

Public Service Commission of the District of Columbia

450 5TH STREET, N.W.
WASHINGTON, D.C. 20001
(202) 626-5100



IN REPLY REFER TO:

July 21, 1989

Mr. Dan Wedderburn
Chairman
Consumer Utility Board
3539 T Street, N.W.
Washington, D.C. 20007

Dear Mr. Wedderburn:

This is to advise you of recent developments in telecommunications which will affect ratepayers in the District of Columbia.

First, on April 13, 1989 the Commission filed a petition for reconsideration of the Federal Communications Commission (FCC's) decision concerning the 1989 interstate access charges. That decision found the costs supporting the 1989 interstate access charges excessive and directed the local exchange carriers to reduce their access charges other than subscriber line charges (SLCs). Our petition requested the FCC to direct Bell Atlantic to reduce its SLC for the District of Columbia, to the same extent as it had directed reductions for other rate elements. The FCC has now announced that effective August 1, 1989 the SLC in the District of Columbia has been reduced from \$3.14 per line per month to \$3.04 per line per month. While this amount may seem minor, the victory is important because it has triggered an investigation into SLC charges in other jurisdictions. Thus, nationwide reductions are possible.

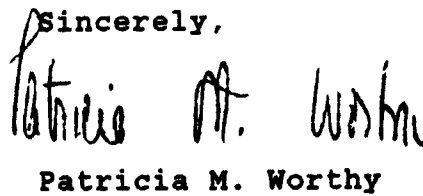
Second, please find enclosed recently introduced federal legislation which would lift some of the restrictions on the Bell operating companies (BOCS). As you are aware, the Modified Final Judgment prohibited BOC participation in the manufacturing of telecommunications equipment, the provision of long distance services and the provision of information services. The enclosed legislation would allow the BOCS to manufacture telecommunica-

tions equipment and provide information services.

The D.C. Public Service Commission has serious concerns about allowing the BOCS to be involved in these activities without adoption of appropriate regulatory safeguards to prevent discrimination, cross-subsidization and predatory pricing. It is imperative that we orchestrate an effort to bring these concerns before the House Subcommittee on Telecommunications and Finance (the Subcommittee) which has the proposed bill under consideration. To that end, I have enclosed a copy of the legislation and the Commission's comments which were filed with the Subcommittee.

I am available to meet with you and other members of the C.U.B. to discuss coordinating our efforts in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Patricia M. Worthy". The signature is written in dark ink and is positioned above the typed name.

Patricia M. Worthy
Chairman

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE

COMMENTS OF THE
PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
ON
H.R. 2140 THE "CONSUMER TELECOMMUNICATIONS SERVICES ACT OF 1989"

JUNE 23, 1989

The Public Service Commission of the District of Columbia (D.C. PSC) hereby submits these comments on H.R. 2140, the "Consumer Telecommunications Services Act of 1989" (the "Bill"). The Bill proposes to remove the restrictions on the provision of information services and manufacturing of telecommunications equipment from the Bell Operating Companies (BOCs) and their affiliates. The D.C. PSC is opposed to the Bill in that it relies on the current federal regulatory environment to guard against the possibility of anti-competitive conduct. To that end, the D.C. PSC notes that the ability to rely on such regulatory safeguards, and the ability of the Federal Communications Commission (FCC) and the State Commissions to monitor the activities of the BOCs and their affiliates, are insufficient to assure that the negative effects that could result from passage of the Bill are curtailed.

The Bill, in order to avoid cross-subsidies, relies on existing FCC initiatives in the area of cost accounting known as "non-structural safeguards." See generally Bill, proposed Sec. 225 at (e). Further, with regard to information services, the Bill relies upon: (1) an as yet uncompleted FCC proceeding regarding "Open Network Architecture"; and (2) any future FCC regulation enacted in, or related to, this area. Id. at (b)(2). The D.C. PSC

notes, however, that the ability of the FCC to effectively oversee such cost-accounting, non-structural safeguards has been the subject of considerable debate.^{1/} Further, and although subject to appellate action in the United States Court of Appeals for the Ninth Circuit, the FCC is attempting to dictate the use of non-structural safeguards by the States through its Computer III proceeding. See People of the State of California v. FCC, Case No. 87-7230, et al. (9th Cir.).

This Subcommittee should raise a critical eye to the advocates of such non-structural safeguards before it. What is at stake is clear -- the interests of ratepayers to enjoy local rates which are not inflated by the potential for a BOC to cross-subsidize its competitive ventures with its regulated operations. The D.C. PSC submits that it is no argument that such accounting safeguards protect the ratepayers because of the "audit" requirements. See

^{1/} For example, the General Accounting Office (GAO) previously has raised questions concerning the ability of the FCC to control cross-subsidy between regulated and competitive services through its joint cost accounting measures. See Telephone Communications Controlling Cross-Subsidy Between Regulated and Competitive Services, GAO/RCED-88-34 (October 1987) (GAO Report).

Overall, the level of oversight [that GAO sees] FCC prepared to provide will not, in [GAO's] opinion, ultimately provide telephone ratepayers or carrier competitors positive assurance that FCC's joint cost rules will guard against cross-subsidy. Such assurance is important in the future with the growth in carriers' competitive ventures, the loosening of restrictions on their entry into more of these ventures, and the increased potential for undetected cross-subsidy in the absence of structural separation requirements.

GAO Report at 54-55.

Bill, proposed Sec. 225 at (f)(2). In a similar instance, the GAO Report has also questioned the FCC's ability to assure comprehensive reviews even with the use of independent auditors as the Bill proposes.

FCC's requirement that each CPA attestation report provide a "positive" level of assurance rather than a "negative" level of assurance will provide FCC a greater degree of assurance. However, FCC's own oversight of the cost allocation program will provide only a "negative" assurance that cross-subsidy is not occurring because of the limited FCC staff available to examine carrier books and records.

GAO Report at 50-51. Apparently, staffing levels at the FCC are still a concern, as expressed recently by the FCC's Chairman to Congress. See Statement of Dennis R. Patrick, Chairman, Federal Communication Commission before the Subcommittee on the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies of the House Appropriations Committee (March 7, 1989). Further, the D.C. PSC's efforts to gather information concerning the affiliate transactions between Bell Atlantic, the parent corporation, and its subsidiaries, including The Chesapeake and Potomac Telephone Company in Washington D.C. (C&P), have been frustrated. Only C&P is subject to the D.C. PSC's jurisdiction, not Bell Atlantic. Therefore, there remains the question as to a State Commission's ability to require such information from the parent corporation in those States which do not have affiliate interest legislation.

This Subcommittee, likewise, should note that Judge Greene has questioned the ability of the FCC to effectuate these accounting

v

safeguards. In his September 10, 1987 decision, he questioned the ability of the FCC to oversee such safeguards based on its reduced staff. United States v. Western Electric Co., 673 F.Supp. 525, 570-71 (D.D.C. 1987). Further, in the context of discussing the FCC's decision to use joint cost accounting rules to oversee Regional Holding Company allocation of joint and common costs between regulated and nonregulated offerings, Judge Greene indicated

cross-subsidization is easy to achieve by firms engaged in both regulated and unregulated business but difficult to detect and to remedy. If regulations are to have any hope of success, they must facilitate such detection to the maximum extent possible. The [FCC's] Joint Cost order is not likely to accomplish this objective. To the contrary, it complicates the process of detection by allowing each Regional Company (1) to adopt a manual different from the others; (2) to choose its own cost allocation procedures, (3) to select its own accountants to review and certify the manual, and (4) to use its own reporting categories and terminology. In short, there will be no common denominator. Additionally, the rules will apply only to interstate services, while much of the Regional Company business, mixed and interrelated though it is, is technically intrastate in nature.

Id. at 573 (footnotes omitted).

In sum, the D.C PSC submits that the Bill's reliance on accounting safeguards and monitoring efforts, such as through audits, would not protect the public interest. The movement to loosen the restrictions on the provision of information services by the BOCs and their affiliates, therefore, is premature.

The other major focus of the Bill is the elimination of the manufacturing restriction. This portion of the Bill also raises severe challenges to the public interest. The points made above

regarding the inability of cost accounting safeguards to protect the interest of the ratepayer are equally true here. However, an additional point bears noting. One of the underlying reasons supporting the restriction against manufacturing of telecommunications equipment was the concern that a vertically integrated firm could engage in preferential procurement policies favoring their manufacturing affiliate. See United States v. American Telephone & Telegraph Co., 524 F.Supp 1336 (D.D.C. 1981). Permitting BOC manufacturing could raise similar concerns. While the BOC may have a choice among, for example, switch manufacturers, this choice may not be a "free" choice. For a decision subject to the business judgment of the individual company, the BOC could cite some quality or design characteristic to justify the purchase of its own manufactured switch, rather than a purchase of an almost identical, but less expensive, switch from another vendor. The burden of policing such a transaction, and deciding whether the business judgment was correct, falls upon the regulators.^{2/}

As indicated above, policing such transactions may be hampered by the lack of information concerning the transaction flowing to

^{2/} Prior to divestiture, the D.C. PSC had to pass on what then were termed "licensed contracts" between AT&T and its then local telephone companies, and later on similar types of expenses incurred by the BOC as a result of services rendered by BellCore. The appropriateness of these expenses, and the ability to pass on their reasonableness concerned the Commission due to the lack of specificity of how the expenses were incurred. See, e.g., Chesapeake and Potomac Telephone Company, 56 P.U.R.4th 53, 87-88, 4 D.C.P.S.C. 267, 300-01 (1983). Should the restriction on manufacturing be lifted, the questions concerning the reasonableness of centralized expenses could increase.

the appropriate regulatory authority. On the other hand, retention of the current manufacturing prohibitions provide the BOCs with the incentive to purchase the least cost switch. Therefore, the D.C. PSC contends that the risks associated with removing the ban on manufacturing -- possible increased costs reflected in increased rates -- are not in the public interest.

In conclusion, the D.C. PSC opposes the Bill due to its reliance on the non-structural safeguards and audits to guard against the possibility of anti-competitive conduct.

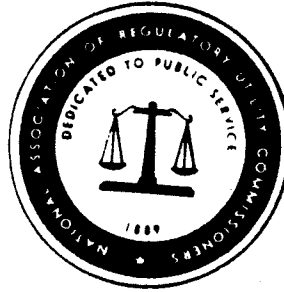
National Association of Regulatory Utility Commissioners

Incorporated

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PAUL RODGERS
Administrative Director
RECEIVED
GAILE ARGIRO
MAY 5 1989

May 1, 1989

CHAIRMAN WORTHY

To: Chairmen, State Commissions Engaged
in Regulation of Telecommunications
Members, NARUC Committee on Communications

Re: H.R. 2140, a bill proposing to lift
the MFJ restrictions on information
services and manufacturing

Dear Commissioners:


Last week the long-awaited MFJ relief bill was introduced. The first in a series of hearings on this issue before the House Subcommittee on Telecommunications and Finance will be held this week. This bill is the first piece of major telecommunications legislation in many years that has a good chance of moving out of subcommittee. Members of Congress increasingly are feeling they must assert their policymaking authority in this area. It will be a long process, however, and the Hill is likely to look to State regulators for guidance in the area of consumer safeguards in particular.

The NARUC Executive Committee recently adopted a resolution on MFJ Relief which is enclosed. The Resolution is primarily concerned with preserving State regulatory authority over the terms by which these new services will be provided, which the bill does not do.

A summary and the text of the bill are enclosed with the Resolution and the membership list of the Committee on Energy and Commerce. Please communicate any comments you may have to your delegations and provide our office with copies of your correspondence. We will keep you informed of any developments.

Sincerely,


Paul Rodgers
General Counsel


Caroline M. Chambers
Director, Congressional
Relations

Enclosures

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*Member of the Executive Committee of the Association

**SUMMARY OF H.R. 2140
"CONSUMER TELECOMMUNICATIONS ACT OF 1989"**

H.R. 2140 (which is similar to H.R. 2030 from the last Congress) was introduced by Congressman Al Swift (D-Washington) and Tom Tauke (R-Iowa) on April 27, 1989 and was referred to the Committee on Energy and Commerce.

H.R. 2140 would lift the current restrictions contained in the Modified Final Judgment against Bell operating company provision of information services (including electronic publishing) and manufacturing of telecommunications equipment, with some conditions.

Information Services

In order for a BOC or one of its affiliates to provide information services, the BOC must provide comparable interconnection to competing information service providers and comply with the Federal Communications Commission's Open Network Architecture Order.

The FCC must determine that there is a competitive information services market in a State before a BOC in that State may provide electronic publishing using its exchange service facilities. To reach that determination, the FCC must satisfy one of two tests: (A) the FCC must find that 1) the BOC has established an information services gateway; 2) the BOC has complied with the interconnection and ONA requirements above; and 3) the customers in that State "have access to a competitive market for information services;" or (B) the FCC must find that the BOC does not exercise monopoly control over the provision of business or residential exchange service. BOCs would be limited to updating electronic yellow pages advertising once a month for the first two years it (or its affiliate) provides such service using an information services gateway.

Manufacturing

In order for a BOC or one of its affiliates to manufacture equipment, the BOC must provide competing manufacturers opportunities to sell equipment to the BOC or its affiliates comparable to those they provide to themselves. BOCs must also comply with any FCC regulations established to preserve competition in the manufacturing market or to protect exchange service customers.

Customer Proprietary Network Information

The BOCs would be required to comply with any regulations prescribed by the FCC governing the disclosure of CPNI to BOC information services personnel or one of its affiliates. They would also be required to disclose CPNI to an information services provider at a customer's request. Finally, if a BOC provides aggregate information based on CPNI to its information services personnel or one of its affiliates, it must provide that

information to any other information services provider on the same terms.

Cost Allocations

In order to engage in equipment manufacturing or information services, a BOC must develop a cost allocation system which prevents those lines of business from subsidizing or being subsidized by telephone exchange service. The FCC is given authority to determine the just and reasonable allocation of costs incurred by a BOC in the new lines of business or in the provision of telephone exchange service. In determining the allocation of joint and common costs, the FCC must consider any "significantly beneficial capacities or characteristics" gained by exchange service customers.

The FCC would be required to establish regulations to insure that exchange service customers would be insulated from a failed venture into the new lines of business, although investment assigned to such a failed venture could be reassigned to exchange service upon a showing that customers of exchange service would benefit. Also, any BOC affiliate engaging in a new line of business may not obtain credit under terms that would give the creditor recourse to a BOC's assets. Finally, the FCC is required to establish rules governing the transfer of assets between BOCs and their affiliates.

Administration

If a BOC itself engages in information services or manufacturing, it would be required to provide annually to the FCC and relevant State commissions the results of an independent audit conducted for the purpose of determining whether the BOC has complied with cost allocation regulations. The auditors would be given access to the accounts and records of the BOC and those of its affiliates necessary to verify transactions with the BOC.

The FCC would also be required to adopt rules governing the investigation of complaints alleging discriminatory interconnection and to provide for expedited review of such complaints.

The bill explicitly states that it does not alter the telephone company/cable television cross-ownership restriction or the restriction on interexchange service.

The bill also states that it should not be construed as to alter State regulatory authority over intrastate communications.

Caroline Chambers
NARUC
May 1, 1989

Insert
title
here

Mr. SWIFT (for himself, Mr. TAUKE [insert attached list of cosponsors]) introduced the following bill; which was referred to the Committee on _____

DISTRIBUTED
BY NARUC
GENERAL COUNSEL

IN THE HOUSE OF REPRESENTATIVES

_____ 19____

Insert
number's
here

To bring new and innovative consumer services to the American public by allowing the telephone operating companies and their affiliates to provide information services and to manufacture telecommunications equipment and customer premises equipment.

A BILL

1 Be it enacted by the Senate and House of Representatives of the United
2 States of America in Congress assembled,

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the ``Consumer
3 Telecommunications Services Act of 1989``.

4 SEC. 2. FINDINGS.

5 The Congress finds that--

6 (1) the Federal Communications Commission is the
7 appropriate Federal entity for overseeing and regulating
8 the telecommunications industry;

9 (2) universally available basic telephone service at
10 affordable rates has long-been an accepted national
11 policy;

12 (3) advancements in technology have brought the
13 society to the threshold of the information age;

14 (4) the national welfare will be greatly enhanced by
15 bringing about universal availability to the American
16 people of the innovative technologies of the information
17 age;

18 (5) the provision of information services, including
19 electronic publishing, by the Bell operating companies,
20 their affiliates, and other local exchange operating
21 companies will stimulate and encourage the competitive
22 development and use of information age technology by the
23 American people;

24 (6) the revision of the current line of business
25 restrictions on the Bell operating companies and their

1 affiliates will serve national policy by enhancing the
2 capacity of the United States to better compete in the
3 global information and high technology marketplace; and

4 (7) continued economic growth and the international
5 competitiveness of American industry are dependent upon--

6 (A) permitting the Bell operating companies and
7 their affiliates to conduct research and to design,
8 develop, manufacture, and market software,
9 telecommunications equipment and customer premises
10 equipment for American residential and business
11 telecommunications users;

12 (B) the rapid introduction of new and innovative
13 telecommunications services for American consumers,
14 and

15 (C) the continued development of an efficient,
16 reliable and state-of-the-art public
17 telecommunications network to serve the needs of the
18 people of the United States.

19 **SEC. 3 AMENDMENTS TO COMMUNICATIONS ACT OF 1934.**

20 (a) **AMENDMENT.**--Title II of the Communications Act of
21 1934 is amended by inserting after section 224 (47 U.S.C.
22 224) the following new section:

23 **REGULATION OF INFORMATION SERVICES AND MANUFACTURING**
24 **SEC. 225. (a) AUTHORITY TO PROVIDE INFORMATION SERVICES**
25 **AND ENGAGE IN MANUFACTURING.**--Subject to the requirements of

1 this section and the regulations prescribed thereunder, a
2 telephone operating company, its affiliates, and any
3 organization or entity in which such company or affiliates
4 have any financial or management interest may--

5 “(1) provide information services, including
6 electronic publishing, and

7 “(2) manufacture and provide telecommunications
8 equipment and customer premises equipment,

9 notwithstanding any restriction or obligation imposed before
10 the date of enactment of this section pursuant to the
11 antitrust laws on the lines-of-business in which a telephone
12 operating company and its affiliates may engage.

13 “(b) INFORMATION SERVICES RESTRICTIONS.--

14 “(1) NONDISCRIMINATORY INTERCONNECTION.--If a
15 telephone operating company or any of its affiliates is
16 engaged in the activities described in subsection (a)(1),
17 it shall be unlawful for such telephone operating
18 company--

19 “(A) to fail to provide, to other information
20 service providers, opportunities for interconnection
21 (for information services) to the telephone exchange
22 service facilities of such company which--

23 “(i) are comparable to the interconnection
24 (for information services) provided by such
25 company to itself or to any of its affiliates;

1 and

2 "(ii) comply with regulations prescribed by
3 the Commission for purposes of ensuring such
4 comparability; or

5 "(B) to fail to provide common carriage for the
6 delivery of information services in accordance with
7 the requirements of title II and such regulations as
8 the Commission shall prescribe to carry out this
9 subparagraph.

10 "(2) OBLIGATION TO MAKE AVAILABLE NECESSARY
11 INTERCONNECTION FUNCTIONS.--The regulations prescribed by
12 the Commission under paragraph (1) of this subsection
13 shall not relieve a telephone operating company of the
14 obligation to comply with--

15 "(A) the order of the Commission entitled
16 'Filing and Review of Open Network Architecture
17 Plans,' CC Docket 88-2, Phase I, released December
18 22, 1988, and any amendment or revision thereof;

19 "(B) such additional regulations and orders as
20 the Commission may from time to time prescribe
21 concerning open network architecture plans and
22 related requirements.

23 "(3) ESTABLISHMENT OF COMPETITIVE INFORMATION
24 SERVICES MARKET REQUIRED BEFORE ENTRY INTO ELECTRONIC
25 PUBLISHING.--A telephone operating company and its

1 affiliates may not engage in electronic publishing in any (
2 State using such company's exchange service facilities
3 unless the Commission determines that such company and
4 its affiliates do not exercise monopoly control over
5 electronic publishing services in that State. For the
6 purposes of making such determinations, a telephone
7 operating company and its affiliates do not exercise
8 monopoly control over electronic publishing services in a
9 State if the Commission determines that--

10 (A)(i) such company has established in such
11 State an information services gateway system;

12 (ii) such company complies in full with the
13 requirements of paragraph (1) and the regulations
14 prescribed thereunder; and

15 (iii) the customers in such State have access
16 to a competitive market for information services; or

17 (B) such company does not exercise monopoly
18 control, within such geographic area as the
19 Commission determines to be relevant, over the
20 business or residential markets for exchange
21 services, as measured by the number of customer
22 premises serviced.

23 (4) LIMITATIONS ON ADVERTISING SERVICES DURING
24 DEVELOPMENT OF COMPETITIVE MARKET.--A telephone operating
25 company and its affiliates which have been permitted to

1 commence electronic publishing pursuant to a
2 determination by the Commission under paragraph (3) shall
3 not update information provided by any electronic yellow
4 pages service in any State more frequently than once per
5 month during the first 2 years after such company or
6 affiliate--

7 “(A) establishes an information services gateway
8 system in such State; and

9 “(B) commences providing electronic yellow pages
10 services using such gateway system.

11 “(5) EXEMPTIONS FROM PROHIBITIONS.--Nothing in
12 paragraph (3) or (4) shall be construed to prohibit a
13 telephone operating company or its affiliates--

14 “(A) from continuing to provide information
15 services (including electronic publishing) which such
16 company or affiliate was authorized to provide on the
17 date of enactment of this section;

18 “(B) from updating the information provided by
19 an information service described in subparagraph (A)
20 without regard to the limitations contained in
21 paragraph (4) of this subsection; or

22 “(C) from providing network management services.

23 “(6) STANDARDS FOR REGULATIONS.--In prescribing
24 regulations to carry out this subsection, the Commission
25 shall--