

REMARKS OF CHAIRMAN PATRICIA WORTHY
PUBLIC SERVICE COMMISSION OF THE DISTRICT
OF COLUMBIA

CONCERNING "THE FCC'S PRICE CAP PLAN
FOR COMMON CARRIERS: AN OVERVIEW, ITS
IMPLICATIONS, AND ITS PROSPECTS"- THE STATES' VIEWS

JUNE 27, 1988

1:30 P.M.

INTRODUCTION

I'M DELIGHTED TO BE HERE THIS AFTERNOON AND TO HAVE THIS OPPORTUNITY TO DISCUSS ONE STATE'S PERSPECTIVE CONCERNING THE FCC'S PRICE CAP PLAN FOR COMMON CARRIERS. IN A NOTICE OF PROPOSED RULEMAKING (NPRM) RELEASED BY THE COMMISSION ON AUGUST 21, 1987, IT WAS PROPOSED THAT RATE OF RETURN REGULATION FOR DOMINANT CARRIERS BE REPLACED WITH A "PRICE CAP MODEL". IN A DOCUMENT CONSISTING OF ONLY TWENTY-TWO PAGES (INCLUDING FOOTNOTES), THE FCC SOUGHT TO REVOLUTIONIZE THE TELECOMMUNICATIONS INDUSTRY. THE RESPONSE WAS IMMEDIATE AND OVERWHELMING. WHILE THERE WAS DISAGREEMENT AS TO WHETHER PRICE CAPS WAS NECESSARY OR PROPER, THERE WAS NO DISAGREEMENT THAT THE FCC HAD MERELY PROVIDED A SKELETAL PLAN WHICH OBVIOUSLY NEEDED FLESHING OUT. A MULTITUDE OF PARTIES FILED COMMENTS ON THE PLAN

AND ON MAY 23, 1988, THE FCC ISSUED A TWO HUNDRED AND SEVENTY-EIGHT PAGE FURTHER NOTICE OF PROPOSED RULE MAKING (FNPRM) IN AN EFFORT TO PROVIDE SOME MEAT ON THE BONES OF THE ORIGINAL PLAN.

IN THE NEW NOTICE, THE FCC HAS SOLICITED SO MANY ADDITIONAL COMMENTS AND REQUESTS FOR INFORMATION, ON SO MANY PREVIOUSLY UNDISCUSSED ASPECTS OF THE PLAN THAT I AM CONVINCED THAT THIS CONCEPT OF REGULATORY REFORM REQUIRES FAR GREATER ANALYSIS, EVALUATION AND DISCUSSION THAT CAN BE ACHIEVED IN THIS PROCEEDING. HOWEVER, IT IS ABUNDANTLY CLEAR THAT THE FCC IS DETERMINED TO EMBRACE THIS REGULATORY METHODOLOGY. THIS IS EVIDENCED BY PARAGRAPH 185 OF THE FURTHER NOTICE WHICH SPECIFIES THE INTENT TO IMPLEMENT PRICE CAP REGULATION ON APRIL 1, 1989. AT FIRST, I WAS OPTIMISTIC IN THAT THE DATE SELECTED FOR IMPLEMENTING THE PROPOSAL WAS APRIL FOOL'S DAY. I THOUGHT PERHAPS THAT CHAIRMAN PATRICK WAS GOING TO ANNOUNCE THAT THE ENTIRE EXERCISE WAS A COLOSSAL JOKE BEING PLAYED ON THE STATE REGULATORS. HOWEVER, ONE IS QUICK TO REALIZE THAT THE FCC IS BOTH SINCERE AND COMMITTED TO ITS EFFORTS AT REGULATORY REFORM. AS ONE OF THE STAUNCH CRITICS OF THE COMMISSION, I MUST ACKNOWLEDGE THE OBVIOUS EFFORT TO RESPOND TO THE MANY CONCERNS AND CRITICISMS RAISED IN THE EARLY COMMENT CYCLE. HOWEVER, EVEN WITH THE WEALTH OF REVISIONS, THE PROPOSED "PRICE CAP MODEL" STILL CONTAINS FATAL FLAWS AND WEAKNESSES THAT UNTIL REMEDIED,

WILL, IN MY OPINION, SIGNAL ITS DEMISE.

THIS AFTERNOON, I WILL IGNORE THE OBVIOUS TEMPTATIONS TO ATTACK AND CRITICIZE THOSE ASPECTS OF THE NEW PROPOSAL THAT WILL ELICIT, IN MY OPINION, THE GREATEST ATTENTION IN THE FIRST ROUND OF COMMENTS DUE JULY 26, 1988, SUCH AS: THE OPTIONAL ASPECT OF THE PLAN, THE USE OF THE EXISTING 45-DAY FILING TARIFF PROCEDURES FOR RATE STRUCTURE AND TARIFF CHANGES, THE ESTABLISHMENT OF A 5% BAND, THE NEWLY CREATED "SUBSTANTIAL CAUSE" TEST, THE APPLICATION OF THE PLAN TO BOTH AT&T AND THE LECS, THE "Y" ADJUSTMENTS, AND THE 3% PRODUCTIVITY FACTOR.

INSTEAD, IT IS MY INTENTION TO FOCUS ON AN AREA OF GRAVE CONCERN TO STATE REGULATORS, AND THAT IS, WHAT EFFECT, IF ANY, WILL PRICE CAPS HAVE ON THE QUALITY OF SERVICE PROVIDED BY THE COMMON CARRIERS. MOREOVER, WHAT STEPS, IF ANY, SHOULD BE TAKEN TO INSURE THAT SERVICE QUALITY IS NOT JEOPARDIZED BY THE OPPORTUNITY TO INCREASE EARNINGS UNDER A PRICE CAP REGIME.

PRICE CAPS AND QUALITY OF SERVICE

THE FCC'S PRICE CAP PROPOSAL IS MODELED AFTER THE REGULATORY REFORM IMPOSED ON BRITISH TELECOM (BT) IN 1984. PRIOR TO THAT TIME, BT WAS A GOVERNMENT OWNED MONOPOLY PROVIDING BOTH DOMESTIC AND INTERNATIONAL TELECOMMUNICATIONS SERVICES. NOW, BT NO LONGER

HAS AN EXCLUSIVE FRANCHISE, 51% OF ITS STOCK IS PUBLICLY OWNED AND ITS SERVICES ARE CAPPED. 1/

IN THE COMMENTS FILED BY THE D.C. PUBLIC SERVICE COMMISSION ON DECEMBER 4, 1987, WE NOTED THAT THE FCC'S PRICE CAP PROPOSAL APPEARED TO OVERLOOK CERTAIN KEY ASPECTS OF THE BRITISH TELECOM EXPERIENCE WHICH INCLUDED A SIGNIFICANT QUALITY OF SERVICE OVERSIGHT PROVIDED BY OFTEL. THE OFTEL HAS MADE A SERIOUS COMMITMENT TO MONITORING LEVELS OF CUSTOMER SATISFACTION BY COMMISSIONING CONSUMER SURVEYS BY MARKET RESEARCH FIRMS AND OTHER PUBLIC AND PRIVATE BODIES. THE D.C. COMMISSION ALSO CAUTIONED THE FCC, THAT IF "THE LECS ARE FREE TO INVEST WITHOUT REGARD TO THEIR UNDERLYING COMMITMENT TO PUBLIC SERVICE, OR FAIL TO MAINTAIN OR UPGRADE THE NETWORK TO INCREASE PROFITS, THE INDUSTRY WILL LIKELY DETERIORATE IN THE SAME MANNER AS HAS THE DEREGULATED AIRLINE INDUSTRY, WITH COMMENSURATE SERVICE DEGRADATION, DECLINE IN MARGINS OF SAFETY, AND CUSTOMER DISSATISFACTION."

IN THE NOTICE, THE FCC SOUGHT COMMENT ON WHETHER ITS PRICE CAP MODEL MIGHT ADVERSELY AFFECT SERVICE QUALITY. HOWEVER, IT WAS CLEAR THAT SERVICE QUALITY WAS NOT A PARAMOUNT CONCERN TO THE FCC BECAUSE THE NOTICE ALSO STATED THAT QUALITY OF SERVICE PROBLEMS WOULD NOT "FATALLY UNDERMINE" THE PRICE CAP REGIME. 2/ THUS, THE FCC MADE IT CLEAR THAT AN INABILITY TO GUARANTEE

SERVICE QUALITY WOULD NOT DELAY IMPLEMENTATION OF PRICE CAPS. EVEN SO, A SIGNIFICANT NUMBER OF COMMENTERS EXPRESSED CONCERN ON THIS ISSUE.

THE COMMENTS

THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (NARUC) ATTACHED TO ITS COMMENTS A RESOLUTION PASSED AT ITS MEETING IN NOVEMBER OF 1987 WHICH RECOGNIZED THAT QUALITY OF SERVICE COULD BE ADVERSELY AFFECTED UNDER PRICE CAPS. 3/

THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE (AD HOC) AND THE INTERNATIONAL COMMUNICATIONS ASSOCIATION (ICA) FILED AS PART OF THEIR COMMENTS A REPORT PREPARED BY ECONOMICS AND TECHNOLOGY, INC., (ETI) WHICH STATED THAT ANY PRICE CAP SYSTEM THAT GIVES CARRIERS INCENTIVES TO OPERATE MORE EFFICIENTLY MAY ALSO CAUSE THEM TO SACRIFICE SERVICE QUALITY IN ORDER TO INCREASE SAVINGS. ETI WENT ON TO NOTE THAT THE BRITISH SYSTEM (WHICH THE FCC HAS PRAISED SO HIGHLY) HAS BEEN ACCOMPANIED BY INCREASING PUBLIC COMPLAINTS ABOUT INSTALLATION, REPAIR AND DAY-TO-DAY SERVICE. 4/

IN JANUARY OF 1988, OFTEL ISSUED A REPORT WHICH STATED THAT THE LAST YEAR HAD SEEN A WORSENING IN THE QUALITY OF SERVICE PROVIDED BY BRITISH TELECOM, 5/ WHICH IN SOME MEASURE OFTEL ATTRIBUTED TO THE PRICE CAP METHOD OF REGULATION.

EVEN THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA) WHICH IS AN AVID SUPPORTER OF DEREGULATION AND SUPPORTS THE UTILIZATION OF PRICE CAPS TO COVER AS BROAD AN AREA AS POSSIBLE, BELIEVES THAT MONITORING OF SERVICE QUALITY IS "CRITICAL" 6/ BECAUSE PRICE CAPS COULD "GIVE FIRMS AN INCENTIVE TO INCREASE PROFITS BY DEGRADING SERVICE." 7/

THE TELE-COMMUNICATIONS ASSOCIATION (TCA) URGED THE FCC TO "DEVELOP PROCEDURES TO VIGILANTLY MONITOR AND PROTECT SERVICE QUALITY, PARTICULARLY IN THE AREAS OF SERVICE RESTORATION TIMES, NUMBER AND EXTENT OF SERVICE OUTAGES, SERVICE DELIVERY TIMES, TECHNICAL TRANSMISSION QUALITY, AND FAILURE TO MEET DELIVERY DATES". 8/ IT FURTHER RECOMMENDED THAT THE FCC "PROHIBIT ABANDONMENTS OF SERVICE ABSENT EXCEPTIONALLY COMPELLING CIRCUMSTANCES AND BE WATCHFUL OF SUBTLE SERVICE EROSIONS SUCH AS MINIMAL POINTS OF PRESENCE WITHIN EACH LATA". 9/

THE MARYLAND PEOPLE'S COUNSEL WARNED THE FCC THAT SERVICE DETERIORATION COULD TAKE MANY FORMS, INCLUDING REPLACEMENT OF EQUIPMENT WITH THE SAME TECHNOLOGY EVEN THOUGH NEW TECHNOLOGY IS AVAILABLE, STRETCHING OUT MAINTENANCE SCHEDULES, AND THINNING OUT SERVICE PERSONNEL. IT URGED THE FCC NOT ONLY TO DEVELOP NEW STANDARDS FOR SERVICE QUALITY, BUT TO RECRUIT A SUBSTANTIAL STAFF

TO MONITOR COMPLIANCE. 10/

FINALLY, THE NEW YORK DEPARTMENT OF PUBLIC SERVICE URGED THE FCC TO ADOPT MINIMUM QUALITY OF SERVICE STANDARDS FOR NON-COMPETITIVE SERVICES AND TO HOLD PRICE CAPS IN ABEYANCE UNTIL SUCH STANDARDS ARE IN PLACE. 11/

IN FACT, THE FCC ADMITTED THAT COMMENTERS WERE VIRTUALLY UNANIMOUS IN ASSERTING THAT SOME SERVICE QUALITY SAFEGUARDS SHOULD BE MAINTAINED OR DEVELOPED AS PART OF THE NEW REGULATORY REGIME.

AS FOR THE CARRIERS, EVEN THOUGH AT&T AND BELLSOUTH DID NOT BELIEVE THAT PRICE CAPS WOULD PROVIDE INCENTIVES TO IGNORE SERVICE QUALITY, BELLSOUTH SUPPORTED THE CONTINUATION OF CERTAIN MONITORING PROGRAMS AND THE FILING OF TECHNICAL STANDARDS, AND AT&T EXPRESSED A WILLINGNESS TO ASSIST IN THE DEVELOPMENT OF SERVICE QUALITY MONITORING PROCEDURES.

THE FCC'S POSITION

THE FCC RESPONDED TO THESE CONCERNS BY STATING, IN ESSENCE, THAT SERVICE QUALITY WOULD NOT BE A PROBLEM UNDER PRICE CAPS REGULATION BECAUSE:

- 1) CUTTING BACK ON SERVICE QUALITY WOULD

DECREASE PROFITS BECAUSE CUSTOMERS

WOULD MAKE FEWER CALLS;

- 2) QUALITY REDUCTIONS MANIFEST THEMSELVES READILY AND INVITE A SWIFT RESPONSE FROM CUSTOMERS AND REGULATORS; AND
- 3) THE FCC CURRENTLY MONITORS SERVICE QUALITY AND WILL CONTINUE TO DO SO. 12/

DISCUSSION

I FOUND THE FCC'S RESPONSE TO THE SERVICE QUALITY ISSUE SEVERELY LACKING. IT IS TRUE THAT THE FCC CURRENTLY MONITORS SERVICE QUALITY UNDER SECTION 214 OF THE COMMUNICATIONS ACT (THE ACT) AND PART 63 OF ITS RULES. THE COMMON CARRIER BUREAU DOES RECEIVE SEMI-ANNUAL REPORTS FROM AT&T AND THE RBOCS. THE RBOC REPORT COVERS 1) CUSTOMER SATISFACTION LEVELS; 2) PERCENTAGE OF SWITCHING MACHINES PERFORMING AT OR ABOVE DIAL TONE SPEED OBJECTIVES; 3) PERCENTAGE OF OFFICES MEETING ALL TRANSMISSION OBJECTIVES; 4) PERCENTAGE OF CALLS ENCOUNTERING EQUIPMENT FAILURE OR BLOCKING; AND 5) PERCENTAGE OF "ON TIME" RESPONSES TO SERVICE ORDERS. THE AT&T REPORT COVERS SWITCHING MACHINE PERFORMANCE, INTERLATA TRANSMISSION QUALITY, AND EQUIPMENT FAILURE OR BLOCKING ON THE TERMINATING ACCESS NETWORK. 13/ FURTHER, THE FCC IS AUTHORIZED TO SCRUTINIZE CHANGES IN TECHNICAL STANDARDS CONTAINED IN INTERSTATE TARIFFS AS PART OF THE TARIFF REVIEW PROCESS UNDER

PART 61 OF ITS RULES AND AGGRIEVED PARTIES MAY UTILIZE THE COMPLAINT PROCESS UNDER SECTION 208 OF THE ACT. 14/

ONE REGULATOR'S OPINION

I HAVE REVIEWED THE FCC'S STATUTORY AND REGULATORY AUTHORITY AS CITED BY THEM IN THE FURTHER NOTICE. SECTION 214 OF THE ACT GIVES THEM AUTHORITY TO IDENTIFY OR CORRECT PROBLEMS RELATING TO FACILITIES AUTHORIZATION. CARRIERS APPARENTLY CANNOT COMMENCE OR PROCEED WITH CONSTRUCTION OR OTHER ACTIVITIES WITHOUT COMMISSION APPROVAL. THE COMMISSION'S AUTHORITY UNDER PART 61 GRANTS THEM THE POWER TO SCRUTINIZE CHANGES IN TECHNICAL STANDARDS CONTAINED IN INTERSTATE TARIFFS AS PART OF THE TARIFF REVIEW PROCESS. I AM UNSURE, HOWEVER, AS TO WHETHER OR NOT THE EXISTING MONITORING PROCEDURES ARE ADEQUATE IN THAT THE FCC HAS ONLY DESCRIBED ITS AUTHORITY AND THE VARIOUS REPORTS FILED BUT HAS FAILED TO INDICATE WHAT PROCEDURES ARE BEING IMPLEMENTED, WHAT IS ACTUALLY CONTAINED IN THE REPORTS AND WHAT USE THE FCC MAKES OF THE DATA PROVIDED. I WOULD SUGGEST, HOWEVER, THAT EVEN IF THE FCC ACTUALLY REVIEWS, ANALYSES, AND EVALUATES THE DATA, THAT A MONITORING EFFORT ALONE IS INADEQUATE. I WOULD ALSO NOTE THAT THE SERVICE QUALITY MONITORING THAT IS OCCURRING IN THE EQUAL ACCESS AREA HAS APPARENTLY BEEN DELEGATED BY THE FCC TO A PRIVATE GROUP KNOWN AS THE CARRIER LIAISON COMMITTEE OF THE ESCA. A SIMILAR DELEGATION SEEMS TO BE OCCURRING TO THE CARRIER INDUSTRY

AND STATE REGULATORS, WITH RESPECT TO TECHNICAL AND IMPLEMENTATION ISSUES SURROUNDING ONA. MOREOVER, THE FCC IS ONLY NOW BEGINNING TO LOOK AT 800 DATABASE ISSUES, AFTER ITS FIRST REVIEW OF THE ISSUE IN DOCKET 86-10 GREW STALE DUE TO LACK OF FCC ACTION.

THIS PATTERN OF INACTION, IN MY OPINION, REQUIRES BOTH THE ADOPTION OF MANDATORY MINIMUM SERVICE QUALITY STANDARDS, AS WELL AS THE DEVELOPMENT OF ENFORCEMENT PROCEDURES WHICH MUST BE IMPLEMENTED WITH GREAT VIGILANCE TO INSURE PROPER COMPLIANCE.

I FOUND IT OF SOME INTEREST THAT THE DIRECTOR GENERAL OF OFTEL ARGUED THAT SERVICE QUALITY WAS OF SUCH PARTICULAR IMPORTANCE THAT A CASE COULD BE MADE FOR "INCORPORATING SOME KIND OF FINANCIAL PENALTY IN THE PRICE CONTROL FORMULA" IF AND WHEN BT FAILED TO DELIVER A GIVEN QUALITY OF SERVICE. HE WENT ON BY GIVING AN EXAMPLE WHEREBY THE REGULATORS WOULD REDUCE PERMITTED PRICE INCREASES BY SOME AMOUNT FOR EACH FAILURE TO MEET A PERFORMANCE TARGET. I DON'T, AT THIS TIME, SUGGEST SUCH AN APPROACH BUT DO RECOMMEND THAT THE INDUSTRY COME FORWARD WITH PROPOSED STANDARDS (BOTH TECHNICAL AND PROCEDURAL) THAT COULD BE ENDORSED BY USERS AND REGULATORS ALIKE.

TO SUCCESSFULLY ACHIEVE REGULATION UNDER A PRICE CAP MODEL,

CONCERNS OF SERVICE QUALITY, SAFETY, AND CUSTOMER SATISFACTION
MUST BE ADDRESSED AND RESOLVED. FAILURE TO PROPERLY RESPOND TO
THESE CONCERNS WILL, IN MY OPINION, FURTHER DELAY ANY POSITIVE
CONSIDERATION OF THE PRICE CAP PROPOSAL.

FOOTNOTES

1. The Notice at paragraph 25.
2. The Notice at paragraph 34.
3. NARUC Comments.
4. ETI Report at p. 72.
5. The Regulation of British Telecom's Prices at p. 4.
6. Reply comments of NTIA at p. 17.
7. Id. at p.18.
8. Reply comments of State of Hawaii, at p. 19-20.
9. Id.
10. Reply comments of Maryland People's Counsel at p. 18.
11. Comments of N.Y. Department of Public Service at p. 11.
12. Id. at paragraphs 134-137.
13. Id. at paragraphs 490-491.
14. Id. at paragraph 493.