

"THE AT&T DIVESTITURE: CONCERN FOR WHAT HAS
OCCURRED BECAUSE OF HOW IT OCCURRED

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LADIES AND GENTLEMEN, IT IS WITH GREAT PLEASURE THAT I ADDRESS YOU THIS MORNING ON THE ISSUE OF AT&T'S DIVESTITURE, THE ROLE REGULATORS MUST PLAY IN THE GRUESOME AFTERMATH AND HOW ORGANIZATIONS SUCH AS THE AMERICAN ASSOCIATION OF RETIRED PERSONS CAN BEST IMPACT THE RATEMAKING PROCESS ON BEHALF OF THEIR CONSTITUENTS.

IT IS ALSO WITH GREAT PRIDE THAT I SHARE THIS MORNING'S PROGRAM WITH THE DISTINGUISHED CONGRESSMAN FROM COLORADO, REPRESENTATIVE TIMOTHY WIRTH WHO, AS YOU KNOW, HAS BEEN A STRONG ADVOCATE FOR UNIVERSAL TELEPHONE SERVICE.

I HAVE REVIEWED PORTIONS OF THE DRAFT 1984 FEDERAL AND STATE LEGISLATIVE POLICY WHICH YOU WILL BE CONSIDERING AS MEMBERS OF THE NATIONAL LEGISLATIVE COUNCIL. I WAS PARTICULARLY INTERESTED IN THE SECTION ENTITLED "INDUSTRIAL REGULATION AND DEREGULATION" WHICH INCLUDES A PORTION ON INTERSTATE TOLL TELEPHONE SERVICE. THIS SECTION FOUND AT PAGES 25 AND 26 OF THE DRAFT MENTIONS BRIEFLY AND OBJECTIVELY THE DEREGULATION OF LONG DISTANCE TELEPHONE SERVICE AND THE BREAK UP OF AT&T. THE IMPLICATION BEING THAT THE DIVESTITURE WAS INEVITABLE, RATIONAL AND JUSTIFIABLE. I WOULD HAVE DRAFTED THIS PORTION DIFFERENTLY. IT WOULD HAVE BEEN MORE ANALYTICAL AND CLEARLY MORE CRITICAL. IN MY OPINION, THE AT&T DIVESTITURE WAS A "WRONG" PERPETRATED AGAINST THE AMERICAN PUBLIC. I AM SURE THERE ARE THOSE OF YOU WHO FEEL THAT BECAUSE THE DIVESTITURE TOOK EFFECT ON JANUARY 1, 1984 THAT THE TIME FOR CRITICISM HAS PASSED. I DISAGREE, AND HOPEFULLY, I WILL CONVINCING YOU THIS MORNING THAT YOUR LEGISLATIVE COMMENTS SHOULD REFLECT A GREATER CONCERN FOR WHAT HAS OCCURRED BECAUSE OF HOW IT OCCURRED.

ON NOVEMBER 20, 1974, THE JUSTICE DEPARTMENT FILED AN ANTITRUST SUIT AGAINST AT&T AND THE BELL SYSTEM COMPANIES ALLEGING THAT MA BELL HAD MONOPOLIZED THE TELECOMMUNICATIONS INDUSTRY. ON JANUARY 8, 1982, AT&T AND JUSTICE ENTERED INTO A SETTLEMENT OF THE ANTITRUST SUIT AND FILED WHAT WAS ENTITLED A "MODIFICATION OF FINAL JUDGMENT" (MFJ) FOR COURT APPROVAL.

IMMEDIATELY AFTER FILING THE PROPOSED SETTLEMENT, AT&T AND JUSTICE FILED A STIPULATION PURPORTING TO DISMISS THE 1974 ANTITRUST ACTION IN THE DISTRICT OF COLUMBIA. JUDGE HAROLD GREENE, WHO PRESIDED OVER THE CASE SINCE JUNE OF 1978, HAD HEARD SEVERAL MONTHS OF TESTIMONY IN THAT TRIAL AND WAS ALMOST AT THE CLOSE OF THE CASE WHEN THE PARTIES HAD REQUESTED A CONTINUANCE TO WORK OUT A PROPOSED AGREEMENT. ON JANUARY 12, 1982, JUDGE GREENE HELD A HEARING IN HIS COURT CONCERNING THE PROPOSED MODIFICATION AND THE STIPULATION OF DISMISSIAL FILED BY AT&T AND THE JUSTICE DEPARTMENT. JUDGE GREENE MADE IT QUITE CLEAR TO THE PARTIES THAT HE VIEWED THE DOCUMENTS PURPORTING TO BE A MODIFICATION OF THE EARLIER CONSENT DECREE TO BE A SETTLEMENT AGREEMENT IN THE CASE PENDING BEFORE HIM AND THAT AS SUCH, IT WAS GOVERNED BY THE "TUNNEY ACT " WHICH REQUIRES PUBLIC COMMENT.

JUDGE GREENE STATED THAT THE TUNNEY ACT-PROVISIONS WERE AN IMPORTANT PART OF THE ANTITRUST LAW AND PARTICULARLY IMPORTANT IN A CASE WITH THIS MAGNITUDE OF PUBLIC IMPACT. HE SAID THAT HE WOULD NOT ALLOW THE PROVISIONS OF THAT ACT TO BE CIRCUMVENTED BY WHAT HE PERCEIVED TO BE A PROCEDURAL MANEUVER BY THE PARTIES. BOTH PARTIES PROTESTED GREATLY AND ASSERTED THAT IT WAS THEIR INTENT THAT THE MODIFICATION OF THE CONSENT DECREE WOULD BE SUBJECTED TO TUNNEY ACT

"TYPE" PROCEEDINGS. THEY WERE OF THE VIEW, HOWEVER, THAT, WHILE A TUNNEY ACT PROCEEDING WAS DESIRABLE, THE ACT TECHNICALLY DID NOT APPLY TO THIS PARTICULAR SETTLEMENT, BECAUSE IT WAS THE MODIFICATION OF A DECREE AND NOT A NEW DECREE. TRANSCRIPT U.S. v AT&T, CASE NO. 74-1698 (D.D.C.), JANUARY 12, 1982, pp 25036-25046. JUDGE GREENE ORDERED THE PARTIES TO FILE COMMENTS IN COMPLIANCE WITH TUNNEY.

THE AFFECT OF JUDGE GREENE'S ORDER WAS TO ALLOW THE PROPOSED SETTLEMENT AGREEMENT TO BE SCRUTINIZED AND COMMENTED UPON BY ANY INTERESTED PARTIES. MORE IMPORTANTLY, IN MY OPINION, IT SAVED THE FINANCIAL LIVES OF THE BELL OPERATING COMPANIES (BOCS) AND THE CONCEPT OF UNIVERSAL SERVICE. I MAKE THIS STATEMENT WITHOUT RESERVATION, IN THAT THE PROPOSED SETTLEMENT AGREEMENT PROVIDED FOR:

- THE SPIN OFF (FROM AT&T) OF THE 22 OPERATING COMPANIES INTO ONE OR MORE ENTITIES TO BE OWNED BY AT&T'S SHAREHOLDERS;
- THE RETENTION BY AT&T OF ITS LUCRATIVE LONG LINES DEPARTMENT, ITS EXTREMELY VALUABLE BELL OPERATING LABORATORIES AND ITS PRODUCTIVE MANUFACTURING ARM, WESTERN ELECTRIC;
- THE DIVESTED OPERATING COMPANIES HAVING TO EXPEND MASSIVE SUMS OF MONEY TO PROVIDE (ON A PHASED-IN BASIS) EXCHANGE ACCESS TO ALL LONG-DISTANCE CARRIERS ON AN EQUAL BASIS;
- AT&T (AND NO LONGER THE OPERATING COMPANIES) WITH THE OPPORTUNITY TO PROVIDE INTRASTATE TOLL SERVICE AND THEREFORE NOT RECEIVING THE RESULTING REVENUES FROM THAT SERVICE;
- A PROHIBITION OF THE CONTINUED SALE OR LEASE OF CUSTOMER PREMISES EQUIPMENT (CPE) BY THE OPERATING COMPANIES,

TRADITIONALLY A SUBSTANTIAL SOURCE OF REVENUE FOR THE BOCS. BUT MORE INTERESTINGLY, THE TRANSFER OF THIS EQUIPMENT AND ITS RELATED REVENUES TO AT&T;

- A GENERAL PROHIBITION THAT THE OPERATING COMPANIES COULD NOT MANUFACTURE OR PROVIDE ANY TELECOMMUNICATIONS PRODUCTS OR PROVIDE ANY OTHER PRODUCTS OR SERVICE THAT WAS NOT A NATURAL MONOPOLY REGULATED BY TARIFF.
- A PROHIBITION THAT THE OPERATING COMPANIES COULD NOT PRODUCE, PUBLISH OR DISTRIBUTE THE WELL KNOWN "YELLOW PAGES", WHICH TRADITIONALLY HAVE GENERATED LARGE SUMS OF REVENUES FOR THE RESPECTIVE BOCS.
- AND AN ADMONISHMENT TO THE OPERATING COMPANIES NOT TO DISCRIMINATE AGAINST AT&T'S COMPETITORS IN PURCHASING INTERCONNECTING EQUIPMENT.

SURELY, THE PROPOSED SETTLEMENT AGREEMENT AND THE PROCESS OF DIVESTITURE AS DESCRIBED THEREIN COULD NOT HAVE BEEN DEEMED BY AT&T AS BEING IN THE BEST INTEREST OF THE OPERATING COMPANIES. AND THEREFORE NOT IN THE BEST INTEREST OF THIS COUNTRY.

MOREOVER, MORE THAN SIX HUNDRED COMMENTS WERE RECEIVED BY JUDGE GREENE FROM INTERESTED PARTIES, MANY OF THEM OBJECTING TO VARIOUS ASPECTS OF THE PROPOSAL. JUDGE GREENE, HIMSELF, WAS SOMEWHAT DISTURBED BY AT&T'S ACTIONS FOR IN HIS AUGUST 11, 1982 DECISION HE MODIFIED THE PROPOSED SETTLEMENT AND ALLOWED THE OPERATING COMPANIES TO RETAIN THE "YELLOW PAGES" AND ITS RELATED REVENUES. HE ALSO ALLOWED THE BOCS TO OFFER NEW CUSTOMER PREMISES EQUIPMENT AND HE ATTEMPTED TO INSURE THE 22 COMPANIES GREATER FINANCIAL SECURITY BY SPECIFYING THAT EACH BOC (EXCEPT PACIFIC TELEPHONE) BE LEFT WITH A DEBT RATIO OF APPROXIMATELY 45 PERCENT. WITH MANY QUESTIONS STILL

UNANSWERED HOWEVER, HE STATED THAT GENERALLY THE PROPOSED SETTLEMENT WAS IN THE PUBLIC INTEREST AND THE AGREEMENT, WITH JUDGE GREENE'S REVISIONS, WAS APPROVED AND WE NOW HAD A NEW CONSENT DECREE BETWEEN AT&T AND THE DEPARTMENT OF JUSTICE. THERE WAS STILL, HOWEVER, THE PLAN OF REORGANIZATION, THE ACTUAL DETAILED BLUEPRINT OF THE DIVESTITURE THAT HAD TO BE DEVELOPED AND FILED BY AT&T WITH THE COURT FOR ITS APPROVAL. WHAT OF THE PLIGHT OF THE OPERATING COMPANIES? WOULD THEY BE INVOLVED IN THE PREPARATION, DESIGN AND DEVELOPMENT OF THE PLAN? JUDGE GREENE DEMONSTRATED THIS SAME CONCERN WHEN HE STATED IN HIS DECISION:

"THE COURT ACCORDINGLY INTENDS TO REQUIRE THAT, AT THE TIME THE PLAN OF REORGANIZATION IS SUBMITTED TO THE COURT BY THE DEPARTMENT OF JUSTICE, THE DESIGNATED CHIEF EXECUTIVE OFFICERS OF THE (OPERATING COMPANIES) MUST FILE WITH THE COURT SWORN STATEMENTS CERTIFYING THAT, TO THE BEST OF THEIR KNOWLEDGE, THE PLAN WILL LEAVE THE COMPANIES WHICH THEY HEAD AS VIABLE ENTITIES WITH THE RESOURCES NECESSARY TO PERFORM THE FUNCTIONS DESCRIBED IN THE DECREE."

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FOR IT WAS CLEAR TO EVERYONE, THAT THE SUCCESS OF THE DIVESTITURE, AND THE CONTINUATION OF UNIVERSAL SERVICE, DEPENDED DIRECTLY ON THE ECONOMIC VIABILITY AND STRENGTH OF THE DIVESTED COMPANIES. BUT THE QUESTION WAS: WAS IT CLEAR TO AT&T?

PURSUANT TO THE COURT'S REQUIREMENT, THE BOC PRESIDENT-DESIGNATES FILED THEIR AFFIDAVITS WITH THE COURT ON DECEMBER 16, 1982, THE DATE AT&T FILED ITS REORGANIZATION PLAN. DID THE BOCS

PARTICIPATE IN A MEANINGFUL WAY IN THE DEVELOPMENT AND PREPARATION OF THE MASTER PLAN? WERE THEIR INTERESTS PROTECTED? HAD THE PARENT ACTED IN A MANNER THAT INSURED THE FINANCIAL VIABILITY AND FISCAL WELL BEING OF ITS CHILDREN? THE AFFIDAVITS SUGGEST THAT THE ANSWERS TO THESE QUESTIONS WERE NO. WALLACE R. BUNN (SOUTHEAST REGION) AT PPS. 2-3 SPECIFIED:

"COMBINED FINANCIAL HEALTH FOR THE OPERATING COMPANIES... WILL BE HEAVILY DEPENDENT ON REGULATORY ACTIONS OF STATE AND FEDERAL AGENCIES. ACCESS CHARGES WILL NOT FULLY RECOVER THE REVENUES LOST THROUGH DIVESTITURE FOR THIS REGION. TO ATTEMPT TO IMPOSE ACCESS CHARGES THAT WOULD RECOVER ALL LOST REVENUES WOULD PROBABLY LEAD TO WIDESPREAD BYPASS OF OPERATING COMPANY FACILITIES. INCREASED LOCAL RATES THEREFORE, WILL BE NECESSARY. MY CERTIFICATION ASSUMES THAT SUCH RATE INCREASES WILL BE PROMPTLY GRANTED."

THE PLAN OF REORGANIZATION WAS 470 PAGES IN LENGTH AND CONTAINED SEVERAL PROPOSALS THAT IMPACTED DIRECTLY ON THE FINANCIAL VIABILITY OF THE OPERATING COMPANIES. WHAT WAS DISTURBING TO THOSE OF US OBSERVING THE PROCESS WAS THE OBVIOUS NEGATIVE IMPLICATIONS OF THESE PROPOSALS. FOR EXAMPLE, AT&T PROPOSED THE ESTABLISHMENT OF A CENTRAL SERVICE ORGANIZATION THAT WAS TO BE ENTIRELY FUNDED BY THE BOCS, STAFFED WITH THOUSANDS OF FORMER AT&T EMPLOYEES TO PROVIDE SUPPORT FUNCTIONS THAT THE BOCS COULD, IN MY OPINION, HAVE PROVIDED FOR THEMSELVES. THE PLAN FURTHER PROPOSED THAT POTENTIALLY PROFITABLE CELLULAR RADIO BE PROVIDED BY THE REGIONAL HOLDING COMPANIES AND NOT THE OPERATING COMPANIES. AND AFTER THE COURT'S DECISION THAT THE LOSS OF YELLOW PAGE REVENUES WOULD CAUSE AN UNJUSTIFIABLE INCREASE IN

LOCAL RATES AND CONSEQUENTLY RULED THAT THE RIGHTS AND REVENUES RELATED TO YELLOW PAGES WERE PROPERLY ASSIGNED TO THE BOCS, THE PLAN PROPOSED REGIONALIZATION OF YELLOW PAGE OPERATIONS THEREBY PRECLUDING THE AVAILABILITY OF DIRECTORY ADVERTISING REVENUES FROM BEING USED BY THE INDIVIDUAL OPERATING COMPANIES. ADDITIONALLY, THE PLAN PROVIDED FOR THE JOINT CONTRIBUTION BY AT&T AND THE BOCS TO JUDGMENTS IN ANTITRUST ACTIONS BROUGHT BY COMPETING MANUFACTURERS OF CUSTOMER PREMISES EQUIPMENT WHICH POTENTIALLY COULD CONSTITUTE MILLIONS OF DOLLARS. REQUIRING CONTRIBUTION BY THE BOCS FOR LIABILITIES ARISING FROM PURELY INTERSTATE ACTIONS, IN MY OPINION, WAS CLEARLY IMPROPER.

THE PLAN HAS BEEN APPROVED, THE PROPOSALS OF AT&T CHALLENGED BY THE REGULATORY COMMUNITY WENT, IN MOST PART, UNADDRESSED BY THE COURT AND NOW THE SCENARIO HAS CLEARLY CHANGED. AT&T, THE PARENT HAS DIVORCED ITSELF, PRIMARILY, FROM ALL FINANCIAL RESPONSIBILITIES RELATING TO THE OPERATING COMPANIES. INSTEAD OF BEING EMANCIPATED, THE 22 OPERATING COMPANIES FIND THEMSELVES "ORPHANS" IN A NEW VOLATILE AND UNSTABLE ECONOMIC ENVIRONMENT. THEY HAVE BEEN STRIPPED OF REVENUE GENERATING SERVICES AND FORCED TO PROVIDE BASIC TELEPHONE SERVICE IN A HIGHLY COMPETITIVE, TECHNOLOGICALLY ADVANCED, TELECOMMUNICATIONS REVOLUTION. AND WE, THE REGULATORS ARE FORCED BY CIRCUMSTANCES AND DECISIONS RENDERED BY THE FCC AND JUDGE GREENE TO NO LONGER FUNCTION AS A SURROGATE FOR THE MARKET PLACE BUT AS "FOSTER PARENTS" TO THE 22 STEPCHILDREN" OF THE OLD AT&T. THERE ARE APPROXIMATELY \$6.7 BILLION IN APPLICATIONS FOR HIGHER TELEPHONE RATES NOW PENDING BEFORE STATE PUBLIC SERVICE COMMISSIONS ACROSS THE COUNTRY AND EXPLANATIONS THAT WITHOUT TIMELY APPROVAL OF THESE HIGHER RATES BY WE, THE REGULATORS, THE OPERATING COMPANIES WILL BE UNABLE TO SURVIVE.

AND YOU, WHAT CAN AN ORGANIZATION SUCH AS YOURS DO TO IMPACT POSITIVELY ON FUTURE DECISIONS WHICH DIRECTLY AFFECT YOUR CONSTITUENTS? THE EASY ANSWER IS NOTHING. THE DIFFICULT RESPONSE IS THAT THE PUBLIC AT LARGE MUST UNDERSTAND FULLY WHAT HAS TRANSPIRED. THEY MUST KNOWHOW AND WHY CHANGES ARE OCCURRING TO WHAT WAS, WITHOUT EXCEPTION, THE FINEST COMMUNICATION NETWORK IN THE WORLD. THEY MUST UNDERSTAND HOW TO OBTAIN TELEPHONE SERVICE (BOTH LOCAL AND TOLL) HOW TO ACHIEVE MAINTENANCE AND REPAIR FOR TELEPHONE EQUIPMENT AND FOR THE ACCESS LINES. THEY MUST LEARN HOW TO UNDERSTAND AND SCRUTINIZE THEIR MONTHLY TELEPHONE BILLS AND COMPREHEND ALL OF THE COMPLEXITIES OF CHOOSING A LONG DISTANCE CARRIER BY SEPTEMBER OF 1984. THEY MUST BE PROVIDED WITH THIS BASIC INFORMATION SO THAT THEY CAN MAKE THE NECESSARY AND APPROPRIATE DECISIONS.

TIME, ATTENTION AND FINANCIAL RESOURCES MUST BE MARSHALLED TO PROVIDE FOR MEANINGFUL PARTICIPATION BY VARIOUS CONSUMER AND SPECIAL INTEREST GROUPS IN THE TELEPHONE RATEMAKING PROCESS IN EVERY JURISDICTION. THE OPERATING COMPANIES CANNOT BE VIEWED AS THE "ENEMY" BUT INSTEAD AS THE ONLY HOPE FOR CONTINUED, AFFORDABLE, BASIC TELEPHONE SERVICES. THE PUBLIC AT LARGE MUST BEGIN TO ACTIVELY INTERVENE IN TELEPHONE PROCEEDINGS. NOT IN A BLIND FURY DEMANDING UNREASONABLE RESULTS BUT INSTEAD AS A POSITIVE, VIABLE, CONSTRUCTIVE COMPONENT OF THE RATEMAKING PROCESS. THE OPERATING COMPANIES MUST BE FINANCIALLY VIABLE IN ORDER TO CONTINUE PROVIDING EVERYONE WITH THE OPPORTUNITY OF ACCESS TO THE TELEPHONE NETWORK. YOU MUST DEVELOP AND OFFER POSITIVE ALTERNATIVES AND VIABLE OPTIONS TO ACHIEVE THAT END.

WHO WOULD HAVE EVER THOUGHT THAT ONE DAY, A STATE REGULATOR WOULD BE ESPOUSING SUCH A PHILOSOPHY. UNFORTUNATELY, LADIES AND GENTLEMEN THE EVENTS SURROUNDING THE DIVESTITURE, THE RESULTING PLIGHT OF THE OPERATING COMPANIES, THE SURGE OF TELEPHONE RATE INCREASES THROUGHOUT THIS COUNTRY AND THE VARIOUS FCC DECISIONS WHICH HAVE BROUGHT HAVOC UPON STATE UTILITY REGULATION, DICTATES MY POSITION. BUT MORE IMPORTANTLY, THESE ACTIONS DICTATE, IN MY OPINION, A MORE AFFIRMATIVE DECLARATION OF DISSATISFACTION AND ACKNOWLEDGEMENT BY YOUR ORGANIZATION THEN IS PRESENTLY CONTAINED IN YOUR DRAFT GUIDELINES FOR 1984-1985. I HOPE MY COMMENTS HERE TODAY WILL PROVIDE THE NECESSARY FOOD FOR THOUGHT AND THEREBY ASSISTING YOU IN THAT EFFORT.

THANK YOU AGAIN FOR THIS OPPORTUNITY.