

BACK TO THE FUTURE: A 1986 STATE REGULATORY RESPONSE

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THE FOWLER CHALLENGE: DEREGULATION
AND COMPETITION IN THE LOCAL
TELECOMMUNICATIONS MARKET

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THE FORCES OF TECHNOLOGY HAVE REQUIRED A REEVALUATION AND REDEFINITION OF THE STRUCTURE OF TELECOMMUNICATIONS SERVICE MARKETS.

THE FEDERAL TREND TOWARDS DEREGULATION OF THE TELECOMMUNICATIONS INDUSTRY HAS PLACED SUBSTANTIAL POLITICAL PRESSURE ON THE STATE COMMISSIONS WHERE PRIMARY CONCERN HAS BEEN THE CONTINUATION OF AFFORDABLE RATES FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS. MANY OBSERVERS HAD SPECULATED THAT TECHNOLOGICAL, ECONOMIC AND POLICY DEVELOPMENTS WOULD COMPEL MORE STATE OFFICIALS TO PERMIT SOME FORM OF TELECOMMUNICATIONS COMPETITION.

STATE REGULATORY INITIATIVES

IT WOULD APPEAR THAT THOSE OBSERVATIONS WERE CORRECT. THE RECENT NTIA SURVEY 1/ OF THE 51 PUBLIC SERVICE COMMISSIONS INDICATES A HIGH DEGREE OF REGULATORY AND LEGISLATIVE ACTIVITY ON SUCH ISSUES AS INTERLATA AND INTRALATA COMPETITION, LOCAL EXCHANGE COMPETITION AND PRICING AND DEREGULATION OF COMPETITIVE SERVICES. SINCE DIVESTITURE, NEARLY ALL MULTI-LATA STATES HAVE PERMITTED FACILITIES-BASED COMPETITION. 2/ IN THE INTERLATA MARKET, 36 OUT OF 38 MULTI-LATA STATES HAVE AUTHORIZED FACILITIES-BASED CARRIERS TO OPERATE IN THEIR JURISDICTIONS, WHILE RESELLERS ARE PERMITTED IN ALL MULTI-LATA JURISDICTIONS. A NUMBER OF STATES HAVE ALSO TAKEN STEPS TO REDUCE THE REGULATORY RESTRICTIONS ON INTERLATA COMPETITION. COMMISSIONS IN 28 STATES

HAVE APPROVED SOME FORM OF PRICE FLEXIBILITY FOR INTEREXCHANGE CARRIERS, INCLUDING AT&T. 3/

STATE COMMISSIONS HAVE EXERCISED GREATER RESTRAINTS IN ALLOWING FACILITIES-BASED COMPETITION IN THE INTRALATA TOLL MARKETS. FOURTEEN STATES PRESENTLY PERMIT INTRALATA COMPETITION AND FOUR ADDITIONAL JURISDICTIONS HAVE APPROVED INTRALATA COMPETITION TO BE EFFECTIVE BY JANUARY OF 1987. FACILITIES-BASED TOLL COMPETITION HAS BEEN APPROVED IN THE SINGLE-LATA STATES OF NEW MEXICO AND VERMONT WHILE NEBRASKA, CONNECTICUT, DELAWARE AND MAINE HAVE THE MATTER PRESENTLY UNDER CONSIDERATION. THE ILLINOIS COMMISSION HAS BEEN PARTICULARLY PRO-COMPETITION. IN JULY OF 1985, IT BECAME THE FIRST MULTI-LATA STATE TO APPROVE DEAVERAGING OF TOLL RATES FOR THE LOCAL EXCHANGE COMPANIES EFFECTIVE OCTOBER 1ST OF THIS YEAR. AS PART OF ITS DEAVERAGING PLAN, THE COMMISSION ESTABLISHED "MARKET SERVICE AREAS" AND ESTABLISHED "PRIMARY TOLL CARRIERS" FOR EACH SERVICE AREA. EACH PRIMARY TOLL CARRIER IS RESPONSIBLE FOR SETTING TOLL RATES AND DETERMINING ITS REVENUE REQUIREMENTS WITHIN ITS SERVICE AREAS.

STATE COMMISSIONS APPEAR MORE WILLING TO SUPPORT INTRALATA TOLL COMPETITION IF IT IS RESTRICTED TO RESELLERS. THIRTY-TWO MULTI-LATA STATES HAVE AUTHORIZED INTRALATA TOLL RESALE. AMONG THE SINGLE-LATA STATES, SIX (MAINE, NEW MEXICO, SOUTH DAKOTA, UTAH, VERMONT AND WYOMING) PERMIT RESALE OF SERVICE WHILE FOUR JURISDICTIONS (CONNECTICUT, HAWAII, RHODE ISLAND, AND NEW HAMPSHIRE) PROHIBIT IT.

STATE COMMISSIONS HAVE ALSO EXTENDED THE CONCEPT OF PRICE FLEXIBILITY BEYOND BANDED RATES TO ALSO INCLUDE DETARIFFED OR DEREGULATED LOCAL EXCHANGE SERVICES AND PRIVATE CONTRACTS.

THE IOWA COMMISSION WAS GRANTED LEGISLATIVE AUTHORITY IN 1983 TO DEREGULATE ANY SERVICE IT FOUND TO BE COMPETITIVE. AS A RESULT, CENTREX AND PRIVATE LINE DIGITAL SERVICES HAVE BEEN DEREGULATED FOR MORE THAN TWO YEARS. IN NEW MEXICO, THE COMMISSION RECENTLY GRANTED MOUNTAIN BELL PRICING FLEXIBILITY FOR CUSTOM CALLING SERVICES. THE ORDER SETS MINIMUM AND MAXIMUM RATES FOR EACH SERVICE. THIRTY-FIVE STATES NOW PERMIT SOME FORM OF PRICE FLEXIBILITY FOR LOCAL EXCHANGE CARRIERS. MOREOVER, AN ADDITIONAL ELEVEN JURISDICTIONS HAVE CONSIDERED THE ISSUE IN SOME FORM THIS PAST YEAR; INDIANA IS EXAMINING PRICE FLEXIBILITY FOR CUSTOM CALLING SERVICES; NEW HAMPSHIRE IS CONSIDERING BANDED RATES FOR DIGITAL PBX SERVICE AND WASHINGTON IS REVIEWING WHETHER TO DETARIFF CENTREX AND PRIVATE LINE SERVICES.

THE DISTRICT OF COLUMBIA COMMISSION HAS ALSO INVESTIGATED THE FEASIBILITY OF DEREGULATING CENTREX SERVICE.

CENTREX IS AN EXTREMELY IMPORTANT SERVICE IN THE DISTRICT OF COLUMBIA BECAUSE IT COMPRISES 40% OF OUR OPERATING COMPANY'S ACCESS LINES AND 21% OF ITS INTRASTATE REVENUES. THIS LARGE DEPENDENCE ON CENTREX REVENUES IS UNIQUE AMONG LOCAL EXCHANGE CARRIERS. 4/ ALSO UNIQUE IS THE COMPANY'S HEAVY RELIANCE ON THE FEDERAL GOVERNMENT AS A CENTREX CUSTOMER. GSA IS C&P'S LARGEST

CUSTOMER, USING APPROXIMATELY TWO-THIRDS OF THE CENTREX LINES IN SERVICE.

IN 1985, THE COMPANY PROPOSED NEW CENTREX RATES. IN THIS PROCEEDING THE OFFICE OF PEOPLE'S COUNSEL ARGUED THAT THE COMPETITIVE ENVIRONMENT REQUIRED THAT CENTREX BE TREATED AS A SPECIAL CATEGORY OF SERVICE, WITH AN IMPUTED REVENUE REQUIREMENT UNDER WHICH C&P WOULD HAVE BROAD FLEXIBILITY TO PRICE CENTREX AS IT SAW FIT. 5/

C&P OPPOSED THIS PROPOSAL. INSTEAD, THE COMPANY PROPOSED TO CONTINUE ITS PRESENT RATE STABILITY PLAN AND INSTITUTE A NEW PLAN, WHICH CONTAINED A THREE YEAR CONTRACT LIFE AND SUBSTANTIAL PRICING REVISIONS, RANGING FROM REDUCTIONS OF 10% TO 95%. C&P ALSO PROPOSED TO IMPLEMENT A FULL CALC CREDIT OF \$2.00 TO ENSURE CONTINUED COMPARABILITY WITH PBX SYSTEMS.

THE COMMISSION REJECTED THE PROPOSAL TO CREATE A SEPARATE CENTREX REVENUE REQUIREMENT CATEGORY. WE WERE NOT PREPARED TO RELINQUISH REGULATORY AUTHORITY OVER A SERVICE WHICH UTILIZED SUCH A SUBSTANTIAL PORTION OF COMMON CENTRAL OFFICE FACILITIES AND OUTSIDE PLANT.

WHILE THE COMMISSION WAS ABSOLUTELY CONVINCED THAT CENTREX REQUIRED A SPECIAL REGULATORY RESPONSE, WE WERE NOT PERSUADED THAT THE C&P PROPOSAL WOULD PROVIDE THAT RESPONSE. WE REASONED THAT THE CUSTOMERS WITH 10,000 LINES OR MORE COULD NOT SOLICIT BIDS FROM VENDORS, AWARD A CONTRACT AND COMPLETELY INSTALL A PBX SYSTEM IN LESS THAN THREE YEARS. THEREFORE, THE PLAN AS PROPOSED

BY THE COMPANY WOULD HAVE NO IMPACT UPON THE PROCUREMENT DECISIONS OF ITS LARGE CUSTOMERS - AND THUS FAILED IN PROVIDING THE INDUCEMENT TO RETAIN CENTREX SERVICE. WE THEREFORE, ORDERED THAT LARGE CUSTOMERS COULD ONLY ELECT THE NEW PLAN, WITH THE PROPOSED RATE REDUCTIONS, IF THE CUSTOMER SIGNED UP FOR A FIVE YEAR PERIOD. IN ORDER TO FURTHER INDUCE CUSTOMER COMMITMENT, WE AGREED THAT THE RATES FOR THE NEW SERVICE WOULD ONLY BE ADJUSTED UPWARD BY AN AMOUNT NOT TO EXCEED THE PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX DURING THE PREVIOUS TWELVE MONTHS. THE COMMISSION WAS SO CONCERNED WITH THE POTENTIAL REVENUE LOSSES ASSOCIATED WITH CENTREX THAT WE ALSO GRANTED C&P'S REQUEST FOR A FULL CALC CREDIT ON THE INTERCOM RATE.

LEGISLATIVE INITIATIVES

MUCH OF THE IMPETUS TO DEREGULATE AND DETARIFF SERVICES AT THE STATE LEVELS HAS BEEN THE DIRECT RESULT OF LEGISLATION ENACTED BY STATE LEGISLATURES.

SINCE 1983, SIXTEEN STATES HAVE ENACTED GENERAL STATUTES TO DEREGULATE SOME ASPECT OF TELECOMMUNICATION SERVICES. THESE STATES ARE ARIZONA, INDIANA, IOWA, ILLINOIS, MONTANA, NEBRASKA, NEVADA, NEW MEXICO, NORTH CAROLINA, NORTH DAKOTA, OREGON, TEXAS, UTAH, VIRGINIA, WASHINGTON AND WISCONSIN. DEREGULATION BILLS HAVE BEEN CONSIDERED AND REJECTED IN IDAHO, NEW HAMPSHIRE AND VERMONT. 6/

THE WISCONSIN DEREGULATION LEGISLATION IMMEDIATELY DEREGULATES RESELLERS, CABLE TELEVISION TELECOMMUNICATIONS SERVICE

PROVIDERS, COCOTS, RADIO COMMON CARRIERS, CELLULAR CARRIERS AND STS. IT ALSO DEREGULATES COMPANIES WITH LESS THAN 7,500 CUSTOMERS SO LONG AS RATE INCREASES DO NOT EXCEED 30% OR \$2.00 IN ANY ONE YEAR OR 100% OR \$10.00 DURING ANY FOUR CONSECUTIVE YEARS. CUSTOMERS, INCLUDING INTEREXCHANGE CARRIERS, MAY PETITION THE COMMISSION FOR A REVIEW OF A PROPOSED RATE INCREASE. THE COMMISSION WOULD BE ALLOWED TO REIMPOSE REGULATION IF DOING SO WOULD PROTECT THE PUBLIC INTEREST.

THUS FAR, TWO OF THESE TELEPHONE COMPANIES HAVE FILED FOR THE MAXIMUM INCREASE ALLOWED UNDER THE LAW AND ITS CUSTOMERS HAVE PETITIONED FOR A REVIEW. INTERESTINGLY, THIS PROCESS OF FILING, PETITION AND COMMISSION REVIEW TAKES APPROXIMATELY TWICE AS LONG AS IT DID PRIOR TO THE LEGISLATION.

THE NEBRASKA LEGISLATION PROVIDES THAT THE TELEPHONE COMPANIES ARE NOT SUBJECT TO ANY RATE REGULATION. INSTEAD, THEY NEED ONLY TO FILE RATES WHICH WILL BECOME EFFECTIVE IN 10 DAYS. HOWEVER, CHANGES IN MONTHLY RATES FOR BASIC LOCAL SERVICES SHALL REQUIRE 60 DAYS NOTICE TO ALL SUBSCRIBERS.

THE PSC MAY ONLY REVIEW BASIC LOCAL EXCHANGE RATES UPON RECEIPT OF A FORMAL COMPLAINT SIGNED BY 5% OF ALL SUBSCRIBERS IF THE COMPANY HAS NO MORE THAN 50,000 LINES OR 3% OF ALL SUBSCRIBERS IF THE COMPANY HAS BETWEEN 50,000 AND 250,000 LINES, OR 2% OF ALL SUBSCRIBERS IF THE COMPANY HAS OVER 250,000 LINES. SUCH COMPLAINTS MUST BE RECEIVED WITHIN 60 DAYS OF THE RATE CHANGE NOTICE. IF THE PSC FINDS THAT THE COMPLAINT IS VALID, IT MAY

ADJUST THE RATES, BUT MAY NOT SET ANY RATE BELOW THE ACTUAL COST OF PROVIDING THE SERVICE. THE COMMISSION MAY ALSO ORDER THAT THE COMPANY REFUND ANY AMOUNTS COLLECTED THAT EXCEED THE RATE SET BY THE COMMISSION. IF THE COMMISSION ADJUSTS A COMPANY'S RATES, THE COMPANY MAY NOT INCREASE ITS RATES AGAIN FOR 6 MONTHS UNLESS THE COMMISSION APPROVES. THIS PROVISION, HOWEVER, FOR PSC REVIEW AND ADJUSTMENT EXPIRES ON AUGUST 31, 1991. 7/

IN SETTING INTEREXCHANGE RATES, THE LEGISLATION MANDATES RATE AVERAGING ON A STATEWIDE BASIS UNTIL AUGUST 31, 1991 UNLESS THE PSC ORDERS OTHERWISE. THE COMPANY MAY ALLOW VOLUME DISCOUNTS OR OTHER DISCOUNTS THAT HAVE A REASONABLE BUSINESS PURPOSE. 8/

THE COMMISSION RETAINS JURISDICTION OVER QUALITY OF SERVICE, DEPOSITS AND DISCONNECTIONS. 9/

THE NEBRASKA LEGISLATION IS SCHEDULED TO BECOME EFFECTIVE ON JANUARY 1, 1987. HOWEVER, THE NEBRASKA PUBLIC SERVICE COMMISSION HAS FILED A LAWSUIT TO HALT ITS IMPLEMENTATION ON CONSTITUTIONAL GROUNDS. IF THE SUIT IS NOT DECIDED BY THE EFFECTIVE DATE OF THE LEGISLATION, THE COMMISSION WILL REFUSE TO IMPLEMENT IT. THE PRIMARY CONCERN OF THE COMMISSION IS THE LEGISLATION'S IMPACT ON UNIVERSAL SERVICE. THE COMMISSION BELIEVES THAT ITS COMMENTS ON THE LEGISLATION WERE EITHER MISUNDERSTOOD OR IGNORED AND THAT THE BILL IS GENERALLY NOT WELL THOUGHT OUT.

WASHINGTON'S DEREGULATION LEGISLATION ALLOWS EITHER THE COMMISSION OR A COMPANY TO INITIATE A PROCEEDING TO CLASSIFY A

COMPANY OR A SERVICE AS COMPETITIVE. IN ORDER TO BE CLASSIFIED AS COMPETITIVE, A COMPANY MUST SHOW THAT IT IS SUBJECT TO "EFFECTIVE COMPETITION". THE LEGISLATION DEFINES "EFFECTIVE COMPETITION" AS THE PRESENCE OF AVAILABLE CUSTOMER ALTERNATIVES AND THE ABSENCE OF A SIGNIFICANT CAPTIVE CUSTOMER BASE. IN ASSESSING THESE FACTORS, THE COMMISSION MUST ALSO CONSIDER THE ABILITY OF THE APPLICANT TO CONTROL ENTRY AND PRICES IN THE MARKET. ONCE A COMPANY IS CLASSIFIED AS COMPETITIVE BY THE COMMISSION, IT NEED ONLY FILE ITS RATES AND THEY BECOME EFFECTIVE AFTER 10 DAYS.

THE STATUTE PROVIDES THAT ONCE AN INTERLATA INTEREXCHANGE CARRIER HAS FULLY IMPLEMENTED THE EQUAL ACCESS REQUIREMENTS OF THE MFJ, A REBUTTABLE PRESUMPTION ARISES THAT IT IS COMPETITIVE AND SHOULD BE CLASSIFIED AS SUCH.

FOR ANY SERVICE, THE COMMISSION MAY APPROVE "BANDED RATE" TARIFFS. A BANDED RATE TARIFF IS A TARIFF WHICH SETS A MINIMUM AND MAXIMUM RATE. WITHIN THAT BAND, A COMPANY MAY CHANGE ITS RATES SO LONG AS THE MINIMUM RATE COVERS THE COST OF SERVICE.

THE COMMISSION ALSO WILL HAVE SOME CONTROL OVER THE ENTRY INTO THE MARKET OF NEW TELECOMMUNICATION COMPANIES. THOSE WHICH BEGAN OPERATING AFTER JANUARY 1, 1985 MUST REGISTER WITH THE COMMISSION AND THE COMMISSION MAY DENY REGISTRATION TO COMPANIES WHICH DO NOT POSSESS ADEQUATE FINANCIAL OR TECHNICAL RESOURCES.

THE LEGISLATION SPECIFICALLY FORBIDS THE REGULATION OF ONE-WAY BROADCAST OR CABLE TELEVISION TRANSMISSION OF TELEVISION OR RADIO SIGNALS, PRIVATE TELECOMMUNICATIONS SYSTEMS, TELEGRAPH

SERVICES, CPE, PRIVATE STS UNLESS CUSTOMERS HAVE NO ALTERNATIVE ACCESS TO LOCAL EXCHANGE SERVICE, AND RADIO COMMUNICATIONS SERVICE COMPANIES.

THUS FAR, THE WASHINGTON COMMISSION HAS CLASSIFIED 17 TELEPHONE COMPANIES AS COMPETITIVE. PACIFIC NORTHWEST BELL HAS FILED FOUR PETITIONS TO CLASSIFY SPECIFIC SERVICES AS COMPETITIVE. ONE OF THESE SERVICES IS CENTREX AND ALL FOUR APPLICATIONS ARE AWAITING COMMISSION ACTION.

THE LEGISLATION IS SCHEDULED TO BE REVIEWED BY THE STATE LEGISLATIVE BODY IN 1989.

DEVELOPMENTS AT THE FEDERAL LEVEL

A GREAT DEAL OF THE LEGISLATIVE AND REGULATORY ACTIVITY THAT HAS TRANSPIRED IN THE PAST SEVERAL YEARS CAN BE DIRECTLY ATTRIBUTED TO THE DEREGULATION EFFORTS AT THE FEDERAL LEVEL. EVEN THOUGH CHAIRMAN FOWLER'S LAW REVIEW ARTICLE PROCLAIMS THAT "STATE REGULATORY AUTHORITIES HAVE BEEN IN THE FOREFRONT OF RESPONDING TO THE CHALLENGES OF NEW TECHNOLOGY AND HAVE SERVED AS BEACONS LIGHTING THE WAY FOR THEIR FEDERAL COUNTERPARTS", 10/ WE ALL REALIZE THAT STATE INITIATIVES WERE DRIVEN BY POLITICAL AND ECONOMIC PRESSURES EMANATING FROM FEDERAL ACTIONS.

IT IS CLEAR THAT TWO SCHOOLS OF THOUGHTS HAVE EMERGED REGARDING THE DEREGULATION OF THE TELECOMMUNICATIONS INDUSTRY. THERE ARE THOSE THAT STRONGLY BELIEVE THAT ONE MUST JUSTIFY DEREGULATION, THAT ONE MUST JUSTIFY THE PROPOSITION THAT DEREGULATION IS GOING TO IMPROVE THE OVERALL STATE OF TELECOMMUNICA-

CATIONS, THAT DEREGULATION WILL RESULT IN EFFICIENCIES, TECHNOLOGICAL INNOVATIONS, SUSTAINED PRICE REDUCTIONS AND THAT, GENERALLY, THE BENEFITS WILL EXCEED IN SOME APPRECIABLE AMOUNT THE ASSOCIATED RISKS. THE SECOND SCHOOL OF THOUGHT ARGUES THAT AMERICA WAS FOUNDED ON THE PRINCIPLE OF A FREE MARKET. CONSEQUENTLY, ONE MUST JUSTIFY THE ABSENCE OF COMPETITION IN THE TELECOMMUNICATIONS MARKET PLACE. THIS REGULATOR SUBSCRIBES TO THE TEACHINGS OF THE FIRST SCHOOL OF THOUGHT, AND OBVIOUSLY CHAIRMAN FOWLER SUBSCRIBES TO THE LATTER.

THE BACK TO THE FUTURE ARTICLE GENERALLY CONDEMNS REGULATION AS 1) DISCOURAGING PRICE COMPETITION; 2) PROVIDING ONLY LIMITED INCENTIVES TO CUT COSTS; 3) LIMITING THE CHOICES AVAILABLE TO CONSUMERS; 4) LIMITING THE ABILITY OF COMPANIES TO QUICKLY RESPOND TO CHANGES; AND 5) MAKING IT DIFFICULT TO KEEP PRICES CLOSE TO ACTUAL COSTS. 11/ THE ARTICLE ENCOURAGES REGULATORS TO ALLOW DOMINANT CARRIERS SOME PRICING FLEXIBILITY AND TO REMOVE COSTLY STRUCTURAL SAFEGUARDS IN FAVOR OF OPEN NETWORK ARCHITECTURE AND OTHER NONSTRUCTURAL DEVICES. 12/

HOWEVER, THE HEART OF THE ARTICLE IS FOWLER'S PROPOSAL OF A 3-YEAR SUSPENSION OF REGULATION TO DETERMINE WHETHER COMPETITION WOULD LEAD TO LOWER COSTS. UNDER HIS PROPOSED SCENARIO, REGULATION OF TELECOMMUNICATIONS GOODS AND SERVICES WOULD BE LARGELY SUSPENDED INCLUDING ALL ENTRY/EXIT REGULATION, ALL RATE OF RETURN REGULATION OF INDIVIDUAL SERVICE PRICES, AND ALL STRUCTURAL REGULATION IMPOSED BY REGULATORS OR UNDER THE MFJ. 13/ THE

ARTICLE GOES ON TO SPECULATE THAT SUCH A POLICY WOULD ONLY ENHANCE UNIVERSAL SERVICE BECAUSE SUCH COMPETITION "WOULD DRIVE COSTS TO THE ABSOLUTE MINIMUM." 14/ UNDER THIS PROPOSAL, STATE REGULATORY COMMISSIONS WOULD ONLY REGULATE THOSE SERVICES THAT THEY ARE WILLING TO SUBSIDIZE FROM GENERAL TAX REVENUES. SPECIFICALLY MENTIONED AS A POSSIBILITY WAS LOCAL EXCHANGE SERVICE FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS. THE ARTICLE GOES ON TO STATE THAT IF THE SUBSIDY WAS PAID FOR BY OTHER TELECOMMUNICATIONS SERVICES, RATHER THAN TAX REVENUES, THE LOCAL COMPANY SHOULD DECIDE WHICH SERVICES ARE TO BE PRICED AT A LEVEL NECESSARY TO GENERATE THE REVENUES NEEDED TO SUBSIDIZE THE PROTECTED SERVICE.

AS AN INCENTIVE FOR THE STATES TO ADOPT THIS PROPOSAL, CHAIRMAN FOWLER INDICATED THAT SUCH ADOPTION COULD LEAD TO THE DEREGULATION OF THE INTERSTATE ACCESS CHARGES OF THAT STATE'S TELEPHONE COMPANIES. 15/

BASICALLY, MR. FOWLER IS FOCUSING ON ONLY ONE SEGMENT OF THE SERVICES PROVIDED---LIFELINE. MR. FOWLER PROFFERS THAT THE STANDARD FOR DETERMINING THE APPROPRIATENESS OF HIS PROPOSAL IS THE ABILITY TO RETAIN LOW-INCOME CUSTOMERS ON THE NETWORK. HE PROPOSES TO MEET THE STANDARD BY PROVIDING FREE TELEPHONE SERVICE TO THE POOR (EITHER THROUGH TAX REVENUES OR SUBSIDIES FROM OTHER TELEPHONE SERVICES). I SUBMIT THAT THIS STANDARD IS GROSSLY INSUFFICIENT. WHY SHOULDN'T EVERYONE IN SOCIETY BE PROTECTED? WHY SHOULD ANY TELEPHONE CUSTOMER BE SUBJECTED TO PRICE GOUGING?

EQUITY AND FAIRNESS ARE THE LEGISLATIVE CORNERSTONES OF OUR SOCIETY, AND IT IS OBVIOUS THAT THE ECONOMY AS A WHOLE WILL SUFFER IF TELEPHONE SERVICES ARE PRICED MONOPOLISTICALLY. WHERE ARE THE EFFICIENCIES IF DE FACTO MONOPOLIES ARE ALLOWED TO PRICE TELEPHONE SERVICE WITHOUT REGULATORY SAFEGUARDS?

MR. FOWLER ARGUES THAT HIS THREE-YEAR EXPERIMENT REQUIRES THE IMPLEMENTATION OF OPEN NETWORK ARCHITECTURE (ONA), IN ESSENCE, THE UNBUNDING OF THE PUBLIC SWITCH. HE DESCRIBES ONA AS THE PANACEA FOR THE TELECOMMUNICATIONS INDUSTRY. WHAT, HOWEVER, WILL BE THE SOCIETAL BENEFITS? AND, AT WHAT COST? AGAIN THE FCC IS PROPOSING MAJOR TELECOMMUNICATIONS POLICY WITHOUT THE SUBMISSION OF APPROPRIATE DATA. I HAVE YET TO READ OR HEAR OF ANY COST ESTIMATES ASSOCIATED WITH THE ONA PROPOSAL. REGULATORS AND THE PUBLIC AT LARGE WERE ADVISED OF THE BENEFITS OF "EQUAL ACCESS". THE COST WAS INITIALLY ESTIMATED AT \$2.5 BILLION. I SUBMIT THAT THE ACTUAL COSTS HAVE EXCEEDED THOSE ESTIMATES AND WHAT HAS BEEN THE OVERALL BENEFIT TO THE SOCIETY? AT&T STILL HAS THE LION'S SHARE OF THE LONG DISTANCE MARKET. ARE WE IMPLEMENTING GOOD NATIONAL POLICY OR ARE WE ONLY PROTECTING COMPETITORS IN THE MARKET PLACE AS OPPOSED TO PROTECTING THE PUBLIC AS A WHOLE?

I FURTHER SUBMIT TO YOU THAT A PROPOSAL TO ELIMINATE ENTRY/EXIT REGULATION MUST BE EXAMINED VERY CLOSELY AND EMBRACED WITH GREAT CAUTION. WITHOUT EXCLUSIVE FRANCHISES, THERE EXISTS NO STATUTORY REQUIREMENT TO SERVE. EVEN INDUSTRY MEMBERS ACKNOWLEDGE THAT THE ELIMINATION OF FRANCHISE AREAS WOULD BE A POOR

SOCIAL POLICY. THE INDEPENDENT PHONE COMPANIES SERVICING SMALL TOWNS AND RURAL AMERICA GREATLY FEAR DEREGULATION. THEY ARGUED AT THE RECENT USTA CONVENTION IN SEATTLE THAT DEREGULATION WILL RESULT IN RAIDS ON THEIR BEST CUSTOMERS, INDUSTRY CONSOLIDATION AND LESS ATTRACTIVE INVESTMENT RETURNS. A SPOKESMAN FOR MOUNTAIN BELL, AS REPORTED BY THE WALL STREET JOURNAL, HOWEVER STATED THAT THE SMALL COMPANIES' CONCERNS ARE EXAGGERATED AND THAT [THE BELL COMPANIES] AREN'T LOOKING TO DOMINATE THE TELECOMMUNICATION MARKET PLACE". 16/ IT IS MY OPINION THAT THE REGIONAL HOLDING COMPANIES POSSESS OR HAVE AT LEAST THE POTENTIAL FOR POSSESSING THE SAME MARKET POWER THAT PROMPTED THE FIRST AT&T ANTITRUST LAW SUIT. WE MUST, I URGE, APPROACH THE DEVELOPMENT OF NATIONAL TELECOMMUNICATIONS POLICY WITHIN THE FRAMEWORK OF EXISTING ANTITRUST LAWS. WE MUST EMBRACE NATIONAL POLICY GOALS THAT WILL BENEFIT THE ECONOMY AND THE SOCIETY AS A WHOLE. AS JUDGE GREEN CAUTIONED IN HIS RECENT ADDRESS TO THE CONSUMER FEDERATION OF AMERICA CONFEREES, WE MUST NOT MOVE AWAY FROM THE PURPOSES OF THE MFJ FOR TO DO SO WOULD BE TO DEFEAT THE EFFORTS OF THE FEDERAL GOVERNMENT AND THAT IS THE ENFORCEMENT OF THE ANTITRUST LAWS OF THIS COUNTRY.

AS A REGULATOR, I WILLINGLY ACCEPT MR. FOWLER'S CHALLENGE TO MEET AND HAVE DIALOGUE IN ORDER TO RESHAPE TELECOMMUNICATIONS POLICY. HOWEVER, I MUST CAUTION ALL THOSE WHO JOIN IN THAT EFFORT THAT I BRING A CERTAIN BIAS TO THE TABLE. BASED ON MY ASSESSMENT OF THE SIGNIFICANT STATE REGULATORY RESPONSES TO

COMPETITION AND TECHNOLOGICAL INNOVATIONS, SOMEONE MUST FIRST ANSWER THE FUNDAMENTAL QUESTION: WHAT IS HOPED TO BE ACCOMPLISHED BY DEREGULATION OF LOCAL SERVICE THAT CANNOT BE ACHIEVED WITH RESPONSIBLE REGULATION? I SUBMIT TO YOU, THE ANSWER IS NOTHING.

THANK YOU LADIES AND GENTLEMEN FOR YOUR ATTENTIVENESS AND FOR ALLOWING ME TO SHARE MY CONCERNS WITH YOU THIS MORNING.

FOOTNOTES

1. "Telephone Competition and Deregulation", Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce, October 1986.
2. A facilities-based interexchange carrier provides the majority of its transmission service over its own facilities, rather than through the leased facilities of another carrier.
3. Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia, Washington And Wisconsin
4. See Formal Case #828, Order #8230, April 15, 1985 at 32.
5. Id. at 29
6. See "A Survey of Trends in State Telecommunications Deregulation Legislation" by Phillip E. Stoffregen, former General Counsel of the Iowa Commerce Commission
7. Nebraska Legislative Bill 835; Approved by the Governor April 18, 1986; Section 3(3)
8. Id. at Section 3(5)
9. Id. at Section 3(6)
10. Fowler, "Back To The Future: A Model for Telecommunications", 38 Fed. Comm. L. Rev. 145 (1986)
11. Id. at 152
12. Id. at 166, 167
13. Id. at 194
14. Id. at 195
15. Id. at 198
16. Wall Street Journal, October 17, 1986 at 6