

REMARKS OF PATRICIA M. WORTHY  
CHAIRMAN  
DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

BEFORE THE  
D.C. WOMEN'S BAR ASSOCIATION  
COMMUNICATIONS LAW FORUM LUNCHEON  
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WASHINGTON, D.C.  
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I AM DELIGHTED TO BE WITH YOU THIS AFTERNOON. I WANT TO THANK THE COMMUNICATIONS LAW FORUM OF THE DISTRICT OF COLUMBIA'S WOMEN'S BAR ASSOCIATION FOR THE OPPORTUNITY TO SHARE SOME OF MY PERSPECTIVES AS CHAIRMAN OF THE DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION ON ISSUES AND CHALLENGES CURRENTLY FACING STATE REGULATORY COMMISSIONS IN WHAT IS DEEMED THE "INFORMATION AGE". ISSUES THAT I AM SURE ARE IMPORTANT TO THOSE OF YOU PRACTICING COMMUNICATIONS LAW.

AS SOME OF YOU MAY BE AWARE, I HAVE BEEN CHAIRMAN OF THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA SINCE 1984 AND A COMMISSIONER SINCE 1980. DURING MY TEN YEARS AS A REGULATOR, I HAVE HAD THE OPPORTUNITY TO WITNESS FIRST HAND A NEW, EVOLVING TELECOMMUNICATIONS MARKETPLACE DRIVEN BY RAPID TECHNOLOGICAL ADVANCES, NEW SERVICE PROVIDERS, AND THE DEPLOYMENT OF NEW AND INNOVATIVE GOODS AND SERVICES. WHEN I LOOK BACK ON MY CAREER AS A REGULATOR I AM SIMPLY AMAZED AT THE CHANGES THAT HAVE OCCURRED IN THE TELECOMMUNICATIONS INDUSTRY.

IF I HAD BEEN TOLD THAT, BY THE END OF MY FIRST DECADE AS A COMMISSIONER, I WOULD BE CONVERSANT IN SUCH TERMS AND ACRONYMS AS "ECONOMIES OF SCALE AND SCOPE", "MFJ", "SLCS", "LANS", "PCNS", "CT2", "AUTOMATIC STABILIZERS", "SS7", AND "ISDN", JUST TO NAME A FEW, I MAY HAVE DECIDED TO EMBARK ON OTHER, LESS DYNAMIC, PROFESSIONAL INTERESTS. BUT I FIND THE LANGUAGE AND THE MYRIAD OF ACRONYMS SYMBOLIC OF THE CHALLENGES AHEAD. NOT ONLY HAS THE LANGUAGE CHANGED BUT THE LANDSCAPE HAS CHANGED AS WELL. AS REGULATORS WE NOW HEAR FROM "ESPS" AND "OSPS", IN ADDITION TO EQUIPMENT MANUFACTURERS, NETWORK SERVICE PROVIDERS, AND, OF COURSE,

THE TELEPHONE COMPANIES WHICH WE HAVE TRADITIONALLY REGULATED.

AS WE ENTER THE 90'S MOVING TOWARDS THE TWENTY-FIRST CENTURY THE TELECOMMUNICATIONS MARKET PLACE CONTINUES TO UNDERGO RAPID TRANSITION. AS REGULATORS WE ARE CURRENTLY GRAPPLING WITH HOW BEST TO PROTECT UNIVERSAL SERVICE WHILE ATTEMPTING TO DEFINE WHAT WE NOW MEAN BY "THE PUBLIC INTEREST". THE D.C. COMMISSION, AS WELL AS OTHER STATE COMMISSIONS ACROSS THIS NATION, FACE THE CHALLENGE OF NEW TECHNOLOGY AND SERVICE DEVELOPMENT, THE COSTING AND PRICING OF THESE NEW SERVICES, PRIVACY CONCERNS, REDUCED OR RELAXED REGULATION FOR COMPETITIVE SERVICES, AND NEW ENTRANTS OFFERING SPECIALIZED SERVICES, AND THE RISKS ASSOCIATED THEREWITH.

INCENTIVE REGULATION OR ALTERNATIVES TO TRADITIONAL RATE OF RETURN REGULATION HAS BEEN AND CONTINUES TO BE ONE OF THE MOST CHALLENGING DEVELOPMENTS AT THE STATE LEVEL.

AS THE EXPERIENCES OF THE EIGHTIES ARE EVALUATED, THE ROLE OF REGULATION IS BEING REEXAMINED IN LIGHT OF THESE EXPERIENCES, IN AN EFFORT TO BETTER EMULATE THE "FREE MARKET". THERE ARE SEVERAL METHODS PROFFERED BY MANY TO REACH THIS GOAL SUCH AS PRICE CAPS, INCENTIVE REGULATION, BANDED PRICING AND DEREGULATION. I SUGGEST TO YOU, HOWEVER, THAT A CAUTIOUS, GUARDED SKEPTICISM MAY BE NECESSARY, REQUIRING A THOROUGH EXAMINATION OF THE UNDERLYING PRECEPTS OF ANY ALTERNATIVES TO TRADITIONAL RATE OF RETURN REGULATION, TO ASSURE THAT THE BENEFITS PROMISED ARE REALIZED AND SUSTAINED. LET US NOT FORGET THAT WE ARE EXAMINING REQUESTS BY VIRTUAL MONOPOLIES FOR REGULATORY ALTERNATIVES, WHILE STILL GOVERNED BY OUR "PUBLIC INTEREST" MANDATE, AND THE NEED TO FASHION REGULATORY RESPONSES WHICH BALANCE THE INTERESTS OF THOSE

MONOPOLIES WITH THE INTERESTS OF CAPTIVE RATEPAYERS.

FOR EXAMPLE, AS A D.C. COMMISSIONER, MY MISSION IS TO "INSURE THAT EVERY PUBLIC UTILITY DOING BUSINESS WITHIN THE DISTRICT OF COLUMBIA...[IS FURNISHING] SERVICE AND FACILITIES REASONABLY SAFE AND ADEQUATE AND IN ALL RESPECTS JUST AND REASONABLE."<sup>1</sup> MOREOVER, I MUST ASSURE MYSELF THAT "THE CHARGE MADE BY ANY SUCH PUBLIC UTILITY FOR ANY FACILITY OR SERVICES FURNISHED, OR RENDERED, OR TO BE FURNISHED OR RENDERED, SHALL BE REASONABLE, JUST, AND NONDISCRIMINATORY."<sup>2</sup> THUS, FROM MY PERSPECTIVE, IT IS AGAINST THIS "JUST AND REASONABLE" STANDARD THAT ALL REGULATORY PROGRAMS, BOTH RATE OF RETURN AND "INCENTIVE" ALTERNATIVES, MUST BE EXAMINED, AND AGAINST WHICH THE DELICATE BALANCE CALLED THE "PUBLIC INTEREST" MUST BE STRUCK.

IN JANUARY OF THIS YEAR, THE MISSOURI OFFICE OF THE PEOPLE'S COUNSEL RELEASED A SUMMARY REPORT CONCERNING STATE INCENTIVE REGULATION PLANS, WHICH INDICATES THAT OVER TWENTY STATES HAVE EITHER INSTITUTED SUCH PLANS OR ARE CONSIDERING SOME FORM OF INCENTIVE REGULATION, WITH A SIMILAR NUMBER OF STATES ENACTING LEGISLATION WHICH HAS AT LEAST ESTABLISHED THE FRAMEWORK FOR ALTERNATIVE REGULATION.<sup>3</sup>

AN ANALYSIS OF THE VARIOUS STATE REGULATORY SCHEMES INDICATES THREE COMMON FACTORS:

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<sup>1</sup>D.C. Code Section 43-402.

<sup>2</sup>Id.

<sup>3</sup>See Schmitz, Drainer, "Report on Telecommunications Alternative Regulation Plans by State," Missouri Office of the Public Counsel (Jan. 1990) (Missouri Report).

- (1) THE PLAN PROPOSES A FREEZE ON "BASIC RESIDENTIAL RATES" IN EXCHANGE FOR RELIEF FROM TRADITIONAL RATE OF RETURN REGULATION FOR OTHER SERVICES;
- (2) THE PLAN PROVIDES FOR SOME FORM OF "SHARING" OF PROFITS ABOVE A TARGETED RETURN BETWEEN THE TELEPHONE COMPANY AND THE RATEPAYERS; AND
- (3) THE PLAN IS PROPOSED FOR A SPECIFIC TIME PERIOD AFTER WHICH A REEXAMINATION OF THE PROPOSAL PRESUMABLY WILL OCCUR.

I SHOULD NOTE THAT THE THREE FACTORS ARE NOT MUTUALLY EXCLUSIVE; SOME PLANS INCLUDE MORE THAN ONE.

FOR EXAMPLE, IN FLORIDA, THE COMMISSION ESTABLISHED A PLAN WHICH CAPPED BASIC RATES UNTIL THE END OF THIS YEAR, THE TRIAL PERIOD FOR THE PLAN WAS FROM OCTOBER 1988 THROUGH DECEMBER, 1990, AND A THREE LEVEL SHARING MECHANISM WAS APPROVED. UNDER THE FLORIDA MECHANISM, THE COMPANY RETAINS ALL EARNINGS BETWEEN 13.25% TO 14.00%, THE RATEPAYERS SHARE 60% OF THE EARNINGS BETWEEN 14.00% AND 16.00%, AND THE RATEPAYERS RECEIVE 100% OF THE EARNINGS OF THE COMPANY IN EXCESS OF 16.00%.

IN NEBRASKA, WHERE REGULATORY RESTRUCTURING WAS MANDATED BY THE LEGISLATURE OVER THE OBJECTIONS OF THE NEBRASKA PSC, BASIC LOCAL SERVICE IS PRICE CAPPED UNTIL 1991. AT THAT TIME, THE PRICE CAPS WILL EXPIRE AND ALL BASIC LOCAL SERVICE WILL BE DEREGULATED. PRICES AND PROFITS FOR ALL OTHER TELECOMMUNICATIONS SERVICES HAVE ALREADY BEEN DEREGULATED. THE NEBRASKA PSC REGULATORS RETAINED THEIR AUTHORITY OVER SERVICE QUALITY, MARKET ENTRY AND THE

SETTLEMENT OF CONSUMER COMPLAINTS.

THE STATE OF OHIO HAS A DEREGULATION LAW WHICH GIVES THE COMMISSION AUTHORITY TO DEREGULATE ANY SERVICES IT FINDS TO BE COMPETITIVE. UNTIL 1997, THE OHIO PUC MAY RE-REGULATE A SERVICE. AFTER 1997, THE COMPANY MUST AGREE TO HAVE A SERVICE RE-REGULATED. THE COMMISSION ALSO HAS THE OPTION TO END PRICE AND PROFIT REGULATION FOR BASIC LOCAL SERVICE.

IN THE DISTRICT OF COLUMBIA, OUR COMMISSION DECIDED THAT C&P COULD SEEK REGULATORY RELIEF FOR ITS COMPETITIVE SERVICES BASED ON A SHOWING OF ACTUAL LOSSES ATTRIBUTABLE TO COMPETITION, WITH C&P'S SHAREHOLDERS BEARING THE BURDEN OF ANY LOSS DUE TO SERVICES FOR WHICH THERE WAS REDUCED REGULATION. WE ALSO PROVIDED OTHER GUIDELINES WHICH ARE GENERALLY BASED ON THE COMMISSION STAFF'S PROPOSED "INDUSTRIAL ORGANIZATION" (IO) APPROACH. THE IO APPROACH FIRST DEFINES THE MARKET AND THEN ASSESSES THE IMPLICATIONS OF ACTUAL MARKET SHARE OR POWER. IN APPLYING FOR REDUCED OR FLEXIBLE REGULATION C&P WILL ALSO BE PERMITTED TO MAKE A SHOWING OF THE EXISTENCE OF VIABLE COMPETITORS, PRICE AND NON-PRICE COMPETITION, AND THE OPPORTUNITY AND EASE WITH WHICH FIRMS CAN ENTER AND EXIT A MARKET.

THIS WIDE VARIANCE OF PLANS IS INDICATIVE OF THE FACT THAT EACH STATE COMMISSION IS GRAPPLING WITH THE VERY SPECIAL CIRCUMSTANCES OF THEIR RESPECTIVE JURISDICTIONS. I BELIEVE, HOWEVER, THAT THESE NEW REGULATORY APPROACHES RAISE THEIR OWN CHALLENGING CONCERNS WHICH I WOULD LIKE TO BRIEFLY SHARE WITH YOU.

FIRST, I AM CONCERNED THAT RATEPAYERS MAY BE BEARING TOO MUCH

OF THE RISK. MY CONCERN FOCUSES ON THE ABILITY OF THE LEC TO SEEK FLEXIBILITY BUT RETAINING THE RIGHT TO RETURN TO TRADITIONAL RATE OF RETURN REGULATION SHOULD THE PROJECTIONS FOR FINANCIAL SUCCESS FALTER.

SECOND, I DO NOT BELIEVE THAT FREEZING BASIC RATES FOR SOME PERIOD OF TIME NECESSARILY PROTECTS RATEPAYERS. WHILE THE CONCEPT OF "FREEZING RATES" OR RATE STABILIZATION MAY BE POLITICALLY ADVANTAGEOUS -- DURING A PERIOD OF COST DECLINE, SUCH AS NOW, THE OBLIGATION WE FACE AS REGULATORS IS TO INSURE THAT RATES ARE "JUST AND REASONABLE" AND, TO THE EXTENT FEASIBLE, REFLECTIVE OF COST.

THIRD, I AM CONCERNED THAT THE USE OF A "SHARING MECHANISM", WHILE AN INTERESTING THEORY MAY NOT BE A REALITY. FIRST, I AM AWARE OF ONLY ONE JURISDICTION, IDAHO, WHICH HAS INCLUDED A SHARING MECHANISM IN ITS REGULATORY REGIME, WHERE THE CONSUMERS HAVE, IN FACT, SHARED IN ANY ACTUAL EARNINGS.

LAST, BUT NOT LEAST, I AM CONCERNED THAT SERVICE QUALITY IS AT RISK. IN MY OPINION, ALTERNATIVE REGULATORY MECHANISMS MAY CREATE THE INCENTIVE TO REALIZE SHORT TERM PROFITS AT THE EXPENSE OF SERVICE QUALITY. LET US NOT FORGET THE BELL SYSTEM SERVICE QUALITY CRISIS IN THE LATE 1960'S WHICH RESULTED FROM AT&T'S EFFORTS TO INCREASE NET EARNINGS.

IN LIGHT OF MY REMARKS IT MAY SURPRISE YOU THAT I AM NOT OPPOSED TO REGULATORY REFORM. I DO BELIEVE, HOWEVER THAT CHANGE FOR CHANGE'S SAKE IS NOT PROGRESS. BEFORE ANY PARTICULAR ALTERNATIVE APPROACH IS USED IT SHOULD BE PROVEN THAT THE CHOSEN METHOD OF RE-REGULATION WILL IMPROVE THE OVERALL STATE OF

TELECOMMUNICATIONS, THAT IT WILL INCREASE EFFICIENCIES, YIELD TECHNOLOGICAL INNOVATIONS, CREATE, WHERE APPROPRIATE, SUSTAINED PRICE REDUCTIONS, AND THAT THE BENEFITS WILL APPRECIABLY EXCEED RISKS.

THERE ARE THOSE WHO VIEW STATE REGULATORS, SUCH AS MYSELF, AS OBSTRUCTIONISTS AND WHO ASSERT THAT WE ARE RESPONSIBLE FOR THIS NATION'S TECHNOLOGICAL DECLINE, SOME HAVE EVEN ARGUED, I HOPE, NOT SERIOUSLY, THAT WE ARE DIRECTLY RESPONSIBLE FOR THE INTERNATIONAL TELECOMMUNICATIONS TRADE DEFICIT. THE OBLIGATION OF REGULATORS IS TO ENSURE UNIVERSAL SERVICE AND TO BALANCE THE INTERESTS OF COMPANIES AND RATEPAYERS. WHICH BRINGS ME TO ANOTHER MAJOR CHALLENGE WHICH STATE COMMISSIONS FACE AND THAT IS BALANCING THE PROVISION OF NEW TELECOMMUNICATIONS SERVICES AND THE COST OF THESE SERVICES.

WHILE I DO NOT OBJECT TO THE CONCEPT OF A NATIONWIDE NETWORK WITH ITS TECHNOLOGICAL ADVANCEMENTS, THE REAL ISSUE FOR STATE REGULATORS IS THE ASSESSMENT OF ACTUAL DEMAND FOR THESE SERVICES AND THE ALLOCATION OF THE CONCOMITANT COST OF THE NEW INFRASTRUCTURE.

I NOTE THAT THE FCC HAS ISSUED A NUMBER OF DECISIONS WHICH SHIFT THE BURDEN OF COST RECOVERY TO THE STATE JURISDICTIONS. AS THE COSTS RISE, SO DOES THE DEMAND ON A STATE COMMISSION'S COMMITMENT TO ASSURE THAT SPECIAL CIRCUMSTANCES PRESENTED IN THEIR RESPECTIVE JURISDICTIONS ARE ACCOMMODATED TO THE EXTENT POSSIBLE WHILE ENSURING THAT THE LOCAL RATEPAYERS ARE NOT BURDENED WITH THE EXPENSE OF NETWORK SERVICES THAT THEY HAVE NEITHER THE DESIRE TO



USE NOR THE MONEY TO PAY FOR. THIS BALANCE WILL BECOME EVEN MORE DIFFICULT TO MAINTAIN WITH THE RAPID ESCALATION OF TECHNOLOGICAL ADVANCEMENT.

ALTHOUGH TECHNOLOGICAL GROWTH IS OFTEN SEEN AS BENEFICIAL COMPLEMENT TO ECONOMIC PROSPERITY, THERE ARE INHERENT DIFFICULTIES IN ASSESSING THE NEED FOR NEW TECHNOLOGY AND SERVICES. WE AS REGULATORS CANNOT BE OVERLY INFLUENCED BY THE PROMISES OF "BELLS AND WHISTLES." THE PUBLIC INTEREST REQUIREMENT MANDATES THAT NEW TECHNOLOGY, AND THE SERVICES THAT ARE OFFERED AS A RESULT, BE BENEFICIAL TO THE CONSUMER AND, AT THE SAME TIME, COST-EFFICIENT. WE ARE CHARGED WITH THE RESPONSIBILITY OF ENSURING THAT RATEPAYERS RECEIVE RELIABLE SERVICE AT REASONABLE COSTS. THE PREVAILING PROBLEM ASSOCIATED WITH THESE NEW SERVICES IS, IN MANY INSTANCES, PRICING.

AN EXAMPLE OF THIS IS THE PRICING ISSUES ASSOCIATED WITH WHAT WE DESCRIBE AS, "CLASS" SERVICES WHICH INCLUDES THE INFAMOUS CALLER I.D. RECENTLY, OUR COMMISSION APPROVED C&P'S PROPOSAL TO OFFER RETURN CALL AND CALLER ID WITHIN THE DISTRICT OF COLUMBIA. WE FOUND THAT THE PUBLIC INTEREST WOULD BE BEST SERVED IF PER-CALL BLOCKING WAS MADE AVAILABLE WITH THE OFFERING OF CALLER ID. C&P HAS NOW PROPOSED THAT PER-CALL BLOCKING BE OFFERED ON AN OPERATOR-ASSISTED CALL BASIS USING OPERATOR ASSISTANCE TO BLOCK CALLS. A CUSTOMER WISHING TO BLOCK HIS OR HER NUMBER WOULD DIAL "O" AND THE NUMBER. THE CALL WOULD BE INTERCEPTED BY AN OPERATOR, AND THE TELEPHONE NUMBER WOULD NOT BE FORWARDED. THE CHARGE FOR THIS SERVICES WAS PRICED, BY C&P, AT FORTY-FIVE (45) CENTS PER CALL.

HOWEVER, DURING THE COMMISSION'S EVIDENTIARY HEARINGS, SEVERAL PARTIES ARGUED THAT THE SS7 NETWORK HAD THE CAPABILITY OF OFFERING PER-CALL BLOCKING WITHOUT THE NEED FOR OPERATOR ASSISTANCE. THESE PARTIES ADVOCATE THAT A CENTRAL OFFICE-BASED PER-CALL BLOCKING FEATURE SHOULD BE MADE AVAILABLE AT NO EXTRA CHARGE TO THE RATEPAYER. THE PRICING ISSUE WITH RESPECT TO THE PER-CALL BLOCKING FEATURE IS CURRENTLY PENDING BEFORE THE COMMISSION. IT IS INTERESTING TO NOTE, HOWEVER, THAT CALLER-ID HAS BEEN OFFERED WITH FREE CO-BASED PER-CALL BLOCKING IN NEVADA.

THE RAPID DEPLOYMENT OF NEW TECHNOLOGIES AND SERVICES HAS PRESENTED STATE REGULATORS AS WELL AS TO THOSE OF YOU WHO PRACTICE COMMUNICATION LAW WITH ANOTHER MAJOR CHALLENGE AND THAT IS TO DETERMINE THE EXTENT OF PRIVACY PROTECTION THAT SHOULD BE AFFORDED USERS OF TELECOMMUNICATIONS SERVICE AND WHO, IF ANYONE, SHOULD PAY FOR PRIVACY.

YOU ALL PROBABLY KNOW THIS ISSUE IN THE CONTEXT OF AUTOMATIC NUMBER IDENTIFICATIONS (ANI) SERVICE OFFERINGS SUCH AS CALLER-ID OR AUTOMATIC CALLBACK, WHICH HAS GENERATED A SIGNIFICANT DEBATE WITHIN THE VARIOUS STATES WHERE THE BOCS HAVE OR ARE ATTEMPTING TO INTRODUCE THE SERVICES. WHILE SOME STATES SUCH AS NEW JERSEY, AND VIRGINIA HAVE PERMITTED THE INTRODUCTION OF THE CALLER-ID SERVICES, THE PENNSYLVANIA COMMONWEALTH COURT RULED THAT CALLER-ID WITH OR WITHOUT BLOCKING VIOLATED THE STATE OF PENNSYLVANIA'S WIRETAP STATUTE AS WELL AS CONSTITUTIONAL PRIVACY RIGHTS. OUR COMMISSION WAS THE FIRST COMMISSION TO ORDER PER CALL BLOCKING. MARYLAND WHICH PREVIOUSLY APPROVED CALLER ID WITHOUT BLOCKING RECENTLY

REVERSED ITS PRIOR DECISION AND HAS NOW INSTITUTED BLOCKING.

I SUBMIT THAT THE PRIVACY ISSUES THAT WE FACE ARE FAR BROADER, AND THAT CALLER-ID IS JUST A SMALL PART OF THE MORE GENERIC ISSUES INHERENT IN PROTECTING INFORMATION IN AN INCREASINGLY OPEN NETWORK SYSTEM. NEARLY EVERY NEW SERVICE HAS RAISED NEW TYPES OF PRIVACY ISSUES AND CONCERNS. CELLULAR TELEPHONES, SATELLITE AND MICROWAVE TRANSMISSION, VOICE MAIL, FACSIMILE MACHINES, AUTOMATIC DIALERS, VIDEOTEX, AUDIOTEX, REMOTE ACCESSORY TO DIRECTORY INFORMATION, JUST TO NAME A FEW, ALL PRESENT RELATED PRIVACY PROBLEMS IN SOME FORM.

HERE AGAIN STATE REGULATORS AS WELL AS COMMUNICATIONS AND CONSTITUTIONAL LAWYERS MUST EXAMINE THESE ISSUES BALANCING PRIVACY WITH SOCIETAL INTERESTS. AND THERE ARE LEGITIMATE SOCIETAL INTEREST THAT MUST BE CONSIDERED. FOR EXAMPLE, PRIVACY PROTECTION MAY INCREASE THE COST OF INFORMATION SEARCH, STORAGE, AND TRANSMISSION. THE COST OF PROVIDING PRIVACY PROTECTION MAY BE A BARRIER TO THE ENTRY OF NEW TECHNOLOGIES AND MAKE THEM MORE EXPENSIVE.

STATE COMMISSIONERS AS WELL AS THE INDUSTRY MUST EXAMINE AND DEVELOP STANDARDS OR GUIDELINES FOR THE FUTURE. STANDARDS DEVELOPMENT IS CRITICAL IN HELPING TO STRUCTURE CONSISTENT POLICIES. MOREOVER, THESE STANDARDS MUST REFLECT CONSUMER EXPECTATIONS OF PRIVACY. THE U.S. SUPREME COURT HAS CONSISTENTLY RULED THAT PRIVACY PROTECTION IS GOVERNED BY THE STANDARD OF REASONABLE EXPECTATIONS.

AND FINALLY, I WANT TO DISCUSS TODAY THE GREATEST CHALLENGE OF THEM ALL - THE CONTINUAL STRUGGLE WITH OUR FEDERAL COUNTERPART, THE

FCC, TO RETAIN AND MAINTAIN CONTROL OF OUR DESTINIES AND OUR STATE STATUTORY RESPONSIBILITY.

GIVEN STATE COMMISSIONS CONCERN WITH PREEMPTION, ONE CAN FULLY UNDERSTAND HOW ELATED WE WERE WITH THE RECENT NINTH CIRCUIT DECISION IN CALIFORNIA V FCC, 905 F.2D 1217 (9TH CIRCUIT) (1990), IN WHICH THE COURT VACATED THE FCC'S PREEMPTIVE ORDER IN ITS THIRD COMPUTER INQUIRY DECISION. THE NINTH CIRCUIT'S DECISION REAFFIRMED THE STATES AUTHORITY TO REGULATE INTRASTATE ENHANCED SERVICES AND TO ORDER STRUCTURAL SEPARATION OR OTHER NON-STRUCTURAL SAFEGUARDS FOR THE PROVISION OF SUCH SERVICE SO LONG AS THE STATES REGULATION DOES NOT NEGATE LEGITIMATE FEDERAL REGULATION OF INTERSTATE SERVICES. AS A RESULT OF THE NINTH CIRCUIT DECISION INDIVIDUAL STATES ARE CURRENTLY TAKING ACTION TO ESTABLISH AN INTERIM REGULATORY FRAMEWORK FOR THE PROVISION OF INTRASTATE ENHANCED SERVICES. THE FRAMEWORK WILL VARY AMONG THE INDIVIDUAL STATES. FOR EXAMPLE, IN SOME STATES, THE PROVISION OF THESE SERVICES BY BELL OPERATING COMPANIES MAY REQUIRE STATE AUTHORIZATION AND SUCH AUTHORITY MAY NOT HAVE BEEN PREVIOUSLY GRANTED IN WHICH CASE THE STATES MAY GRANT THE LOCAL BOC A WAIVER OR PROVIDE OTHER INTERIM APPROVAL.

IN RESPONSE TO THE NINTH CIRCUIT DECISION, OUR COMMISSION INSTITUTED A FORMAL PROCEEDING TO INVESTIGATE WHETHER AND UNDER WHAT CIRCUMSTANCES CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY SHOULD BE GRANTED TO ENHANCED SERVICE PROVIDERS. OUR COMMISSION INITIATED THE CASE IN THE FORM OF A SHOW CAUSE ORDER SETTING FORTH OUR TENTATIVE FINDINGS AND CONCLUSIONS SUCH AS, (1) THAT ENHANCED

SERVICES PROVIDED BY BELL ATLANTIC ARE PUBLIC UTILITY SERVICES WHICH, FOR THE MOST PART, ARE SUBJECT TO THE COMMISSION'S JURISDICTION; (2) THAT BELL ATLANTIC SHOULD BE REQUIRED TO APPLY FOR A CERTIFICATE TO PROVIDE THESE SERVICES; (3) THAT ENHANCED SERVICES PROVIDED BY OTHER COMPANIES MAY BE PUBLIC UTILITY SERVICES, DEPENDING UPON THE CIRCUMSTANCES; AND (4) THAT EXISTING ENHANCED SERVICES SHOULD BE PERMITTED TO BE OFFERED PENDING COMMISSION DECISION IN THIS PROCEEDING; RUMOR HAS IT THAT THE SHOW CAUSE ORDER HAS SENT TREMORS REVERBERATING THROUGHOUT THIS NATION, CREATING AN UPROAR WITH THE ENHANCED SERVICE PROVIDERS AND POTENTIAL PROVIDERS OF ENHANCED SERVICES. REGGIE JACKSON IN HIS GLORY DAYS WITH THE NEW YORK YANKEES DESCRIBED HIMSELF AS "THE STRAW THAT STIRRED THE DRINK", WHICH IS THE WAY SOME INDIVIDUALS HAVE CHARACTERIZED OUR COMMISSION AND THE SHOW CAUSE ORDER. I WOULD URGE ALL PARTIES TO COMPLY WITH THE ORDER AS QUICKLY AS FEASIBLE.

THE FCC HAS GRANTED THE REGIONAL BELL OPERATING COMPANIES AN INTERIM WAIVER OF ITS SECOND COMPUTER INQUIRY RULES DURING THIS PERIOD TO ALLOW THE COMPANIES TO CONTINUE TO PROVIDE INTERSTATE ENHANCED SERVICES.

ALTHOUGH THE FCC HAS DECIDED NOT TO PETITION FOR REHEARING OF THE COURT'S DECISION I DO NOT EXPECT IT TO CEASE ITS PURSUIT OF THIS ISSUE. THE FCC HAS ALREADY ANNOUNCED THAT IT WILL BE INSTITUTING RULEMAKING PROCEEDING TO ADDRESS THE STRUCTURAL SEPARATIONS REQUIREMENTS FOR THE PROVISION OF INTERSTATE ENHANCED SERVICES AND TO ADDRESS THE CONTINUING DEVELOPMENT OF OPEN NETWORK

ARCHITECTURE. THEREFORE, THE STATE COMMISSIONS MUST BE READY TO CONTINUE THE STRUGGLE.

I AM HOPING THAT INSTEAD OF THROWING DOWN THE GAUNTLET, SIGNALLING THE COMMENCEMENT OF A NEW ROUND OF SENSELESS LEGAL AND POLITICAL DEBATES, THAT THE FCC WILL JOIN THE STATES IN AN COOPERATIVE, MEANINGFUL DIALOGUE THAT WILL AFFORD ALL REGULATORS THE OPPORTUNITY TO DEVELOP INTELLIGENT, PROGRESSIVE, YET APPROPRIATE TELECOMMUNICATIONS POLICY.

I WANT TO AGAIN THANK YOU FOR THIS OPPORTUNITY TO BE WITH YOU THIS AFTERNOON. WHILE I HAVE DISCUSSED THE CHALLENGES FACING STATE REGULATORS, YOU AS COMMUNICATIONS LAWYERS ALSO FACE VERY INTERESTING CHALLENGES AHEAD. THE ONLY DIFFERENCE BEING YOU ARE PAID HANDSOMELY FOR YOUR EFFORTS. AGAIN, THANK YOU.