizon DC, and

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[120] See Chesapeake & Potomac Tel. Co. v. United States, 42.F 3rd 181 (4th Cir. 1994).
[121] F.C. No. 1080, Order No. 15825, June 2, 2010
[122] F.C. No. 988, Order No. 15777, April 21, 2010

all other affected carriers had informed the Commission that they had made the necessary billing system changes and that they no longer disconnected consumers for non-payment of long distance charges

V. Conclusion

For one hundred years, the Commission has sought to assure that D.C. consumers are provided with reliable telephone service at reasonable rates. Through the interwoven eras of telecommunications regulation, the Commission has been devoted to certain core values: public safety, universal service, competition, and consumer protection. Today, as we oversee technology changes, we remain committed to those core values.

A Forward Look

Despite the dramatic decline in the real cost of residential plain old telephone service (often called POTS for short) over the first century of the Commission's history, in the last decade or more, the number of POTS customers has been falling dramatically. Consumers have replaced their landline or wireline service with hand-held and pocket-sized wireless cell phones and smart phones that can do more than make and receive calls. They also have bundled their regulated telephone service with unregulated services such as cable TV and Internet access. Since the Commission does not regulate this new technology, there is a real question as to how long traditional local telephone regulation will continue.