

**FEDERAL COMMUNICATIONS COMMISSION
REFORM: THE STATES' PERSPECTIVE**

HEARING
BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION
OF THE
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HOUSE OF REPRESENTATIVES

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THURSDAY, MAY 20, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE, AND CONSUMER PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:22 p.m., in room 2322, Rayburn House Office Building. Hon. W.J. "Billy" Tauzin (chairman) presiding.

Members present: Representatives Tauzin, Oxley, Stearns, Gillmor, Shimkus, Wilson, Fossella, Ehrlich, Markey, Engel, Luther, and McCarthy.

Staff present: Ed Hearst, majority counsel; Justin Lilley, majority counsel; Mike O'Rielly, professional staff member; Cliff Riccio, legislative clerk, and Andy Levin, minority counsel.

Mr. TAUZIN. The committee will please come to order.

Good afternoon. I would like to welcome you all to the second in a series of hearings this year on the issue before us, the Federal Communications Commission commissioned by this subcommittee.

I would also like to welcome our witnesses and thank you for agreeing to come and testify today. I particularly would like to extend a special welcome on behalf of Irma Dixon, from my home State of Louisiana. Irma is testifying on behalf of the Louisiana Public Service Commission. She is busy right now checking in with home, I assume. Have you got all those instructions, Irma?

On March 17 of this year, I held a hearing on the reauthorization of the FCC. Testifying at that hearing were all five FCC Commissioners, including its Chairman, Bill Kennard, and Peter Huber, communications visionary. At that hearing I pledged to work on a sweeping FCC reform bill, among other things, and outlined several key areas for review.

The first is forbearance—whether the FCC activities are simply unnecessary now, or will be unneeded as communications markets become more and more competitive.

Privatization: whether FCC activities could or should be privatized, such as recordkeeping and information gathering, as examples.

Duplication: What FCC programs duplicate those of other Federal agencies and could be eliminated?

Most importantly for our witnesses today, devolution: What FCC functions presently handled in Washington would be better handled at the State level.

And, finally, organization: What FCC structural changes can be made to streamline the agency and make it more user-friendly in today's fast-paced marketplace.

Given that the authority over telecommunications is divided between the Federal Government and the States, with significant areas of overlapping jurisdiction, it is fitting that we hear another perspective today, and let me explain.

The FCC's jurisdiction is broad. It covers both interstate and international communications, and it is the States that generally regulate telecommunications through their State public utility commissions. Thus, reform of the FCC and the nature of those reforms are very important to the States.

Four of our witnesses today serve on such commissions. With us we have Irma Muse Dixon of Louisiana, William Gillis of Washington Utilities and Transportation Commission, David Rolka of Pennsylvania Public Utility Commission, and Bob Rowe, Montana Public Service Commission. Additionally, we will hear testimony from F. Wayne Lafferty, Vice President of the Regulatory and Government Affairs at Citizens Communications.

Clearly, the States have an important role in working with the FCC in implementing telecommunications policy. With this in mind, we look forward to your views on FCC reform.

I would like to add, parenthetically, that we have already appointed on the Republican side a task force to examine the nature of the current operations of the FCC in much greater detail, and to explore with folks such as yourselves and industry representatives and citizens' groups what, in fact, a new FCC should look like in a competitive marketplace. That task force has already begun its work, its assigned responsibilities, and we are beginning to hear and receive a great deal of input from citizens and institutions and organizations and other government agencies such as yourself.

In addition, Mr. Dingell and I have had a number of conversations. I have encouraged him to do a similar review on the Democratic side, so that we might combine our efforts at some point and come to some bipartisan understanding of where we want to go.

Our goal, ladies and gentlemen, is to try to have something available in the formal legislation by the end of June and into July. So with that time table in mind, we welcome your appearance today, your testimony. We will keep the record open, and as you hear discussion today and continue to read about the work of the task force and the committee, I would deeply appreciate it if you would continue to communicate with us up until the time we are beginning to formulate that legislation for the consideration by the Congress.

Again, thank you for coming.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. PAUL E. GILLMOR, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OHIO

Mr. Chairman, I am delighted that we are having this hearing today to hear the States perspective on telecommunications reform. I look forward to the testimony of our panelists.

As has been indicated, Chairman Tauzin has asked that I head up a Task Force to oversee re-authorization of the Federal Communications Commission. It will be a challenging task and I am under no misapprehensions about the success of our mission. But I did want to make it clear to the witnesses today and to members of the audience that I would be interested in receiving further feedback from you.

The Task Force is entering into this exercise with no foredrawn conclusions, nor do we have any bias. But in order for us to come up with a viable package, we need to hear from those individuals and telecommunications entities who deal with the FCC on a regular basis and who have views about meaningful reform.

If you have an idea to streamline or consolidate FCC functions, the Task Force would like to hear from you. If you have a suggestion to eliminate an FCC function, the Task Force would like to hear from you. And if there is an FCC function which you feel could be automated, that would be extraordinarily welcome.

Mr. Chairman, I yield back the balance of my time.

PREPARED STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF FLORIDA

Mr. Chairman: Thank you for calling this hearing to further pursue our understanding of how, when, where, and why the Federal Communications Commission should be reformed to reflect the communications realities of today and the future.

As my colleagues know, I continue to believe that our own individual States and localities should play the paramount role in the regulation of telecommunications, with the federal government and federal regulators playing a complementary role.

However, Congress and the FCC must lead when barriers to competition are evident and where national telecommunications policy needs to be addressed.

This is what drove us to action to create the Telecommunications Act of 1996. Our nation was in need of federal policy to deliver competition at the local level across a wide array of services.

The spirit of the Telecom Act compels us in Congress to seek ways to remove barriers to competition wherever those barriers exist. The building access hearing held last week is an example of the difficulties separating the need for State and federal regulation.

I would hope that the issue of building access, for instance, could be settled at the State level rather than here in Congress or at the FCC.

But as in the case of my home State of Florida, where a widely supported compromise bill was blocked for political consideration, true competition through unencumbered access to multi-tenant buildings has been stifled.

These difficulties at the State level to remove such barriers increases pressure on Congress and federal regulators to create solutions.

The division between federal regulation and State regulation continues to be challenged at all levels. It has most recently come to a head with a decision by the Arizona Corporation Commission on a 2-1 vote a week ago on Tuesday to abolish LATA boundaries within the State and, in so doing, challenges federal authority in regulating voice and data traffic over common carrier lines.

I would like the witnesses today to address the Arizona decision and address whether a State has the power to directly challenge federal authority in such a direct manner.

My colleagues are aware that LATA lines were created with the break-up of AT&T in order to disallow Regional Bell Operating Companies or RBOCs from providing long distance service.

Preventing the incumbent local provider from offering long distance services was done to allow new competitors to enter into this business.

The 1996 Telecom Act opened up the long distance market to incumbent providers *once* that provider met a competitive 14-point checklist.

The Arizona decision presents a difficult dilemma. On one hand, if the Arizona decision is allowed to stand, the 14-point checklist will be meaningless and these provisions in the Telecom Act to open the local market would be equally worthless.

It seems to me that by allowing the incumbent provider to skirt the checklist by eliminating LATA boundaries will remove the incentive to open their local markets to competitors.

On the other hand, maybe our States should have the power to eliminate such distinctions because they should have the ability to regulate services in their State. There is an argument to be made that the checklist has become a Leviathan rather than a blueprint to reach the goal of providing long distance voice.

There is also an argument that can be made that the lucrative business market is open to competition and if the local incumbents are kept from offering long distance to these business customers, there will not be many opportunities for the incumbent to remain economically viable in the rapidly evolving communications marketplace.

What is primarily most disappointing in the Arizona decision is that this will now launch a new round of legal challenges. In 12 months from now or 18, or even longer, we will have this latest legal challenge resolved.

So instead of the American people being a step closer to achieving full-fledged competition for their local telephone service, they will continue not to see actual competition for their local service.

I look forward to the response of the witnesses to these questions.

Thank you Mr. Chairman.

Mr. TAUZIN. We will start today with Ms. Irma Dixon, my dear friend from Louisiana. And, Irma, thanks again for traveling here to Washington, DC, and for being with us. We will appreciate your testimony.

Written testimony, by the way, is made a part of the record. So if you will just summarize and have a conversation with us on your testimony?

Irma Dixon.

STATEMENTS OF IRMA MUSE DIXON, COMMISSIONER, DISTRICT 3, LOUISIANA PUBLIC SERVICE COMMISSION; BOB ROWE, COMMISSIONER, MONTANA PUBLIC SERVICE COMMISSION, ON BEHALF OF NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS; WILLIAM R. GILLIS, COMMISSIONER, WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION; DAVID W. ROLKA, COMMISSIONER, PENNSYLVANIA PUBLIC UTILITY COMMISSION; AND WAYNE LAFFERTY, VICE PRESIDENT, REGULATORY AND GOVERNMENT AFFAIRS, CITIZENS COMMUNICATION, ON BEHALF OF THE UNITED STATES TELEPHONE ASSOCIATION

Ms. DIXON. Thank you so much, Congressman. It is a privilege and an honor to be here in front of you today. We have had many, many years of discussions as relates to this act and the FCC.

We talked a little bit earlier in coming in, and if you don't mind, we would like to adjust a little bit. As a courtesy, we have the Chair of the NARUC Telecommunications Committee here, which is Chairman Bob Rowe, and I would like to start with him, because my component of the testimony is mainly recommendations in the overhauling. But I think Mr. Rowe will set the pace and let you know NARUC is, if you don't mind.

Mr. TAUZIN. Mr. Rowe, I have been with Irma a long time, and she has never let me go first. That is remarkable.

Mr. Rowe.

Ms. DIXON. But I am being courteous. Since the Chair is from my State, we want to be hospitable in Washington. Thank you so much.

STATEMENT OF BOB ROWE

Mr. ROWE. Mr. Chairman, thank you. I have been good friends with Irma for quite a few years, and I always think of her as the shortest distance between two points.

My name is Bob Rowe. I am Chair of the Telecommunications Committee of NARUC, National Association of Regulatory Utility Commissioners, and a first vice president of NARUC.

Members of this committee, your colleagues have focused just extraordinary and very constructive attention on implementation of the act. You have worked very closely, obviously, with the FCC, but

from our point of view, just as closely with the State commissions, to check up on progress we are making; what kind of roadblocks you see.

My written testimony will cover in some detail the NARUC Telecommunications Committee's work, State utility commission restructuring, which I think in some sense does serve as a model for what you are considering, and FCC/State commission cooperation. My colleagues will cover a number of specific areas, including issues concerning numbering, section 271, and consumer protection issues.

First, very briefly, let me describe the NARUC Telecommunications Committee. You in the act very, wisely, adopted a cooperative Federalist approach to telecommunications policy. You gave both the FCC and the States very specific direction and authority in quite a range of areas. The act, I think, mentioned State commissioners over 100 times.

The Telecommunications Committee is the focal point for much of our work, sharing information, developing policies, interacting with the Congress, with the FCC, and the administration. My approach as chairman, wherever possible, is to try to identify ways to move forward within the framework that you have created. Typically, we adopt about 30 telecommunications resolutions a year. We work on research projects through the committee and through our research arm, NRRI, located at Ohio State. I like to produce deliverable products that really do help advance both the public and the industry agenda. I describe those in my testimony.

One good example that we are quite proud of month, issued last month, is best practices implementing the Telecommunications Act. A number of your staff have copies of that. There we summarized nearly 50 suggestions from all kinds of industry and consumer groups to move things forward, take a problem-solving approach.

Second, State commission restructuring: As you know, State commissions have been moving toward local telephone competition since the 1980's, and right now in very many States are actually taking the lead opening up retail competition in both electricity and natural gas. Well, that external restructuring of the industries has required an internal restructuring of State regulations, and there again, NARUC and our research organization, NRRI, have convened commissioner-only summits and have published an extensive series of reports that, again, are listed in an attachment to my written testimony.

Retail rate-setting does still matter at the State level because many local markets are not yet fully competitive. Obviously, local rates, I know you get complaints about local rates from your constituents. However, in general, State commissions are moving more toward a focus on wholesale-level issues: rates, service, things like that. I think of it as moving away from a traditional focus on ratepayer versus shareholder, which was a tough enough balance; now moving toward a focus on shareholder versus shareholder, for the benefit of the retail customer.

We are also really gearing up our efforts on customer education and consumer protection. There I think of the challenge as converting the traditional passive ratepayer to an active shopper for utility services. At least over the near term, our complaints about service

quality have actually increased. This is surprising, but given the complexity of what we are undertaking, maybe it shouldn't have been surprising. We are doing more work on service quality now than we have previously.

We are also working to preserve the benefits of the traditional legal or economic monopolies, if you will, particularly universal service on the phone side. We have adopted really a new emphasis on economic development, supporting infrastructure, investment in technology, that I think is very much consistent with section 706, where, again, you did speak both to the FCC and to the State commission.

We are using new tools, such as alternative dispute resolution, collaboration. We are using regional coordination. Recently, I proposed regional cooperation among the States on the third-party OSS testing, which seems to be one vehicle to move that 271 process along to get to the right result for everybody—not raising or lowering the bar, but moving it forward efficiently.

In my written testimony I describe the experience of the Montana commission. We have 32 staff members other than the commissioners. I describe our work on restructuring and our new emphasis on consumer protection.

The final area of my oral comments is just to emphasize, as you know very well, the FCC/State cooperation. Call it devolution; call it cooperative federalism, but to make your design work, we have to play in the same sandbox.

You are all familiar with *AT&T v. Iowa Utilities Board*, the Supreme Court's decision. The FCC won; we lost. But they have been gracious winners.

Our first action after the Supreme Court decision was to adopt a resolution noting that most all State commissions have used some form of wholesale, forward-looking pricing and asking for FCC cooperation on a couple of key implementation issues. So far, the FCC has responded favorably to those requests and has moved forward.

Our second action was actually to finalize what we call the FCC/State commission magna carta, with which we are working with Chairman Kennard for about a year. I have attached what we call the Statement of Participation from that. Really, this is an attempt to say that, within the Federalist system, we have complementary strengths; there is real benefit to the diversity and the experimentation of the Federalist system. It's messy, but it gets the job done. It is what James Madison had in mind, and tries to outline a number of approaches to move that forward.

Commissioner Gillis is going to describe his work with the FCC on consumer issues. Recently, I suggested that there may be room to move a lot more of the direct customer contact in the slamming area back down to the State commissions, which are doing a lot of the frontline work.

We also recently called for a joint FCC/State commission conference to promote access to advance technologies under section 706. The Alliance for Public Technology was very involved in helping to promote that idea, and I strongly urge you, as you think about ways to promote access to advanced services, to consider the

State commissions as really first-line tools to move that effort forward.

In my written comments I do offer some more initial reactions to the FCC reorganization plan. I think as you very correctly said at the first hearing, which I thought was an outstanding hearing, some of the right elements are on the table there. There are some things we can work with, some things that look like what States are trying to do. I very much appreciate your attention to our efforts, and I look forward to your questions. Thank you.

[The prepared statement of Bob Rowe follows:]

PREPARED STATEMENT OF BOB ROWE, COMMISSIONER, MONTANA PUBLIC SERVICE COMMISSION ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Mr. Chairman and Members of the Committee: My name is Bob Rowe. I am Chairman of the Telecommunications Committee of the National Association of Regulatory Utility Commissioners (NARUC), First Vice President of NARUC, and a Commissioner on the Montana Public Service Commission. NARUC is the national organization that represents state public service commissions from all fifty states, the District of Columbia and the United States Territories. Since passage of the Telecommunications Act of 1996, NARUC's member states have been immersed in implementation efforts nationally and in their own states. We pledge to continue to work constructively with the Congress, the Federal Communications Commission and other federal agencies to maintain a fair balance between various industry and consumer interests. Members of the House Commerce Committee have focused extraordinary and constructive attention on FCC and state actions to implement the 1996 Act. Many of this Committee's members have worked closely with utility commissioners from their own state and with NARUC.

My testimony will cover the following areas: 1. The NARUC Telecommunications Committee's work; 2. State utility commission restructuring, which in some respects may serve as a model for FCC efforts; 3. FCC-state commission cooperation; and 4. Initial comments on the FCC reorganization plan previously presented to you.

In addition, Commissioner Bill Gillis of Washington State will discuss state-FCC work on consumer protection and education. Commissioner Irma Muse Dixon of Louisiana will suggest ways the FCC might increase hands-on cooperation with state commissions. Commissioner David Rolka of Pennsylvania will discuss the process of federal-state "jurisdictional separations," numbering issues, and will offer several observations based on his experience in Pennsylvania.

I. THE NARUC TELECOMMUNICATIONS COMMITTEE WORKS TO IMPLEMENT CONGRESSIONAL INTENT.

Congress wisely adopted a "cooperative federalist" approach in the Telecommunications Act of 1996. You gave the FCC and the state commissions specific direction and authority in areas including terms and conditions for carrier-to-carrier arrangements, universal service, deployment of advanced technology, and consumer protection. In addition, you reserved to the states authority over intrastate rates and service.

The NARUC Telecommunications Committee is the focal point for state implementation of the Telecommunications Act. It is a forum for sharing information, and takes the lead on much interaction with the Congress, the FCC, and the Administration.

My approach is to identify ways to move forward within the policy framework developed by you in the Telecommunications Act and by state legislatures in companion statutes across the country. NARUC adopts about thirty telecommunications resolutions each year, and also sponsors a range of research projects, working closely with the National Regulatory Research Institute (NRRI), located at The Ohio State University. Most of our work concerns competition, universal service, technology, or consumer protection.

I like to produce "deliverable products" which help advance both agency and industry implementation of Congressional intent. Several examples, of many, are:

1. *Policies on Pricing and Universal Service for Internet Traffic on the Public Switched Network* (NRRI, 1998). This report identified many of the technology and policy issues associated with developing a robust Internet.

2. *Section 271 Template* (July 1998). States play a crucial role in developing the record upon which Department of Justice recommendations and FCC decisions concerning Bell Operating Company in-region long distance are based. The Template brought together all the specific factors DOJ and the FCC had identified to-date as relevant, allowing state commissions to develop the best possible record, and potentially giving the industry a useful roadmap for their applications.
3. *Consumer Education Templates* (www.naruc.org); *Compendium of Resources on Consumer Education* (NRRI, July 1998); *No Surprises White Paper* (July 1998), and other consumer materials. These are valuable resources for states developing consumer education and protection programs in emerging-competitive markets.
4. *Year 2000 Template* (www.naruc.org). The Template is a standardized way to track and encourage utility Y2K efforts, ensuring states develop the information they need, and minimizing burdensome or conflicting reporting requirements on industry.
5. *Best Practices Implementing the Telecommunications Act* (NRRI, April 1999). We solicited and received nearly fifty suggestions from industry and consumer groups concerning ways to carry out Congressional intent under the Act. Suggestions concerned alternative dispute resolution, customer service, universal service, advanced technology, interconnection and market entry, numbering, and collocation.

These “deliverable products” represent constructive, problem-solving approaches to implementing telecommunications competition, producing consensus, and moving forward on Telecommunications Act implementation.

II. STATE COMMISSION RESTRUCTURING IS DRIVEN BY CHANGES IN THE TELECOMMUNICATIONS AND ENERGY INDUSTRIES.

Several states began moving toward local telephone competition in the 1980s. Currently, many states are also opening up natural gas and electric markets to retail competition. While many issues are different, both energy and telecommunications competition require internal reorganization by state commissions. There may be lessons as federal agencies begin similar efforts.

Since 1995 NARUC and the National Regulatory Research Institute have actively supported state restructuring efforts. We have convened two commissioners-only restructuring meetings. NRRI has published an extensive series of agency change studies which are listed in Attachment 1.

Generally, state commissions are emphasizing wholesale-level issues: rates, terms, and enforcement of agreements. Much intrastate service, especially local service, is not yet competitive. Therefore, state commissions do still set retail rates and require information concerning utility expenses, so-called “accounting information.” Over time, however, the focus is gradually shifting from “*shareholder versus ratepayer*” to “*shareholder versus shareholder*” for the benefit of retail customers. Regulation is moving from being a substitute for competition to being a support for competition.

Customer education and protection have become critical areas. The challenge is to help passive ratepayers become active shoppers for utility service. Most state commissions have increased their customer-protection staff and have experimented with new ways of providing customer service. Many state legislatures have increased state commission authority to redress slamming, cramming and other abusive practices.

At least over the near-term, service quality has become an increased concern. In response to customer complaints, many state commissions have undertaken aggressive programs intended to correct service quality problems. The FCC’s ARMIS¹ reporting system is an important resource to states monitoring service quality.

States have also worked to develop ways to preserve the benefits of the previous legal and economic monopoly system. In telephony this includes a range of state universal service initiatives.² In natural gas and electricity it includes various low-income assistance and weatherization programs. Similarly, states have adopted a new emphasis on economic development and promoting technology access, consistent with Section 706 of the Telecommunications Act.

¹ARMIS is the Automated Reporting Management Information System, which has traditionally provided information regarding the application of accounting, joint cost, jurisdictional separations and access charge rules for Tier One local exchange carriers; and also provides information regarding service quality and infrastructure for price cap local exchange carriers.

²Edwin Rosenberg, Ph.D., *State Universal Service Funding and Policy: An Overview and Survey* (NRRI, September 1998).

State commissions have embraced new strategies to achieve new purposes. These include greater use of: 1. Market-oriented economic analysis; 2. Alternative dispute resolution, structured negotiation, regulatory flexibility and forbearance; 3. Collaboratives, workshops, and outreach to new stakeholders; and, 4. Regional coordination, as for example through the Regional Oversight Committee for U S WEST (ROC). Recently, I suggested regional coordination on third party testing of the technical systems necessary to support local competition as a way to improve the Section 271 review process.³

Obstacles to commission reorganization include resource constraints, resistance to change, and legal requirements associated with due process and administrative procedure. Resource constraints are especially pronounced for small states where the same staff must work with many major issues or even multiple industries. Resistance to change is both an internal and an external factor. For example, it is sometimes difficult to secure industry participation in collaboratives and other alternative fora. Legal requirements such as limitations on ex parte communication can also impede beneficial commissioner participation in some meetings, and at the end of any innovative process awaits the possibility of a court appeal. NARUC, state commissions, and others have developed materials on alternative dispute resolution which may help reduce the prospect of litigation.⁴ Commissioner Rolka will describe Pennsylvania's experience with alternative dispute resolution and with administrative law constraints.

Every state commission has faced multiple appeals of its decisions implementing the Telecommunications Act. State commissions have defended in federal and state court well over one hundred decisions implementing the competition provisions of the Telecommunications Act.

The Montana Public Service Commission is probably typical of small state commissions. It is in the middle of opening electric and natural gas markets to retail competition, as well as implementing the federal and Montana telecommunications competition statutes. It has thirty-two employees, exclusive of commissioners. While reducing in size overall, it has increased its customer service staff from 1 to 5½. It has received increased consumer-protection authority from the Montana Legislature, and has undertaken various consumer education and outreach programs. One staff person is assigned full-time to work on universal service issues, including outreach on technology access for rural health care providers, libraries, and schools. Interdisciplinary commissioner and staff teams work on telecommunications competition, natural gas restructuring, and electric restructuring.

Telecom carriers (and gas and electric suppliers) register electronically on the Montana PSC's web page. The web and list-serves keep the industry and interested parties informed. One attorney handles almost all telecommunications proceedings at the Commission (rulemakings, contested cases, and other matters), including simultaneous state and federal court appeals of Commission decisions concerning its wholesale arbitration, intraLATA presubscription, and Section 271 proceeding. Attachment 2 reports the increase in Montana PSC consumer complaints in recent years, charts the number of calls to the Montana Commission's toll free consumer complaint line, and summarizes the types of telecommunications complaints received.

III. FCC-STATE COMMISSION COOPERATION IS ESSENTIAL TO TELECOMMUNICATIONS ACT IMPLEMENTATION.

Congress gave the FCC and the states clear authority concerning respective elements of Telecommunications Act implementation. The primary area of dispute was whether the FCC had authority to require that state commissions follow particular rules when setting wholesale pricing in arbitrations under Section 252, and whether those rules interfered with state authority over retail pricing under Section 152(b). They won. We lost. They have been gracious winners.

NARUC's first action after the Supreme Court's *AT&T v. Iowa Utilities Board*⁵ decision was to pass a resolution noting that most all states have adopted some form of forward looking wholesale pricing, and requesting FCC cooperation on sev-

³ Rowe, "Let's Work Together to Resolve Bell Operating Company Long-Distance Entry," See "Regionwide OSS Test Proposed for U S WEST," *Telecommunications Reports* April 26, 1999, p. 19 (text available at www.tr.com).

⁴ An early example is the *NARUC Model Settlement Guidelines* (May, 1989). See, Center for Public Resources, *Negotiated Settlement of Utility Regulatory Proceedings—Recommended Practices* (New York: 1993). See also the alternative dispute resolution proposals by the New York Public Service Commission and others in *Best Practices to Implement the Telecommunications Act* (NRR, April 1999).

⁵ 119 S. Ct. 721 (1999).

eral key implementation issues. The FCC has complied with NARUC's requests and has worked very productively with the states implementing the Supreme Court's decision.

NARUC's second action was to finalize an FCC-state commission "Magna Carta" which Chairman Kennard proposed shortly after taking office, and which we jointly developed. Attachment 3 is the "statement of participation" from that document. The agreement emphasizes that the FCC and the state commissions have complementary strengths, that there is great benefit in the diversity of the federalist system, and that a variety of approaches exist for the states and the FCC to work together. These include federal-state joint boards, joint conferences, identification of "best practices," and cooperative development of models or standards.

Among the things the FCC does well are data collection, analysis, development of models and standards, coordination among interested parties, and convening of national fora. State commissions often look to the FCC in these various areas. Among the state commissions' strengths are dispute resolution, consumer protection and education, infrastructure development and local market analysis. Commissioner Gillis will describe efforts at FCC-state commission coordination on consumer protection which are now underway. We need to work together to take advantage of one another's strengths. Streamlining the process will benefit both industry and consumers. I recently suggested voluntary FCC-state commission agreements to move more anti-slamming enforcement to the state commissions.⁶ I hope the FCC will view this proposal favorably.

NARUC also called for a federal-state joint conference to promote access to advanced telecommunications technologies under Section 706.⁷ This proposal has been endorsed by the Alliance for Public Technology, among others. A joint conference could help advance hands-on work on this important matter.

IV. THE FCC'S INITIAL REORGANIZATION PLAN IS CONSISTENT WITH MANY ELEMENTS OF STATE COMMISSION RESTRUCTURING.

I was especially impressed with the hearing this Subcommittee conducted concerning FCC reauthorization on March 17, 1999. I was struck by the similarities between several elements of the FCC's initial reorganization plan and the state commission restructuring I have described.

The FCC is correctly emphasizing universal service, consumer protection and information, competition and enforcement. The FCC needs to do much less retail rate regulation in its markets than do state commissions, and is correctly moving away from this function. It does require reporting of various kinds of information related to functions such as universal service and interstate access rates. Some of the information it collects is also especially useful to state commissions.

The FCC has identified many of the proper tools as well, including streamlined procedures, automation, and greater forbearance from regulation. State commissions must work with the FCC to identify how we can coordinate reporting and other requirements, and to identify which reports and functions we find most valuable and which can be reduced or eliminated, either in the near-term or long-term.

The FCC faces a major challenge, reorganizing within the structure imposed by its existing statute. At what point does reorganization begin to look like rewriting the Act? How can the agency recognize industry convergence within the structure

⁶Letter to Chairman Kennard, April 20 1999.

⁷That resolution states in part:

WHEREAS, Partnerships between telecommunications service providers and community, regional and State organizations serving target populations could develop applications for advanced telecommunications capabilities that combine their resources and authority with federal and State resources and authority to address the critical needs of their constituents which in turn would stimulate demand for and deployment of such advanced telecommunications services; now therefore be it

RESOLVED, The Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened at its 1999 Winter Meetings in Washington, D.C., urges the FCC to call a joint conference or other official advisory body involving the FCC and all States, Territories, and the District of Columbia, which will consult with industry service providers, the NTIA, the RUS and other potential federal, State, regional, local partners to address the complexities of promoting deployment of advanced telecommunications capabilities under the Act; and be it further

RESOLVED, That the joint conference be chartered to facilitate the cooperative development of mechanisms, policies and resource allocations necessary to promote the maximum level of competition while encouraging, on a reasonable and timely basis, the deployment of advanced telecommunications capabilities to all Americans; and be it further

RESOLVED, The joint conference should develop a set of best practices and program proposals, and monitor results of such practices and proposals to measure the degree to which they increase the deployment of and subscription levels for advanced telecommunications capabilities.

of separate titles of the Communications Act? With Congressional guidance, the FCC is beginning to address these questions.⁸ Without “reopening the Act” initial steps include consolidation of functions which are now performed separately within the agency, including for example various enforcement functions and public information programs. As competition advances in each sector it should be possible to reduce the level of regulation in that sector, achieving consistency in the direction of regulation.

The draft restructuring plan identifies six goals derived from the Telecommunications Act.⁹ It will be important for the FCC to consult with state commissions (as is their intent) concerning these goals and their implementation.

Finally, the FCC’s ability to restructure will be constrained by due process and administrative procedure requirements, which is the same issue faced by the states. Litigation awaits at the end of many important agency proceedings. However, Congress has strengthened the FCC’s ability to reorganize by providing clear policy direction, strong forbearance authority, and sustained attention to Telecommunications Act implementation issues.

V. CONCLUSION.

Telecommunications and information investment and innovation are among the engines driving our economic and societal development. Consequently, few public policy tasks are more critical than successful implementation of the 1996 Telecommunications Act. NARUC and the states appreciate this Committee’s close attention to implementation issues and its interest in the experience of state commissions.

ATTACHMENT 1

THE NATIONAL REGULATORY RESEARCH INSTITUTE ORGANIZATIONAL TRANSFORMATION PROGRAM

Reports:

A Cramming Resource Guide (Columbus, Ohio: NRRI, to be published early in 1999). Francine Sevel, editor and contributor.

Compendium of Resources on Consumer Education (Columbus, Ohio: NRRI, October 1998). Francine Sevel, editor and contributor.

Determining the Structure of an Optimal Personnel Profile for a Transformed Commission (*Occasional Paper #24*) (Columbus, Ohio: NRRI, 1998). Robert J. Granieri.

The Structure of State Utility Commissions and Protection of the Captive Ratepayer: Is There a Connection (*Occasional Paper #23*) (Columbus, Ohio: NRRI, 1998). Nancy N. Zearfoss.

Proceedings of the Second NARUC/NRRI Commissioners Summit: Ensuring the Relevance of Commissions at 2003 (Columbus, Ohio: NRRI 1998). NRRI Staff.

Staffing the Consumer Education Function: Organizational Innovation, Necessary Skills, and Recommendations for Commissions (Columbus, Ohio: NRRI, 1998). Raymond Lawton, Francine Sevel, and David Wirick.

Ensuring the Relevance of Public Utility Commissions (Columbus, Ohio: NRRI, 1998). David Wirick, Robert Burns, Vivian Davis, Douglas Jones, and Francine Sevel.

Transforming Public Utility Commissions in the New Regulatory Environment: Some Issues and Ideas for Managing Change (Columbus, Ohio: NRRI, 1996). David Wirick, Vivian Witkind Davis, Robert Burns, and Douglas Jones.

Information Risk in Emerging Utility Markets: The Role of Commission-Sponsored Audits (Columbus, Ohio: NRRI, 1996). David Wirick, Ray Lawton, Robert Burns, and Sangjin Lee.

Missions, Strategies, and Implementation Steps for State Public Utility Commissions in the Year 2000: Proceedings of the NARUC/NRRI Commissioners Summit (Columbus, Ohio: NRRI, 1995). NRRI Staff.

⁸OPP Working Paper 29, *Digital Tornado: The Internet and Telecommunications Policy* (March 1997), was an early identification of issues and policy goals associated with the Internet. OPP Working Paper 30, *Internet Over Cable: Defining the Future in Terms of the Past* (August 1998) squarely raises the question of Internet convergence between various media which are regulated in different categories under the Communications Act.

⁹Promoting competition, deregulating, protecting consumers, bringing technology to every American, fostering innovation, and advancing competitive goals worldwide.

The Use of Information Systems to Transform Utilities and Regulatory Commissions: The Application of Geographic Information Systems (Columbus, Ohio: NRRI, 1995). David Wirick, Glenn E. Montgomery, David C. Wagman, and James Spiers. Excerpted in *Electrical World* as "Benefiting from IT—A Guide for Utilities and Public Utility Commissions," January 1996, Volume 210, No. 1.

State Public Utility Commission Operations and Management: A Manual Prepared by the NARUC Staff Subcommittee of Executive Directors (Columbus, Ohio: NRRI, 1992). David Wirick, project leader and editor.

Articles:

"Report to the Alaska Public Utilities Commission" (Columbus, Ohio: NRRI, 1998). Vivian Witkind Davis, Douglas N. Jones, David Wirick.

"Report to the Maryland Public Service Commission" (Columbus, Ohio: NRRI, 1998). David Wirick and Vivian Witkind Davis.

"Analysis of Aspects of the Organization and Operation of the Nevada Public Service Commission" (Columbus, Ohio: NRRI 1997). David Wirick, Kerry Stroup, Robert Burns, Vivian Witkind Davis, Raymond Lawton.

"Commission Transformation and the Legislative Model of Regulation" NRRI Quarterly Bulletin, Fall, 1998. Robert Graniere.

"Designing Effective Consumer Education Materials," *NRRI Quarterly Bulletin*, Winter 1997-1998. Francine Sevel.

"Educating the Public: Where Do We Begin," *NRRI Quarterly Bulletin*, Spring 1997. Francine Sevel.

"Risk Mitigation by Public Utility Commissions: New Tools for an Old Role," NRRI Quarterly Bulletin, Spring 1997. David Wirick.

"Commissions as Information Organizations: Meeting the Information Needs of an Electronic Society," *NRRI Quarterly Bulletin*, Spring 1997. Francine Sevel.

"Commissions as Educating Organizations: How to Educate the Public Regarding the Mission of the Public Utilities Commission in the New Regulatory Environment," *NRRI Quarterly Bulletin*, Winter 1996-1997. Francine Sevel.

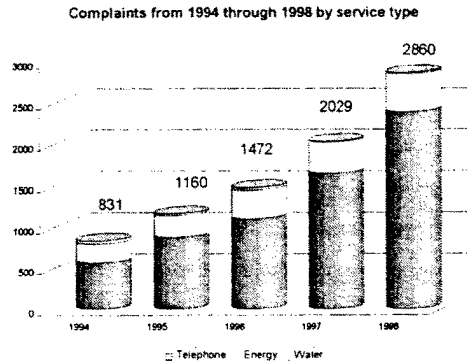
"Strategic Planning for Web Site Managers: Designing Effective Commission-Sponsored Internet Sites" *NRRI Quarterly Bulletin*, Fall 1996. Francine Sevel.

"Report to the Public Service Commission of Nevada (PSCN)" (Columbus, Ohio: NRRI, 1996). David Wirick and Vivian Witkind Davis.

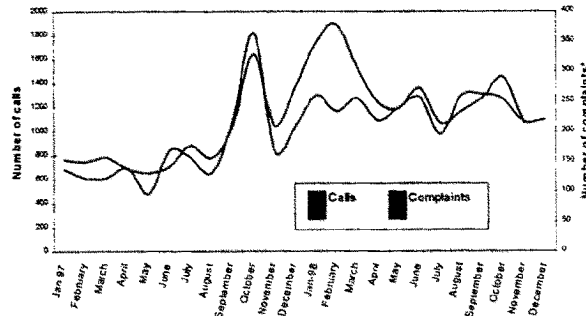
"The Regulatory Battleground: A Briefing for Commanders," *NRRI Quarterly Bulletin*, Fall 1995. David Wirick.

ATTACHMENT 2

MONTANA PUBLIC SERVICE COMMISSION CUSTOMER COMPLAINTS

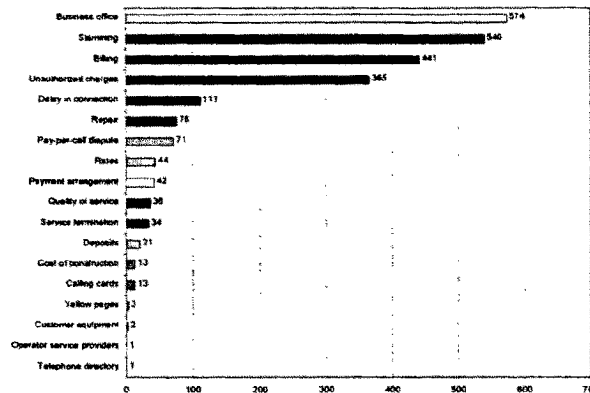


Calls to PSC toll-free number and level of monthly utility consumer complaints 1997-98



*A consumer call or letter is not logged as a complaint unless PSC staff must contact the utility in order to resolve it.

1998 Telephone-Related Complaints by Complaint Category



ATTACHMENT 3

“MAGNA CARTA” FOR STATE AND U.S. TERRITORY COMMISSIONS AND THE FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF PARTICIPATION

State and U.S. territory commissions and the FCC possess complementary strengths. We will work together to take full advantage of these, in the spirit of cooperative federalism.

Cooperation between the federal and State and U.S. territory decisionmakers takes advantage of the strengths of each. The federal, State and U.S. territory proceedings are fact-based and the commissions are able to analyze and act on complex records. States and U.S. territories are close to local markets and have developed methods for evaluating the structure of those markets.

States and the U.S. territories also benefit from experience with other industry restructurings, including natural gas and electricity. The FCC possesses not only a national, but also a global perspective. Moreover, it is expert in dealing with all forms of communications. Together, the FCC, the States and the U.S. territories can accomplish much in addressing customer concerns, the linchpin of the regulatory process.

FCC actions affecting States and U.S. territories should be undertaken in a manner that is consistent with its statutory obligations, while mindful of States' and U.S. territories' unique knowledge of local conditions and experience in regulating the local market. In areas where national standards are appropriate, the FCC will strive to implement them in a way that encourages State and U.S. territory input to the fullest extent possible. The parties recognize the value of diversity and of experimentation in many circumstances. The States and the U.S. territories will support the FCC in its efforts to meet the challenges presented by the implementation of the Act to the fullest extent possible.

Generally, certain practices can help federal, State and U.S. territory regulators achieve their goal of mutual cooperation. Such practices may include encouraging State participation in FCC proceedings, as well as FCC participation in crucial State and U.S. territory proceedings. Encouraging hands-on consultation among State, U.S. territory and federal policy-makers and developing and using "best practices" guidelines will contribute to the collaborative process. Cooperative development of substantive models or standards, which may be considered by States and U.S. territories in formulation of State/U.S. territory-specific policies, will aid in achieving the common goals.

Mr. TAUZIN. Thank you very much, Mr. Rowe.
Let me turn back now to Ms. Irma Dixon.

STATEMENT OF IRMA MUSE DIXON

Ms. DIXON. Now thank you, Mr. Rowe, and thank you, Mr. Tauzin.

Please know that it is an honor, again, to be in front of you, my own Congressman, who is chairing this wonderful subcommittee and who is, I hope, going to do some action to really bring some relief to some of the people, especially in our State, but in other States.

I am grateful to this FCC. It seems like it is a little bit more eager to work with us, and they actually expressed the intent—they have been to the States to some degree—to see demonstrations and to actually be working with the State commissioners.

I am proud of my own State and the work that we have done. I must tell you, in Louisiana, you can take credit for a lot of landmark things. We have been very creative—linking libraries and hospitals, bringing about the educational discounts that are now being used and utilized throughout these United States, and actually was an accident when we started it, but it is working now. We have managed to even locate two commissioners in the UNO Technology Center, which will bring about a lot of changes, I think, as it relates to what we are doing in the South.

But, for the FCC itself, and based on one of the things Mr. Rowe said, we are working regionally, and we have to because the RBOCs are located regionally; transmission is regional. So we have realized, as commissioners, that we need to be more regional in our aspects. As the commissioner from the southeastern region, we have offered ourselves to actually be a demonstration project, to show the other States within the United States that regional cooperation can and will work.

The first concern we have as it relates to some sort of overhauling of the FCC has to do with the development of a master plan. It is very difficult to figure out where the States are going to be and where we need to be without the vision. Without vision, people perish. We need to have a master plan so we can know what we need to be like by the year 2010, 2020, whatever. As new technologies develop and as it unfolds, you have to direct this. If you

don't direct it in a creative way, it will turn to corruption, which we have now in slamming, cramming, jamming, banging, bamming; you name it, we have got it, and we are trying to get rid of it.

After we develop the master plan, I think that the Governors' association, that the legislation association, that the mayors, everybody can come together and see what needs to be done for these United States, and based on that, all the States can unfold and deal with their technology.

Part of the other component of this—and Bob kind of mentioned it in the pricing and wholesale costs as the States were developing, and as the States were actually developing to bring Bell into the long distance business and open the local loop in other areas, we are one State that actually sent two applications up. We actually are elected commissioners in the State of Louisiana. We are actually constitutionally provided for, which means our legislature does not do rules and overrun us; they have to go to court as well. But there is a body called the FCC who's appointed by the President, who actually rejected the application that we sent up, and for whatever reason, we don't know. We had the Chairman down. We did demonstrations; we showed connections. our attitude was spurn competition and making things happen.

We watched the availability of something called by bypass, and before that happened, we caught ourselves trying to hold that gap. We lost that battle. The gap is still open and we have no competition.

Now the recommendation over there, I am not sure. All I would say is, maybe come down to the States a little bit more; maybe look at more demonstrations; maybe work a little bit closer with the State commissions. I like the idea of conferences, but it needs to be more than just one conference once a year—maybe quarterly conference. Maybe the Governors' associations should be included; the legislators have to be inclined. You pass a law here. It goes to the States. Unlike Louisiana, in all the States the legislatures are actually developing the rules. They don't even listen to the PSCs. And we have what today? No competition and almost disaster. We have to work a little bit more smarter. We have to join hands and pull it all together.

The other thing is you have a lot of local governments who actually operate utilities. We have not allowed for an avenue of them to even enter competition. We have to work on that, bringing in the mayors' association and the Governors; I think they can give us ideas, along with the commissioners, to actually put them in the realm.

The good thing about this is people want to switch. If they do bad service, they will get unelected, which is even more important, if you ask me. People will be able to choose, and people will be able to get good services. There is nothing wrong with actually putting the local municipally owned and operated utilities in.

The other thing we looked at is establishing joint boards more than just with NARUC, but with NCSL as well, since those are the people who are making laws as well. We thought that it would be critical as well for more FCC and FERC Commissioners to attend what we call NARUC bootcamp. I met Bob Rowe at a NARUC bootcamp some years ago, and we have been great ever since. We have

worked well together. That is where we do our actual—we dissect things; we do demonstrations; we do implementations. You put projects down and model things, and you can see how it is going to work right there before you actually unleash it on the public. Bootcamp is important to everybody, and we still go sometimes once a year.

Having hearings at the local level will help tremendously. It is all right for me to have a hearing in Louisiana, but FCC needs to come down and have hearings, so that you can hear the voice of the people as to what their concerns and problems are, and you can react. People do have some creative solutions to some of the problems as well.

One last thing: We have something called LATA boundaries. You have to get rid of LATA boundaries if you are going to actually spur competition. You can't implement an act and say we are going to do something, and then you turn around and we have all these things to tie our hands. LATA boundaries are Local Access Transport Areas, where people pay a little bit more so they don't have to be charged long distance every time you call to the right or to the left of your community. Get rid of the LATA boundaries; we will be able to put competition in. The FCC needs to be concentrating on that quite a bit right now.

As this new technology is unfolding, we are not sure what we are doing with the SMART concept. We need to figure that out.

The other little thing is, I am not sure if you knew that we knew that everybody was going to be in everybody's business. We knew that energy or electric companies were going to do tele, water, cable, cell phones. We didn't know it would be this quick.

I just thought I would bring you something to show. This is one. I have one for Cox; I have one for Bell. Everybody is doing everything in everybody's business. We don't have one new or one more staff person to be able to monitor this. I don't know what you did for the FCC, but there is no policing; there is no monitoring. The public is at our mercy.

All I say is, let us join with the FCC; let's hold hands—and Congress—and try to fix this little problem. Mr. Chairman, I invite you to our NARUC summer meeting. I invite you to our CRUC meeting. I invite you to our NARUC winter meeting. As a matter of fact, you have a standing invitation and reservation to come as much as you want to, and any of the members of the staff, committee members, staff of the committee; we want you there. We want to work with you hand in hand, because that is the only way we are going to fix this little, what I call, a milestone that we have. Thank you so much.

[The prepared statement of Irma Muse Dixon follows:]

PREPARED STATEMENT OF IRMA MUSE DIXON, COMMISSIONER, LOUISIANA PUBLIC SERVICE COMMISSIONER

My gratitude for this FCC, which has been reasonable and eager to work with the States. I would also express my respect and appreciation for the work of the FCC Commissioners and their staff. The FCC is a regulatory body with impressive expertise that is valued greatly by us in the states. We are also very proud of our own staff at the Louisiana Public Service Commission; even though our resources are presently limited. I come here today with specific suggestions for reform or change of the FCC. Further, I am here to give some personal experiences that may be of interest or assist this committee in their re-structuring efforts. Since I have

served as a member of the Communications Committee of NARUC, and since much of the recent national legislation has centered on the technical and competitive convergence of local and long distance telecommunications with cable TV and other alternatives, I will confine my comments specifically to the actions over the past years by the FCC.

My major concern for overhauling the FCC is initiated by implementation of the 1996 Tele-communications Act. There was and still is no master plan or total vision as to what and how we allow the telephony direction and convergence to take place in these United States. Competition is a concept of impact pricing and improve services. However, there are no time lines or direction to allow all new technology to unfold systematically or guidance away from corruption by new entrants. Therefore, citizens are slammed, crammed, jammed and deceived. The FCC should provide public service announcements and educational workshops for citizens and industry. There must be a holistic industry approach in development whenever major legislation changes our world as we know it today. Input must be provided by those impacted—Governors, Utility Commissions, Mayors, Education Facilities, Industry Representatives, State Representatives, Consumer Organizations and Minority Businesses to develop a major plan for the implementation of such technology.

The State's role and role of the FCC in any acts or new implementation must be clearly defined. Coming from a state that has twice approved the Bell application for long distance under Section 271 of the Telecommunications Act of 1996... only to have it twice rejected by the FCC. As an elected Commissioner of a Public Service Commission with constitutional provisions, I find it difficult to have federal appointed officials reviewing and over reviewing actions and disposing issues voted on by LPSC. The LPSC was intended to have considerable authority over pricing of telecommunications services and elements, and we were to have a significant role in deciding when the conditions for entry into long distance had been met by the Bell Company. I think this role is logical. Who better than the Louisiana Public Service Commission can assess the status of our own markets and consider the impact of expanded competition on our consumers? I think we know far more about our markets and consumers than anyone in Washington, D.C. And let's be clear about one thing. Neither I nor the other Commissioners in Louisiana chose between the Bell company and the long distance companies in making our decisions on the 271 application. We were in it for our consumers. And we made decisions which we felt benefitted our consumers.

Let me give you an example. In Louisiana, sixteen of our parishes (some of you may call these counties) are bisected by the LATA boundaries. As you are aware, as a result of divestiture, the United States is divided into Local Access and Transport Areas (LATAs) within which a local telephone company may offer telecommunications services. This means that significant consumer benefits such as discounted parish-wide calling or state education discounts were unavailable to many of our Louisiana citizens. When we approved the Bell long distance application, one of our reasons was to bring these benefits to all our consumers. I believe that Congressman Tauzin is familiar with at least one of the parishes that is deprived of full benefit of these state calling plans: his own St. Mary's Parish. While Congressman Tauzin has been instrumental in offsetting this loss to some extent, many other people in Louisiana are being deprived of benefits intended by the Louisiana Public Service Commission because of artificial boundaries that can't be seen or explained. These problems were outlined in a recent letter from Dale Sittig, Chairman of the Louisiana Public Service Commission to the FCC.

We take our 271 responsibilities very seriously. Prior to approving the Bell application for the first time, we gathered thousand of pages of evidence and testimony and conducted numerous hearings and technical demonstrations. Let me report to this body today that we in Louisiana have a very comprehensive set of competitive rules that will ensure that fair play continues after Bell's entry into long distance. In short, as a constitutionally empowered body in Louisiana, we are well equipped and well prepared to protect our markets and consumers.

Our final item of frustration... While we have labored seriously over our responsibilities under the 1996 Telecommunications Act, others have apparently decided to bypass the process all together. I am referring to the mergers between long distance companies and others to expand their markets while continuing to deprive our citizens of the benefits of long competition. While some of these companies have pursued their marketing strategies through acquisitions and mergers, they have continued to delay our state proceedings by pretending to be interested in unbundled network elements and other aspects of the Telecommunications Act.

In summary, I believe the Louisiana Public Service Commission, other state commissions, the National Association of Regulatory Utility Commissioners and the National Conferences of Governors, State Legislators, and Mayors have valuable input

into the process of expanding local, long distance and cable TV competition. For the reasons previously set forth, I would recommend that the FCC and these entities establish additional joint board efforts in deliberating and deciding rules. I also believe that it would be beneficial to both NARUC and the FCC if the FCC would actively participate in the NARUC Action Committees. Lastly, the FCC should hold hearings on critical new changes as technology unfolds, thereby allowing citizen input in the implementation and distribution of these new technical services. It is my belief that such hearings should be held in the region that will be most affected by the FCC's decisions.

Thank you for your attention. It has been my pleasure discussing how the FCC can increase its hands-on cooperation with state commissions through reorganization.

Mr. TAUZIN. Thank you, Irma. I assure you we can, and should, take you up on that offer, particularly with the task force. Perhaps we can work out the right venue for that to happen. Thank you very much.

And now Bill Gillis, the commissioner from Washington State since 1994. Bill, I understand you are going to focus a little bit on the consumer in this new, competitive marketplace world of the local utilities. Mr. Gillis.

STATEMENT OF WILLIAM R. GILLIS

Mr. GILLIS. That is right, Mr. Chairman. I really appreciate this opportunity. In addition to being on the Telecommunications Committee, I chair a NARUC consumer committee, and I am also Chair of a rural task force, which is to make recommendations to the FCC on universal service issues for the small, rural companies. FCC is important to our work as a commission to NARUC and these responsibilities as well.

I am an optimist. I believe the act can create an environment where we can have lower prices, better service quality, innovation. But for consumers that I hear from back home, it is a mixed blessing. When I go home and talk to my friends and neighbors, and we hold hearings, what they talk about is the phone calls at dinner, services appearing on their bill they didn't order or line items that they don't understand, or just simply the complexity of it all.

At our commission the No. 1 source of complaints are service quality, but the fastest-growing complaints are over slamming, since over a 2-year period the number of slamming complaints in my State has doubled, and it is a major concern. That is true of States overall. Overall complaints in States on telecomm issues increased about 91 percent over about a 4- or 5-year period. So they are growing, and largely as a result of the changes—

Mr. TAUZIN. Yes, but, you know, the chairman of our full committee was personally slammed.

Mr. GILLIS. Is that right?

Mr. TAUZIN. So was this chairman's mother. So we have some experience with it.

Mr. GILLIS. Yes, it is a significant problem. It is a major concern to the States and the utility commissioners.

With that, we believe strongly that there is State commissions and the FCC both must take a stronger role in consumer education and consumer protection. We have to accept that responsibility and expand our roles in that.

One of the maybe overlooked aspects is in forms of education. One of my reference points is my parents, as parochial as that may

be, but they are rural; they are elderly; they are small users. Those are the type of customers that are often left behind in these kinds of changes and the ones that I worry about as a State utility commissioner. They today still have the same long distance phone company they had in 1960. Part of the reason is that they are afraid to make a choice; they are afraid something bad is going to happen. One of the things we can do to help your vision of making the marketplace work is to provide education to consumers like my parents and help them understand their choices and how to make those choices, and provide the environment where that makes sense.

Beyond that simple education, there is an important role for protection on issues like slamming. There is fraudulent activity that occurs in the marketplace, and we need to deal with that.

Overall, our view is that the consumer protection/consumer education issues are a joint responsibility of the States and the FCC. It makes sense for the Federal Government to set a floor for consumer protection standards for the Nation, but at the same time it is very important to States to have the flexibility to do it in the way that makes sense in our local circumstances. We are close to the consumers. We have staff and ourselves who interact directly with the consumers. A one-size-fits-all approach doesn't necessarily work. So we are actively involved in trying to promote that cooperation.

Some advantages of that cooperation: One is just to simply reduce customer confusion. If a customer gets a notice from the FCC and they get a notice from the State commission and they are inconsistent, that is a huge problem. So we need to reduce that kind of thing.

It is more effective enforcement if we work together, the States and the FCC. We are able to put together more effective enforcement activities. We can reduce administrative costs for all of us because we are sharing resources, and there is a consistency for the industry. The industries often work nationwide, and to the extent that States and the FCC work closely together on consumer education and consumer protection, that is helpful for them as well.

Some examples of progress we have made, and we have made some good progress in the last year or 2: One is NARUC has established a set of principles that we believe are important for consumer education/consumer protection that apply equally to States and the FCC. One of those principles is just to simply recognize that consumer education/consumer protection are a part of our mission as regulatory bodies, and to expand that mission. Second, to promote the use of understandable language. If the message that the consumers receive from the regulatory community are in legalese or they are not able to understand them, that doesn't help them. To protect consumers from deceptive practices, and to help consumers understand their rights and responsibilities, where they can go if they have a problem.

NARUC has solidified those principles in a white paper which I have attached to my written testimony. The FCC has also adopted many of those principles in their recent truth-in-billing docket. So I think we are very much kind of on the same wave length, important at the principle level.

Another thing we have done to establish cooperation is that we have begun weekly dialog—or not weekly, but regular—phone conference dialogs between the staff of the State commissions and staff of the FCC to help identify and address areas where cooperation makes sense. That dialog is known as SNAP, the State/National Action Plan Strike Force. It has just begun, but it has begun to produce results.

We started pilot projects. In the State of Washington we have a cooperative project with the FCC on producing some factsheets that address the issue of the new surcharges appearing on consumers' long distance bills. The factsheet has the Washington State UTC logos at the bottom; it has the FCC logos at the bottom, and it is a cooperative venture. That kind of thing can be helpful.

Developing a shared data base for enforcement is something that is being explored, to help FCC enforcement by States sharing their information on bad actors or problems; that helps them to build cases and take advantage of their jurisdiction, and it helps us. As well, we are pursuing media strategies to do national marketing of consumer education efforts.

Finally, we are involved with developing relationships and dialogs with a broad group of stakeholders on consumer issues.

But, in summary, the end point that I want to leave with you is that both States and the FCC have to restructure our efforts in the area of consumer education and consumer protection. It is necessary if we are going to have an effective marketplace. It is necessary if we are going to protect consumers from potential harm.

We advocate a cooperative approach from State to Federal levels that we have made some progress on. But as we think about restructuring for the FCC, one area that I would urge you to pay close attention to is to make sure that the budget is adequate and allocated to consumer education and consumer protection, because that is a very important area; and to support States in doing this cooperative role with the FCC and having the flexibility to address unique State circumstances.

[The prepared statement of William R. Gillis follows:]

PREPARED STATEMENT OF BILL GILLIS, COMMISSIONER, WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Chairman Tauzin, members of the Committee, I thank you for the invitation to appear today. My name is Bill Gillis and I have been a public utility commissioner in Washington State since 1994. I am a member of the NARUC Communications Committee and Chair of the NARUC Ad Hoc Consumer Affairs Committee. My perspective is that of a state regulator challenged by the task of implementing the 96 Federal Telecommunications Act. I believe expanded consumer education and protection efforts by both state and federal regulators is absolutely essential to our success in meeting this challenge.

The Emerging Consumer Challenge

Without a doubt, a successful transition from a telecommunications industry formed of regulated monopolies to one relying primarily on competitive market forces has the potential to create tremendous consumer benefits including lower prices, expanded consumer choice, more rapid innovation and improved service quality. However, from the perspective of many consumers there is a trade-off. Along with greater consumer choice come new consumer burdens. Some which are real and some which are simply perceived as new burdens. Some which take the form of unwanted hassle and others which expose consumers to new and unwanted financial risks.

From public hearings and letters received by my commission, I hear repeatedly from customers concerned about marketing phone calls at dinner, services appearing

on their bill for which they did not subscribe and simply the complexity of sorting through the diverse array of telecommunications choices. One indicator of how competition is affecting consumers and responsibilities of regulators is growth in consumer complaints. A survey conducted by the NARUC staff subcommittee on Consumer Affairs, including responses from 28 states, found that between 1993 and 1997, complaints about telephone service increased 91 percent. In 1996, the Washington State Commission received 186 complaints about "slamming". In 1997, we received 228 consumer complaints on "slamming", and in 1998, we received close to 450. The FCC reports they receive 50,000 consumer calls a month and 75,000 written complaints on all types of consumer issues each year.

Preparing Consumer for Change

For some time, state regulators have recognized the growing importance of consumer protection and education. The consumer policy committee is one of the more active policy subgroups of the NARUC Communications Committee. In 1996, NARUC established a special Ad Hoc Committee on Consumer Affairs and is considering the establishment of this committee as a full standing committee within NARUC.

The NARUC adopted a set of principles promoting consumer awareness and protection at its summer conference in Seattle. These policy principles developed jointly by the Communications Committee and the Ad Hoc Committee on Consumer Affairs are:

- the promotion of consumer education and information is an important part of consumer affairs policies,
- the use of plain, understandable language is key for consumers to make the most of a competitive marketplace,
- protection of consumers from deceptive practices is an integral part of consumer protection, and
- consumers should understand both their rights and their responsibilities when entering into an agreement to purchase telecommunications services.

These principles are further explored then in a "No Surprise Package" white paper which sets forth a draft course of action in developing templates for consumer education packages (attached to this testimony). The NARUC website now contains some new templates for just this purpose as well, providing policy makers with a ready-made set of material useful for educating consumers about their choices in the long distance market. Consumers need to know what is happening, why, and what their personal choices are.

A Critical Role For the FCC

Addressing the need for effective consumer education and protection measures requires close cooperation between state and federal regulatory authorities. While policies must be flexible enough to allow for unique state circumstances, federal consumer protection standards providing a "floor" of basic regulatory enforcement methods advantages consumers and supports the development efficient competitive telecommunications markets. States are in an effective position to address consumer complaints and initiate necessary enforcement of rules because of our local experience in dealing with these significant problems. However, as the fast-moving telecommunications industry continues to evolve, we believe that nation is best served by a coordinated state and federal effort in consumer education and protection.

I believe the FCC has recognized and takes seriously its role as a cooperative partner with states on consumer education and protection matters. For example, the recent FCC "Truth in Billing" initiative reflects many of the same principles outlined by NARUC's "No Surprises" white paper. This reflects the parallel challenge faced by both jurisdictions. It also reflects a close dialog on consumer issues between State and Federal regulatory commissions. State Commissions and the FCC recently organized and implemented a new joint strategic initiative know as the State-National Action Plan Strike Force (SNAP). The purpose of this new initiative is to foster a partnership between the FCC and state commissions for the purpose of strengthening consumer protections in the telecommunications marketplace. Specific focus areas include:

- develop joint public information strategies to increase awareness and education on telecommunications issues affecting consumers,
- coordinate enforcement actions to protect consumers against abuses that occur in the telecommunications marketplace, and
- establish a network between the FCC and state commissions to coordinate regulatory initiatives.

A designated team of state and federal commission staff meet by regularly scheduled conference call to implement these initiatives. This team already reports early

successes in enhancing state and federal cooperation on consumer education and protection measures. For example, the Washington State Commission and the FCC are producing joint fact sheets to help consumers in my state understand the new federal access fee and universal service fee appearing on their long-distance bills. Joint cooperation of this type efficiently uses the resources available from each of our agencies and also ensures consumers are not confused by possible conflicting information published separately by state and federal authorities. Members of the SNAP team are exploring a variety of joint federal and state consumer education initiatives.

The team also plans to identify specific actions to coordinate enforcement activities. For example, they plan to develop a shared database that would allow states and the FCC to enter statistics about complaints, beginning with slamming and cramming. This will allow the FCC and states to look at national statistics about problems issues and/or problem companies. By collecting and sharing data in a common format, both state and federal enforcement efforts will be enhanced.

A specific contact at the FCC has recently been designated to act as a liaison for state commissions' consumer affairs departments and to communicate with states on a regular basis. Our state staff report this step alone has been very beneficial in improving communication and coordination between state and federal commissions on matters of consumer education and protection.

Conclusion

State and federal regulatory commissions face similar challenges in restructuring our agencies to accomplish new roles and responsibilities in a dynamic industry increasingly characterized by a competitive marketplace. The development and implementation of effective consumer education and protection approaches is one of the most essential of our new roles. It is fundamentally a joint responsibility of state commissions and the FCC and is best achieved through coordinated actions. I believe the FCC has in fact taken some very important steps forward in meeting this restructuring challenge. These include small steps such as establishing a contact person as a liaison to improve communications with state commissions and larger steps including launching a major initiative around "Truth and Billing" issues and expanding staff resources in the area of consumer education and enforcement. As a state commissioner, I appreciate these efforts and look forward to continuing joint efforts to ensure consumers benefit to the greatest extent possible as we transition to competitive telecommunications markets.

Mr. TAUZIN. Thank you very much, Mr. Gillis.

Next we will have Mr. Rolka, the Pennsylvania commission. Commissioner Rolka, welcome, sir. We will appreciate your testimony.

STATEMENT OF DAVID W. ROLKA

Mr. ROLKA. Thank you, Mr. Chairman. It is a privilege to be here today. It is not very often I get a chance to come down to Washington and appear in front of a congressional committee. Thank you for the invitation.

Mr. TAUZIN. It is not that far; it is just a little hop, skip, and jump for you.

Mr. ROLKA. Just a hundred miles up the street.

But thank you, and members of the committee and staff members.

As I was preparing for this, I was reminded of a lesson that I learned long ago when I was in school, and I haven't had a chance to forget, and that is that nothing in this world ever stays the same for more than about 2 minutes. From the time I sat down in this chair until the time I started talking, my thoughts even about what I was going to say have changed a little bit.

Mr. TAUZIN. It is less than that now.

Mr. ROLKA. Less than that.

Mr. TAUZIN. Less than 2 minutes.

Mr. ROLKA. I am sure it comes as no surprise, and you are all very well aware, that the architecture of the network, the telephone network, and the services that are provided over that architecture in no way resemble the network and the services and such that were contemplated a long time ago, when a piece of the process that I am involved in was instigated, and that is the separations process. I just want to speak a little bit about that for a second.

For anyone who is not particularly familiar with it, each of us has a piece of responsibility for the cost that each of the companies incurs to provide services to us. If the line was fuzzy between the State regulators and the Federal regulators, it would, indeed, be difficult for companies to make sure that they got as much money as they were supposed to; or, in the alternative, it might create the opportunity that they could get a little bit more than they were entitled to.

The separations process is responsible for making sure that we understand where that line is pretty clearly, so that our friends at the FCC can't say, "Well, that is your problem up there in Pennsylvania, and you have to make sure that the rates are high enough to cover that." And we up there in Pennsylvania don't have the opportunity to say to you down there in Washington have to deal with that problem. In a nutshell, that is what separation is about.

The system that we use today was created at about the time they did the breakup, and it hasn't had a significant overhaul since then, although we are in the middle of doing a comprehensive examination. The results of that so far, I have to tell you, I think suggest very strongly that we can simplify the system. It is a pretty complicated system. It is a pretty hairy system. It depends a lot on being able to track minutes and to being able to know what color they are, whether they are interstate purple or intrastate green, and to know whether they are an analog minute or if they are digital minute. Right now I don't think we know how to figure out the answer to all those rainbow colors, which leads me directly to the next topic I wanted to touch with you briefly.

That is this topic related to the Internet and reciprocal compensation. We very strongly support the sentiment that was expressed in a letter, Mr. Chairman, that admonished that we should keep regulators out of the business of regulating the Internet. We should try to avoid very strongly, and as best we can, trying to develop the urge to put usage-based charges on the Internet. We don't need any per-minute charges on the Internet. We encourage you to continue to oppose us getting too heavily involved in the regulation of the Internet or the permanent charges. Those are very important pieces.

Back in December 1998, the FCC issued an order on reciprocal compensation. It declared an order and started a notice. That order is not a solution to the problem. It is not a solution to the problem. In fact, it transfers the problem from down here to 100 miles up the street to me and down south to your home State and to my other colleagues up here. It moves the problem to us. I am very glad to see that you are anxious to work with all of us to try to find ways to avoid those usage-based charges moving over to the

State jurisdiction, and to find some constructive solutions to the way we deal with the Internet.

With respect to the implementation of the Telecomm Act, I have some anecdotal stories to share with you. Sustainable competition takes time, and it takes an awful lot of work. It can't happen as a result of either regulatory or legislative fiat. It just cannot happen that way.

The chairman of my commission and I, back in the fall, issued an invitation to our 200 closest friends at the utility bar up in Pennsylvania. We invited all the members of all the interested telephone industries to come in and try to negotiate a solution, a comprehensive solution. Because after years of litigation and trips back and forth to the courthouse and back and forth to the FCC, we came to realize that the only way we are going to make this work is if we could kind of sit down, and instead of solving these problems one by one, sit down and try to put together a comprehensive solution, involve a reasonable resolution of access charges and a reasonable resolution of universal services, and a reasonable set of unbundled network element prices and provisioning—and the list goes on. There is about two dozen really hot topics that can easily be flashed to in that regard.

After 6 months of intensive discussions with the chairman of my commission and myself, who typically sit at opposite ends of the bench and opposite ends of the spectrum with respect to the resolution of these issues, the two of us came up and offered three separate, comprehensive proposals, the answers to the 24 hottest questions in those negotiations of the parties, recognizing that all we needed to do was find somebody that stood between the two of us on the spectrum, and we would have a majority on the commission. After 6 months of hard work and efforts to do that, we walked away without a resolution. The parties could not resolve their differences, and demanded, essentially, that the commission go up on the bench and sit there and rule and resolve those matters after some period of litigation.

About a month after we ran out of time or we called an end to that process, the two major warring factions each came in with petitions on how they thought the thing should be settled. Remarkably, both of those petitions resembled the term sheets that the chairman and I had offered—remarkably; in fact, in some places were verbatim identical to each other. Yet, when we held the pre-hearing conference and asked the parties to stipulate, so that we could narrow the focus of the thing that we had to sit there on the bench and hear, and we could narrow the depth of the record, because we already had 18 different cases consolidated here, we reached zero stipulations—none; absolutely none. The parties would agree to nothing, and demanded, essentially, that the commission sit on the bench and rule on every issue that is involved in those cases, to dispose of them.

The parties jealously are guarding their rights. We have a very complicated law. We have a lot of implementation issues. None of them are going to abandon their fiduciary responsibilities to their shareholders. They want a regulator to tell them what has to be done, and we are trying mightily to get to that answer. Hopefully, by the end of this year, we will join the ranks of our colleagues that

have given the FCC advice on how to solve the 271 and all the other related issues that go with it.

The next thing I just wanted to mention to you briefly about—and that process I just described to you is unique. Our colleagues in a number of other States are all trying to come up with creative ways to deal with this problem. As far as I know, we are the only ones that have basically tried to the papal approach, where we have locked everybody in a room and said, “We are not letting you out until you settle this.” We are kind of there again.

But the next thing I wanted to talk with you briefly about was about area codes. Area codes for a long time has been kind of a sleeper in terms of its role in the ability to create a competitive telecomm market. The way the statute is structured right now, the FCC holds all the cards. They have all the authority and all the responsibility, and the States are left pretty much in a “Mother, may I?” posture in terms of trying to do anything other than a few very simple things.

When we run out of telephone numbers, the States, absent express, specific dispensation from the FCC, are limited to either move a boundary, decide that we are going to do an area code overlay, which means put one on top of the other one, or we are going to take the area and we are going to figure out how we are going to gerrymander it or we are going to split it into two different places and give them two new area codes. That is all we can do without special dispensation from the FCC.

The system that causes so much problems today is the fact that, under the monopoly scheme, we have dispensed telephone numbers 10,000 at a time. Every new entrant that wants to get into business has to go get a code in the place where it wants to do business, and that code brings with it 10,000 whole numbers. We need—yesterday, a month ago, 6 months ago—the authority for all of us here at the State level to be able to do things like mandatory 1,000-number dispensations. You can work with 1,000 telephone numbers when you are a new entrant, unless you are doing a wholesale, massive entry into the business.

Recently, in Pittsburgh, we had a situation where in the course of 2 days we gave out—in Pittsburgh, you know, an urban, metropolitan area with a population a little bit better than half a million people—we gave out 130 NNXes, 1.3 million telephone numbers in a day. Now none of them, to the best of my knowledge, has been put to use yet, but we give them out 10,000 at a time, and we can’t do anything about it yet.

We recently got a setback, at least from my perspective, on that front, because the wireless carriers, who consistently argue that they are efficient users of telephone numbers, have made a case to the FCC and explained to them that they are really not in the position to implement local number portability, which is the technological underpinning of being able to do 1,000 numbers. They can’t do that, and they have got a dispensation from the FCC to delay implementation of a 1,000 number.

But, by the same token, reaching back to what I described to you before, for us to go forward with 1,000 numbers without them puts them at a competitive disadvantage, they have consistently argued. Therefore, we can’t do anything that depends on LNP until they

catch up with the rest of the process. So we have a real conundrum here, and I hope that you would help us to encourage the FCC that the fact that they have gotten a waiver, because they really can't get there from here yet, of the requirement to implement LNP would constitute a waiver of their right to stand in the way of us other rational conservation measures that weren't too detrimental to their interests.

I am almost finished. I just have two other minor points that I would mention to you.

Obviously, a lot of other countries around the world have been looking at the way we do it and have been jealously examining the systems that we have in this country, and have been trying to figure out how we got here. The obvious lesson I think we should take from that is we should look at what they do when they go back home, because they are trying to develop a market and they are generally trying to develop competitive ones. If we take a quick look-see at what they decide they think will work to develop a competitive marketplace there, we might learn some lessons from them about what they think the minimum requirements are to actually make that system work. Even though they are coming to study us, we might learn by watching what they take away.

Last, from an administrative perspective, I have had the Chinese curse of being the chairman of my agency in the past. I have been with my agency for over 20 years. The biggest organizational issue that we have had to deal with over those years is something that we call back home Lyness, which is the State Supreme Court decision that says I can't both prosecute—I can't both bring a complaint against somebody and then sit there and listen to, and decide whether or not my complaint should be sustained and held against them or not. Reorganizing ourselves in a way to deal with that and protect people's rights actually creates some bureaucratic overhead.

Thank you, Mr. Chairman.

[The prepared statement of David W. Rolka follows:]

PREPARED STATEMENT OF DAVID ROLKA, COMMISSIONER, PENNSYLVANIA PUBLIC
UTILITY COMMISSION

Chairman Tauzin and Members of the Committee thank you for the opportunity to offer my comments on how Congress should proceed with FCC restructuring. My name is David W. Rolka, and I have been a member of the Pennsylvania Public Utility Commission since December 1989. I was Chairman of the Pennsylvania Commission for three of those years, during which time we conducted a thorough re-evaluation of our mission and objectives. I also serve in several capacities as a representative of State Regulators on Federal Joint Boards as well as the North American Numbering Council. Before my commission I was an assistant to a Commissioner for 8 years and the Executive Director of the Pa. Office of Consumer Advocate for 5 years.

I would be remiss if I did not recognize the contemporary efforts of State and Federal regulators to link arms and cooperate in the implementation of the provisions of the Telecom Act of 1996. That relationship, although sometimes strained, is a long standing and productive one. I had an opportunity to read the testimony that Commissioner Gillis prepared for you today and I associate myself with his comments.

Chairman and Members of the subcommittee, I commend you for your hard work and interest in this matter. Your continuing interest and oversight will undoubtedly be instrumental to the process already begun by the Commission.

Like many of its contemporaries in the regulatory community, the FCC is being challenged with new issues and policy-making requests resulting from major changes in technology, legislation and industry reorganization. Declining regulatory

constraints on regulated industries have been more than offset by the public's increasing concern over such issues as the treatment of captive customers, safety, and service quality. At the same time there has been an increasing variety of service, pricing, and corporate arrangements that have emerged that do not fit the traditional criteria and rules around which regulatory agencies have been structured.

In December, 1998 the State members of the "Separations Joint Board" reported that significant statutory, technological, and market changes in the telecommunications industry make today's network architecture and service offerings vastly different from the network and services contemplated in the current separations rules. The current rules evolved during a time when it was presumed that intrastate and interstate telecommunications services would be provided through a regulated monopoly. This is no longer the case.

Within the state jurisdiction, utility commissions attempt to set intrastate rates that, in the aggregate, allow ILECs to earn revenues equal to their intrastate costs, plus a reasonable profit on their property. Federal regulators engage in a parallel process for interstate costs and property. A constitutional prohibition on "Confiscation" underlies both state and federal rate-making.

Numerous parties have suggested that changes to regulatory methods may make it possible to abolish separations in the near future. We concluded that under the present system of dual regulation of telecommunications property, some form of separations will continue to be needed for at least the next few years, even in the transition to a new competitive environment for ILECs.

The continuing need for some form of separations, however, does not conclude that any particular form of separations is required. The basic legal principle is that neither the state nor the federal jurisdiction can set rates in a way that would preclude the utility from recovering a fair return on the totality of its property essential to its jurisdiction. We concluded that so long as the split of costs can be accomplished in a reasonably consistent and quantifiable manner, it was impossible to simplify the process.

I support the sentiments expressed in a letter sent on March 18th from several House and Senate leaders urging the FCC to keep the internet free from regulation, and oppose any additional per minute access charges for internet use. The FCC's recent Declaratory Ruling and Notice of Proposed Rule Making regarding reciprocal compensation for calls to ISP's does not resolve the problem. Pending resolution of its proposed carrier to carrier compensation rules, local reciprocal compensation procedures for interstate services are inconsistent with jurisdictional cost allocations. This decision transfers the responsibility to maintain the freedom from additional per minute charges from the FCC to the states. State commissions are concerned that they may be left with the costs associated with Internet access traffic on the telephone network without adequate revenues.

Congress should work with the FCC and the state commissions to abandon the notion of per-minute charges for internet service. States are committed to working with Congress and the FCC to achieve this goal. We ask that you consider our joint responsibilities under the Telecommunications Act to foster the deployment of the Internet and advanced services.

Much has been written and said about the pace of implementation of competition since the passage of TA-96. My experience confirms the comments of Commissioner Gillis that the development of sustainable competition will take time. Not so long ago, in September 1998, Chairman Quain and I embarked on a bold and aggressive agenda to resolve pending telecommunications dockets and promote fair and meaningful competition throughout Pennsylvania. Our assumption was that the pending cases begged for a comprehensive integrated solution that could only be achieved through negotiations. After six months of intensive negotiation with our direct participation the negotiations ended without result. The issues are complex and some involve property rights that cannot easily be negotiated away. The scope of the negotiations included: fundamental access charge reform; Unbundled Network Element identification pricing and access to combinations; collocation alternatives, provisioning, and pricing; Universal service; rate rebalancing and rate caps; performance measures, standards and enforcement remedies; the designation of competitive services; Section 271 procedures standards and other issues.

Currently our Commission is considering dueling petitions for partial settlement of up to eighteen distinct proceedings. Both petitions purport to comprehensively promote fair and meaningful local competition and fair toll competition on fair terms and conditions for all market participants, as well as continued protections for Pennsylvania consumers. Despite the marked similarity between the terms of the two petitions, a prehearing conference conducted to narrow the scope of testimony and hearings resulted in absolutely no stipulations among the parties for the resolution of any issues in the petitions. Despite Congress' concerted effort to craft a

mechanism to quickly transition to a competitive local telecommunications environment the transition will not come fast and each participants rights have been jealously guarded and litigated.

The FCC's Opinion and Order of September 28, 1998 made it clear that the states had very limited tools to use to solve area code problems. Unfortunately, state commissions are empowered to implement only those traditional forms of area code relief, geographic split, overlay or boundary revision, before they can mandate any type of number conservation measures. Although the FCC has authorized states to adopt and implement voluntary pooling trials, many states such as New York, Massachusetts, Maine, and Florida, pursuant to paragraph 31 of the September 28, 1998 Order have petitioned the FCC requesting additional authority to implement various numbering relief/conservation measures.

Each of these states asked the FCC to grant them the authority to implement mandatory 1000-block number pooling. The FCC has not yet indicated that 1000-block pooling will soon be an available option for the states, and has not acted on the various states petitions. The option of 1000-block number pooling is currently before the NANC, and should be before the FCC in three to four months. The FCC will likely then request comments from interested parties. Since the FCC has recently granted a request for forbearance from the CMRS Number Portability Requirements I do not foresee the FCC ruling on 1000-block number pooling as an alternative for number conservation for the states before the end of 1999.

It is appropriate to review the Commission's current approach and develop strategies that improve its long term efficiency. Several Nations are experimenting with regulatory regimes where virtually none had existed before. Those countries have been examining the successes we have enjoyed with the hope that they will craft mechanisms that will produce similar results for themselves. Perhaps it will be useful to examine what they have taken away from their examination of our systems as they craft environments designed from the ground up to encourage competition as a tool over regulation.

One of the most difficult issues we face is due process, particularly when it comes to our enforcement responsibilities. Since 1992 our organizational structure and procedures have been dramatically reshaped by due process principles as the result of a decision by our State Supreme Court. In *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A2d 1204 (1992), the Pennsylvania Supreme Court held that when an agency both determines that a prosecution should be initiated and then acts as the ultimate arbiter, the due process law in Pennsylvania has been violated. It was ruled that the commingling of prosecutory and adjudicatory functions creates "an appearance of bias" in the agency decision makers.

Recognizing that many state regulatory agencies fulfill both prosecutory and adjudicatory functions, the court stated that this alone does not violate due process so long as the functions are "separated adequately" and handled by distinct administrative entities, but that "if more than one function is reposed in a single administrative entity, walls of division must be constructed which eliminate the threat or appearance of bias." *Lyness* at 546, 605 A.2d at 1209. In order to abide by the Pennsylvania Supreme Court's holding in *Lyness* and comply with our state's due process requirements, we determined that the authority to initiate proceedings which are prosecutions in nature should be delegated to various bureaus within the Commission. I believe that our experience validates the priority that the FCC has placed on reorganizing its enforcement functions to ensure effective enforcement of remaining statutory and regulatory requirements.

Thank you, for the opportunity to offer these comments.

Mr. TAUZIN. Thank you, Mr. Rolka.

And, finally, Mr. Wayne Lafferty, Vice President of Regulatory and Government Affairs, Citizens Communications, on behalf of the United States Association. Mr. Lafferty.

STATEMENT OF WAYNE LAFFERTY

Mr. LAFFERTY. Mr. Chairman, members of the committee, thank you very much for the opportunity to appear before you today on some subjects which are very critical to the customers of our company.

I must admit I do find it a little bit strange, though, to be sitting here at the table with four State regulators. I have spent the last

several years of my career trying to get away from regulation, and I am as close to it as I have ever been.

I appreciate hearing the four issues that you outlined at the beginning of the hearing today because I think that most, if not all, of these issues are the crux of some of the things that I would like to speak to you all about today.

Let me just start by saying that I believe the Telecomm Act of 1996 was a good thing. It can work, but I think some of the implementation of it needs to be tweaked a little bit as we move forward. I would like to speak about four main concepts today.

First of all, let's look looking forward, developing partnerships. Some of the State commissioners sitting at the table today have talked about forging better relationships with the FCC. I would like to make the industry a part of that also, and see that the industry, the FCC, and the States work closer together.

Our customers are demanding that we innovate faster, that we move surfaces to market faster; we provide faster speeds, higher bandwidth, et cetera. I would like to see the regulatory environment keep pace with the rapid change that technology is making in making services available to our customers. I think that a partnership philosophy, a partnership characteristic, is important in making that happen.

Second, I would like to talk briefly about overlap of State and Federal regulation. The best example I can think of—and some of the commissioners here have alluded to it already—is in the area of monitoring service quality. Our company will spend over \$1 million over the next 12 to 18 months to comply with the FCC's 43.05 report, which is their Service Quality Monitoring Report. That is over \$1 per customer for our company. I don't think there is a State out there that doesn't have regulatory rules in place or have the authority to monitor service quality. It is a clear indication of an area where the customers are well taken care of by the State, and the FCC could reduce the burden on the industry, and the States could continue to play that role quite well.

Another area I mention briefly in my testimony is the area of regulatory lag, as I call it. The FCC has recently taken a couple initiatives to make the decision. Just this week they ruled on a forbearance petition under section 10 of the act for some of the mid-sized companies. Though they didn't forbear all the issues that the companies are asking for, they did provide some limited relief.

However, the statute gave the FCC 1 year to act on forbearance petitions and an extension period of 90 days. They used 1 year, 90 days, plus 1 day, to make their decision.

Also, the FCC has recently asked the various associations that represent companies serving rural areas to get together and come forward with constructive comments, concepts, and ideas and recommendations to streamline regulation. We see that as a positive step. Hopefully, it will not take too long.

Also, the act requires the FCC to conduct what we call a biennial review, every 2 years, to take a look at the regulations that it has and to see what changes are possible to streamline the processes as this industry and this marketplace becomes competitive. Nineteen ninety-eight was the first year of the biennial review, and the FCC is now starting to make some progress. However, it is May

1999. We hope that as the next biennial review period comes around, which there is some experience now, we hope that will move forward in a progressive and positive way for the regulatory agencies, both State and Federal and the industry.

The third and last area I briefly mention in my testimony is what we call the regulatory burdens. The Telecommunications Act of 1996 was a deregulatory act. However, many burdens remain on our companies. In some cases the implementation may have produced more, not less, regulation.

Our company spends over \$23 per customer to comply with State and Federal regulation. We serve a rural area. In some cases that could be up to 2 months of our customer service's local residential rates that are used to comply with regulation. I believe that our customers would much rather spend at least some of that money, if not all of it, to introduce new services, better services, higher bandwidth, et cetera.

In front of me on the table here I have four piles of paper that were provided by AmeriTech, one of the USTA members. It represents reports that they file with the SEC, Securities and Exchange Commission, the FCC, and the State of Wisconsin. I would suggest that there is some overlap here that could be eliminated if the States and the FCC will work together. The fourth pile, by the way, are the FCC's rules for completing their pile of reports.

Again, lots of opportunity for the State and the FCC and the industry to work together to eliminate unnecessary burden and allow the companies, the telecommunications providers, to spend our resources on serving customers and providing new services.

Let me provide eight recommendations that are in my testimony, just in summary, that I think that this committee and the agencies should consider.

No. 1, let's put a deadline, a 90-day deadline without extensions, for the FCC to act on petitions, reconsiderations, and applications. Let's require a supermajority vote for any new regulations—with emphasis on "new."

Let's look at elimination of regulation of services as they become competitive. We are starting to see the States taking very positive moves in that direction, both from a legislative and a regulatory standpoint. This committee, under the leadership of Mr. Boucher and Oxley, had an amendment in the Telecommunications Act that allowed some of those things. Unfortunately, in conference that did not make the final legislation. Let's revisit that issue, and we are willing to work with you to do that.

Fourth, let's eliminate the separate subsidiary requirements that are not specifically spelled out in the act. All those do is limit the abilities for competition and add resource burdens to our companies that distract us from serving customers.

Fifth, let's prohibit regulation of the Internet in any way at all. The Internet is making amazing changes in the way that we do business, the way we communicate. Let's not get in its way.

Sixth, let's limit merger review, if there is to be any at all—and we would suggest that there should be very limited at all by the FCC—but if so, let's limit it to 90 days. The Department of Justice and other agencies are well equipped to handle that issue.

Seventh, let's compel regulators to move to gap accounting, so that we don't have three piles of reports sitting on the table, three sets of books, three sets of accountants working for our company.

And, last, as Chairman Kennard outlined in his testimony before this committee back in March, let's restructure the FCC to a more functionally based organization. The very aspects of this industry—long distance, local service, CLEC, wireless, you name it, cable—are converging. Let's have the regulatory agencies organize in such a way to deal with that convergence, and organize in a way to keep that in mind.

I appreciate the opportunity to be here today and to sit with these distinguished gentlemen and lady from the State commissions, and look forward to working with this committee, as well as the State and Federal regulators, to move competition forward.

[The prepared statement of Wayne Lafferty follows:]

PREPARED STATEMENT OF WAYNE LAFFERTY, VICE PRESIDENT, REGULATORY AND GOVERNMENT AFFAIRS, CITIZENS COMMUNICATIONS ON BEHALF OF THE UNITED STATES TELEPHONE ASSOCIATION

Thank you, Mr. Chairman, for extending me the opportunity to testify on the question of the regulation of the telecommunications industry. When I speak of regulation, I refer to both federal and state regulation, even though as a result of the recent Supreme court case, the role of the Federal Communications Commission in regulating *local* exchange carriers is at its highest level in the history of telephony. We still have a system of dual common carrier regulation, but what used to be a bold bright line between what is intrastate and thus subject to the exclusive jurisdiction of the states and what is interstate and thus subject to the FCC's jurisdiction has been made opaque by the Supreme Court's interpretation of the provisions of Part II of Title II of the 1996 Act. In an era of competitive telecommunications, incumbent local exchange carriers (ILECs) are now thus faced with pervasive regulation at both the federal and state level. For instance, the FCC requires our large and midsize companies to file extensive financial and operating data under its ARMIS reporting requirements, but the states also ask these companies to file similar data with them. We need state and federal authority to construct facilities and provide services. Additionally, both the states and the FCC requires extensive service quality monitoring and infrastructure data. Both the states and the FCC give us different criteria in slamming/cramming directives and both the states and the FCC regulate capital recovery for our large and midsize companies.

USTA suggests that rather than the Congress making still another attempt to sort out where this state/federal jurisdictional line should be placed, we believe that a large dose of regulatory reform and deregulation are in order. After three years of litigation over who has regulatory jurisdiction, we also recommend a state/federal partnership to achieve the regulatory balance required for a competitive era where prompt regulatory action is an absolute necessity.

REGULATORY REFORM

Regulatory Lag—Let me give you three classic examples of regulatory lag: reciprocal compensation, universal service and the case of the Roseville Communications Company. First, reciprocal compensation is the amount paid by one carrier to another for the transport and termination of telecommunications. The 1996 Act in Section 251(b)(5) made reciprocal compensation the duty of every local exchange carrier because in an era of competition, we need to exchange traffic. The question of whether traffic being sent to the Internet is intrastate or interstate has been before the FCC since 1996. The issue is not, in May 1999, fully resolved yet because despite the fact that the FCC has determined this traffic to be *interstate* in nature, now we have an ongoing FCC rulemaking to determine what is to be done about it in the future given that it is interstate. There is no telling when this issue will ever be resolved. The 1996 Act instructed the FCC to eliminate implicit subsidies in order to facilitate competition and to provide a level playing field. The FCC's seeming inability or unwillingness to address this issue is creating a new implicit subsidy which is growing day-by-day.

Second, the Congress recognized that the competitive marketplace that was being ushered in by the 1996 Act would require universal service reform because the old

system of implicit subsidies cannot survive in an era of full competition. The FCC was required by the 1996 Act to replace this system of implicit subsidies. This was required to be accomplished by May 8, 1997. It has not been accomplished yet. This failure also leads to dual federal and state universal service regulation which is often confusing as a consequence. The states must move into this area more so than before because of the FCC's failure to act.

Third, one of our small telephone companies is Roseville Communications Company (RCC). RCC has 117,000 lines covering just an 83 square mile area in and around the city of Roseville, California. In early 1997, RCC wanted to acquire a cable system serving just 16,000 subscribers from Jones Intercable. On February 26, 1998, RCC gave up because after 15 months of effort, RCC had yet to receive FCC approval for the acquisition.

RCC had numerous meetings with the FCC staff during the 15-month period. RCC answered every question presented to them. In order to acquire the cable system, RCC needed a FCC waiver under Section 652(d)(6) as the cut-off for such acquisitions without a waiver was 12,000 subscribers. The local franchising authority approved the waiver.

The FCC staff indicated that the acquisition waiver would have to be subjected to "conditions." At first it was suggested to RCC that the conditions made applicable to the Bell Atlantic/NYNEX merger would be appropriate here. RCC tried without success to work out with the FCC more appropriate conditions. Lacking the resources of Bell Atlantic, RCC just gave up.

USTA would submit to you that unless there are mandatory statutory deadlines for completion of regulatory proceedings (*e.g.*, applications, petitions) that the FCC cannot be counted upon to act quickly, even in cases that cry out for attention such as a reciprocal compensation. Second, whatever the statutory deadline is the FCC will use the maximum allotted time, this point has been proven as some of our mid-size and small companies petitioned the FCC for forbearance under Section 10 of the 1996 Act on February 17, 1998. The Act requires the FCC to act upon such petitions within a year unless it extends the time period for an additional 90 days. Of course, the FCC has extended the time period. The FCC announced a decision in this case on Tuesday (5/18/99) of this week. Third, even with a statutory deadline unless the statute makes clear that there are consequences flowing from the failure to meet the statutory deadline, the statutory deadline is worthless. The best example that I can think of to prove this point is the FCC's failure to complete action on universal service despite a clear statutory deadline. The Congress required the FCC to complete action on universal service by May 8, 1997. They have still not completed action, but there are no consequences resulting from this failure to comply. The FCC does not suffer when it fails to meet a statutory deadline only the regulated and the public.

So, we recommend that legislation be enacted requiring the FCC to complete action on any petition, application or reconsideration within 90 days. If the FCC does not act within the 90-day period, the petition/application shall be deemed approved.

Make Additional Regulation Harder

The Conference Report for the 1996 Act said that the new law unlike the 1934 Act was supposed to be "*deregulatory*." Incumbent local exchange carriers are more regulated today than they were on February 7, 1996. The bill, for instance, was intended to give Bell operating companies interLATA relief if they provided the service through a separate affiliate. The BOCs still have no interLATA relief and the separate affiliate requirement intended only for BOCs has been visited on other non-BOC ILECs by FCC rule with respect to their provision of long distance service and other competitive services. We have vast unbundling requirements, collocation requirements, interconnection requirements and resale requirements unheard of prior to the FCC's implementation of the 1996 Act. Further, there are new things coming up all of the time, such as slamming and cramming. The FCC makes the ILECs the arbiter of these disputes.

The House bill (H.R. 1555) had an excellent deregulatory provision as a result of the Committee's adoption of the Boucher/Oxley amendment. Boucher/Oxley would have significantly eliminated common carrier regulation (*e.g.*, tariffing, price, and depreciation) when a telecommunications service was subject to competition. The Conferees did not choose to include this provision on the 1996 Act. What a mistake that was. Instead, they gave the FCC the authority to forbear when the FCC saw fit. Now we have competition with no deregulation. The FCC was given the authority to forbear from regulation, but it does not forbear. USTA believes that regulators will regulate if given the opportunity. Deregulation is not how they view the world.

We are also concerned that the proposed FCC solutions to problems, while well intended, are excessively costly and lack adequate means to recover the costs incurred. Let me cite 4 examples:

- Local Number Portability—Timing of recovery does not match expenditures or assure adequate recovery.
- Customer Proprietary Network Information—FCC went well beyond the requirements of the Act.
- Truth in Billing—Created significant financial burdens.
- Provisions of OSS ruling—Financial burdens far outweigh potential benefits in rural areas where competitors have shown little or no interest in utilizing the incumbent's OSS.

We propose that Congress statutorily require a super-majority (4 votes) at the FCC before the FCC can adopt any new regulatory requirements. The super-majority requirement would not apply to deregulation measures nor to mergers. Second, the FCC should be prohibited from imposing upon any carrier any separate affiliate requirements not specifically mandated by the Act. Incongruous as it may sound, the cost of regulation is rising in a competitive market, and this trend must be reversed.

Relief In Competitive Markets

Competition was emerging for business customers prior to the passage of the 1996 Act. The 1996 Act accelerated that trend. We still do not have very many competitors interested in residential or rural customers, and I doubt that any will be interested at least until the universal service issues have been resolved. In the meantime, incumbent LECs are pervasively regulated whereas our competitors are virtually unregulated. They have total pricing flexibility—we do not as once again the Conferees for the 1996 Act did not accept the price flexibility provisions of both the House and Senate passed bills. Again, relying on the FCC to forbear instead of statutorily mandatory pricing flexibility.

So, we suggest that FCC price regulation of competitive services be statutorily eliminated.

Parity of Regulation

A service that can squeeze itself into the definition of a cable service will not be subject to common carrier regulation even though it is a service that is functionally equivalent to a telecommunications service. The FCC has not addressed this problem saying they cannot because the 1996 Act establishes this disparity as a matter of law.

Advanced Services

The 1996 Act was a two-way voice oriented bill reflecting the fact that the astounding growth of the Internet had not yet occurred by February 8, 1996. The 1996 Act mentions the Internet in only two places in Section 271(g)(2) with respect to Internet access to schools and in Section 230. I dare say that if this legislation were being considered today that it would be replete with references to the Internet. The Internet must not be made subject to regulation, but the FCC is heading in that direction requiring ILEC to resell and provide unbundled access to its services, facilities, and equipment used to provide Internet services.

Section 706 did contemplate the necessity for relaxed regulation to encourage advanced service deployment, but the FCC has determined that its ability to deregulate under Section 706 is severely constrained by other provisions of the 1996 Act.

The FCC and the states should be prohibited from regulation of the provision of advanced services. There is vibrant competition in this aspect of the industry. No telephone company has a dominant share of the advanced services market, yet regulation continues. If you want to encourage broadband service and facility deployment, there should be no regulation of it.

Merger Review

This is still another area where the FCC takes too long to act. Mergers should be considered by the FCC, if at all, for only 90 days. For small and midsize companies, the review should be limited to spectrum management issues.

Accounting

Telephone companies must keep two sets of books—one for the FCC, and the states and for the IRS and Securities Exchange Commission. The FCC and the states do not use generally accepted accounting principles. The FCC and the states requires that you use their accounting principles. The FCC and the states should be compelled to use generally accepted accounting principles.

Structure of the FCC

We at USTA believe that the FCC should be significantly restructured. Instead of the existing bureaus, such as common carriers and cable; we believe that the FCC should be structured on more modern lines to recognize convergence. The FCC should be restructuring into non-service based bureaus: legal, policy, engineering, licensing and enforcement.

In a competitive era speed matters: speed to market, speed to innovation, speed to new services, and speed to lower prices. We need a second partnership between the regulator and regulated where these urgent matters can be dealt with urgently. The regulators need to be our partners. As a part of this reform, we believe that the FCC should change its main focus to enforcement rather than the establishment of highly detailed rules governing even the most minuscule of matters.

Mr. TAUZIN. Thank you, Mr. Lafferty. I am glad you ended with the concept of convergence and the need for a structure of the FCC itself to reflect the converging.

Let me mention three quick things and get your thoughts on this. All of you, you talked to me about LATA lines, separate one customer/one company from another, and you talked about monitoring service quality. You talked about pricing. You talked about the rules of interconnection and unbundling, et cetera, as being extraordinarily complex functions, particularly as it relates to 271 relief sought by the companies.

But we are about to face a world, if I can look over that horizon, where all these services are migrating rapidly to Internet delivery. There is a bumper sticker out; it says, "Relax, it's just 1's and 0's."

Everything is converging into a single stream of information that can mean anything we want it to mean—audio, video, data, complex data.

I am reminded of that movie with John Candy, "Planes, Trains, and Automobiles"—many different systems delivering it: some coming from satellites, some from terrestrial towers, others from various wires, including maybe the electric line. You pointed out with energy several companies now experimenting with the possibility of moving broadband in or around the electric cable.

Here's the question: Mr. Rowe, I have looked at some of the State commission restructuring. New York, for example, just went through it. I think one of the new bureaus they created was a competitive bureau, in fact, to look at the competitiveness of the marketplace that they regulate and to see how much they need to regulate it, and it becomes competitive.

Here's the question: When you get to this new world, as you look over that horizon, where information is delivered in 1's and 0's over all these streams, in a competitive mix where customers can choose from among them, properly educated as to what all of it means in their lives, where distance is irrelevant—a very big point here: where distance is irrelevant in communication of information; when information travels at the speed of light over fiber optics and satellite and other systems; where, as on the Internet, you are not charged by how far you live from one another, but the duration and time you actually use a service; where, in fact, all of the companies you regulate, is it an electric utility or is it telephone utility or as with cable—I mean, all of them would be the same, delivering all of these services in a combination. What is going to be the role of local commissions, and what is going to be the role of the Federal Commission when, in fact, we have distance-irrelevant, common-stream informational services flowing in all these various channels

to consumers who are making choices out there? What role is left for you? And what role is left for us? Give me your best shot at it.

Mr. ROWE. This is Alfonse and Gastone: "After you."

Mr. LAFFERTY. I think that what you are suggesting is, I guess, really the end game. I think we are in a period now where both the States and the FCC need to recognize that we need to get there; we need a plan to get there. I don't want to sound repetitive, but I think the partnership approach is the way to go.

But I think what you are really talking about is a transition period. It is somewhat complicated because—

Mr. TAUZIN. Let me stop you there. I agree with you. I think we would have a transition period, and commissions and the FCC is going to look different in what they do during the transition—certainly partnerships, perhaps some tinkering with maybe even the law, just to get us there quickly, particularly on the deregulation of phone competition before there is no such thing as phone competition because everything is on the Internet.

But I am saying we have gotten there. We have partnershiped; we have done it; 271's are gone; 706 really—all that is gone now. Now we have this incredible world of complex systems of delivery of common, integrated streams of information. What is there left for you to do? And what is there left for us to do at the FCC level?

Mr. LAFFERTY. Well, I mean, the obvious answer is probably not a whole lot as we get there. The marketplace, just like it does if you are selling hamburgers or ketchup, for that matter, will police pricing, will police entry, will police availability. There will probably still be some need to have agencies, maybe mainly at the State level, to make sure that service availability is there, because there are parts of the country that are hard—

Mr. TAUZIN. As a matter of fact, there is competition everywhere. The consumers do have choice.

Mr. LAFFERTY. There is competition. Exactly.

Mr. TAUZIN. Give me your take on it as commissioners.

Mr. ROWE. Mr. Chairman, at the committee we tried to do two things. First, keep one eye focused on the present: How can we implement—

Mr. TAUZIN. Yes, obviously.

Mr. ROWE. [continuing] Congressional intent. At the same, we tried to keep the other eye looking down the road 20 years. We started a discussion actually this winter called "Future Public Policy Structures." We are inviting in two speakers at every one of our meetings. They present papers. The papers are going to be published. We have entered the first set of that. We had a couple of very thoughtful and visionary presentations by two economists looking down the road. I think what they would say is that some things go away. A lot of the retail focus we have now goes away; a lot of the command and control, the ability to actually tell Mr. Lafferty what he is going to do probably goes a way. We are actually fairly eager to get rid of that.

What remains is particularly universal service. I think that in some way will always be with us, but it is going to look different, and there will be new ways to get there. Consumer protection, as you have heard about, and if you think about other markets that

are more competitive, there is usually a pretty robust consumer protection entity involved making sure that everybody is playing by the rules, and that the customers have the confidence——

Mr. TAUZIN. You become more like an FTC, an enforcement agency——

Mr. ROWE. That is exactly what I see——

Mr. TAUZIN. [continuing] educating and watching against fraudulent, bad behavior, assuring that no dominant player is taking advantage of a market and the consumers. Don't you mutate into that on the State level, as we are going to have to mutate on the Federal level?

Mr. ROWE. That I think is going to be an important part of the function. I do think there will still be——

Mr. TAUZIN. In the meantime—I want to ask you quickly because I have to give everybody a chance. I will let you, I promise.

Mr. ROWE. I would like to jump onto something that Mr. Lafferty said, too, about new ways to do things. Citizens bought a territory in Montana, really in bad shape, rural, mountainous area. My primary regulatory responsibility is bringing the Citizens up to these communities, this mountainous, remote area, about once every 6 months for community meetings. What we are doing is really using an economic development/community development approach to moving forward industry investment in that community.

Mr. TAUZIN. It makes sense.

Mr. ROWE. And it is exciting. I think Citizens enjoys what they are doing with the community up there. I enjoy it a lot more than the Dave Rolka kind of a nightmare.

I think there is going to be a real need for people who are close to the local level to go out and do that kind of hands-on work. I think that kind of emphasis is going to continue to be there.

Mr. TAUZIN. Let me go to Mr. Rolka. Mr. Rolka, last year Mr. Dingell and I, and others, introduced a bill that would have given more power to the States to decide the long distance entries question. We would have allowed you to settle it completely intra-State, intra-LATA, for example. We are examining that again this year.

Our concept was that you were closest to the markets and to the consumers, could maybe make a better judgment as to whether or not there was competition and whether or not consumers would benefit from deciding those issues. Do you think that approach is good? You seemed to tell me that, even with the authority to do it, you found it very hard to get cooperation of all the players. Everybody's trying to protect their little domain.

Mr. ROLKA. Mr. Chairman, I think the question wasn't the cooperation of the parties. The parties were willing to cooperate, but the real issue there was that none of them were willing to negotiate a settlement, concede any of their rights——

Mr. TAUZIN. That they may not have to concede——

Mr. ROLKA. Right.

Mr. TAUZIN. [continuing] in a judgment by the commission?

Mr. ROLKA. They wanted somebody to spell out the actual answers to all the questions at least once——

Mr. TAUZIN. We are going through that up here. The first thing we found was that the 271 process was stymied by the fact that the Bell companies didn't want to do anything they weren't re-

quired to do. So they have been looking for somebody to tell them what the minimum was. Nobody told them.

Mr. ROLKA. Mr. Chairman, I would say that if all the States were as well-situated as New York, California, Pennsylvania in their ability to handle this question, I think that that will be a fair assessment of the process. However, on the taxicab ride over here I had a conversation with my colleague that I realized, as an individual commissioner in my State, there are 540 people that work in my regulatory agency and a significant number of them do work on telephones, and I have got lots of lawyers and engineers and analysts. But if I go visit some of my colleagues, I almost have to stay in a hotel to have a meeting with them because there aren't enough people, I mean, you talk about some of the other States; they have 20 people in the entire regulatory community; they just can't do it. It is that simple. Some of us could, and some of us couldn't.

Mr. TAUZIN. Some could; some couldn't.

One final thought and I will give it to Mr. Markey. We are going to probably have to reintroduce our slamming bill. As you know, the Court has stayed the FCC slamming rule. I understand they have been reintroduced in the Senate side, Mr. Markey. We will probably get our bill together here again.

Our bill contained a section that read as follows: "Nothing in this section of the regulations described shall preempt any State law that imposes requirements, regulation, damages, cost, penalties,"—et cetera—"that are less restrictive than those imposed under this section. In other words, we allowed you to do anything less restrictive you thought might work, and second, not inconsistent with those imposed in this section, and were enacted prior to the date of the enactment of the Telecommunications Competition and Consumer Protection Act. So either they had to be less restrictive or they had to be noninconsistent and passed before the act.

Do you have any problems with this preemption language? Yes, sir, Mr. Rowe?

Mr. ROWE. Mr. Chairman, with all respect, this is an area where I think the better solution for the customer would be a Federal floor with a State ceiling. We worked on a number of different bills that were introduced last session, and unfortunately, were not able to support the bill in its form for that reason. I think the list of States that actually had greater protections than what were provided for by the final bill that came out of the House side was probably like 10 or 11. So I think a Federal floor which States can exceed, and there is always the qualification of section 253 prohibition on barriers to entry that is a backstop against anything too terribly Draconian.

But, here again, I think consumers at the local level are looking for certainty and for protection. Typically, they will look first to their State commission. For example, in Montana, where we handled nearly 600 formal slamming complaints, the FCC handled about less than 100 from Montana, we can do a better job for those customers with the authority that our legislation has given us.

Mr. TAUZIN. You know the concern we have is that a company acting across many State boundaries is going to have to follow 50 different rules, and that is a real concern. But we will discuss that with you as we go.

Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman, and I thank you, Mr. Rolka, for making that point. I was going to try to raise it—that many of the States have 30 or fewer employees with issues that now span across State boundaries. So it obviously is very difficult. One of the issues—maybe, Mr. Rowe, I think you are in that situation in Montana—one of the questions that we have to ask is, given your limited staffing, how important is it for us to be careful in terms of anything we do at the FCC that limits their ability to get you the information, and for them to be able to do the things that would be very difficult you to be able to deal with, given your limited staffing.

Mr. ROWE. Mr. Chairman, Mr. Markey, that is an important consideration. Exclusive of commissioners, we have 32 staff members in Montana, and we are actually one of the States upfront on electric and gas restructuring. So we set up industry-level teams to do that work.

Mr. MARKEY. You are doing electric, gas, and telephone all in one commission?

Mr. ROWE. That is correct, and among the low-cost States, we are upfront on electric and gas restructuring. We do look to the FCC for analysis, for data collection, for that kind of support. We also look to our colleagues in the other States. In the 14 U.S. West States we have a regional oversight committee, and that group, in fact, has been following up on my suggestion for regional work on 271 issues.

Mr. Lafferty's point about duplication I think is a fair point. It is a legitimate one, and I think that the States and the FCC and industry should be able to work together to streamline how reporting occurs, and to avoid duplication. But it is very much the case that States to look to the FCC for various kinds of data collection. That is what they hopefully do.

Mr. MARKEY. Thank you, Mr. Rowe.

Mr. Lafferty, the FCC this week granted significant relief to mid-sized local phone companies. They relaxed accounting requirements. They streamlined RMAS reporting requirements. They eliminated part 69 waiver requirements. They eliminated separation requirements for long distance resale, and some other items.

Will these deregulatory efforts increase the likelihood that we will see some more telco versus telco competition or telco versus cable competition?

Mr. LAFFERTY. I think any time that the FCC, or the States for that matter, forbear or relieve companies, regardless of what part of the industry there are in, from competition, that that will allow resources to be spent on implementing competition outside of the service territories.

Mr. MARKEY. Do you think it will help a lot?

Mr. LAFFERTY. I think it can help. I applaud the FCC for taking this first step in that process, and we hope to work with them to take many more such as that.

Mr. MARKEY. We removed the cable telephone restrictions in 1996 to help companies like yours get into telco. We were told that it was a major restriction that impeded your ability to get into that business. Is your company in that business now?

Mr. LAFFERTY. Our company has several small cable operations out in the western States, in southern California, currently. Other mid-sized companies do have businesses in cable.

Mr. MARKEY. How many telephone customers does your company have and how many cable customers?

Mr. LAFFERTY. Well, we serve almost a million telephone customers, and I do not have with me the number of cable customers. I apologize.

Mr. MARKEY. Are you thinking about half a million or—

Mr. LAFFERTY. No, it would be less than that. It would be probably closer to 20,000 or 30,000.

Mr. MARKEY. Twenty-five thousand. Do you plan on ramping up to having a million telephone customers getting cable service? Are you going to compete in that market?

Mr. LAFFERTY. Speaking specifically for our company, our company, it is no secret, is looking to acquire other operations, and we are not restricting ourselves to looking at just telecommunications operations.

Mr. MARKEY. No, I am saying in the communities in which you have telephone operations you can't buy the local cable company. So I am saying, in those areas, are you going to compete with the local cable company? What is your company's plan after we have lifted the restriction?

Mr. LAFFERTY. Our company has not precluded anything from its set of opportunities.

Mr. MARKEY. Have you announced any?

Mr. LAFFERTY. We have not announced any cable operations, but we have not precluded that from the planning process.

Mr. MARKEY. Because, obviously, one of the great discoveries of this committee was, after years of testimony by USTA, that the restriction barring entry into cable had prevented them from building the synergy in individual communities. But we come back and we can't find anything but scant evidence that, after all those years of complaints, that telcos actually move into that industry.

Mr. LAFFERTY. Well, I apologize. Your questions I thought were directed specifically at our company.

Mr. MARKEY. Oh, they were, but what I am saying to you is that we are trying our—I am just giving you my frustration, that we heard great complaints about the restriction, and the promise that really by the year 2000, if we lifted the restriction, that telcos across the country would be rushing into the cable business.

Mr. LAFFERTY. Well, I believe that as the various aspects of the industry continue to converge, the telephone companies will move into the cable business.

Mr. MARKEY. You don't think the video and the voice converts enough for telephone companies to get into video? We were told in the early 1970's—actually late 1980's, early 1990's rather—for 10 years, before the committee we were told that if they lifted the restriction, they would get in.

Mr. LAFFERTY. I mean, the convergence is underway. Actually, UST just recently sent a request up to the Chairman of the FCC to begin a proceeding to look at the convergence of the industry. As it continues, the cable companies will move more into the tele-

phone service, and telephone companies, the traditional telephone companies——

Mr. MARKEY. And I know that AmeriTech and Bell South and you have made some movement in that direction, but it is just not—it doesn't make me feel good, now 3 years later, that it is such a limited movement on the part of the telephone industry into an area that we were promised in the testimony that they would go into.

Can I just ask one other clarifying question? When you say, no regulation of the Internet, you don't mean that we shouldn't pass laws on pornography or fraud or other areas——

Mr. LAFFERTY. Yes.

Mr. MARKEY. [continuing] like that, do you?

Mr. LAFFERTY. Yes, I was not referring to that. I was referring to access charges on the Internet, connection fees, things like that. But, certainly, as I mentioned, and as Mr. Rowe mentioned, I believe, in response to the chairman's question about the future role of regulators, I think one of the areas that regulators will continue to serve the public down the road, as the transition is completed, is consumer protection, and those sorts of things would fall in that category.

Mr. MARKEY. And what about set-top box regulation? Do you believe that that set-top box should be open? Do you think the regulation should guarantee equal access for all software, you know, industry competitors, to reach the consumers of the United States?

Mr. LAFFERTY. I think that, under the requirements in the act, the local telephone company networks are being opened and are being made available. And given that there are some very powerful players with access to most of the homes in the United States for cable, that that should be open also, so that companies that want to compete have that option also. So I think there is a role for the Federal Government there. I think there is a role for the Federal Government to establish the mechanisms to open those up, but I do think that as time passes, and as the industry converges, that the role of the Federal Government and the FCC, it will not be needed to manage that, because as the customers have more and more choice, then it won't be needed as much.

Mr. MARKEY. At the point at which that has happened, where it is actually open and there is complete access?

Mr. LAFFERTY. Correct.

Mr. MARKEY. Yes, I agree with that.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Markey. The vice chairman of the committee, Mr. Oxley, for a round of questions.

Mr. OXLEY. Thank you, Mr. Chairman.

Just to follow up on what my friend from Massachusetts had raised in terms of the telcos getting into cable, I was recently home and visited a small town telephone company which is Wapakoneta, Ohio, that now has full and robust cable competition in that community against the incumbent cable operator, and is now expanding into other communities in that area. They provide 70 channels at about \$26 a month with state-of-the-art equipment. It is quite impressive.

As Mr. Markey said also, Ameritech is providing cable competition in Columbus and some other communities in Ohio. So I think it is starting to happen. Indeed, as Mr. Lafferty said, as convergence takes place, we will fully expect that that will continue to be the case.

In the case of cable, I know in Long Island the incumbent cable company there is already beginning to provide telco service, and you are starting to see more and more of that. I think we are really perhaps a bit impatient, but, indeed, I think the fact is that, with the technology and the changing marketplace and consumer demand, clearly, we can look forward to more, and not less, of that.

I want to ask Mr. Rowe, in your testimony you talk about the National Regulatory Research Institute at Ohio State, and that this group works closely with NARUC on a number of telecommunications policy issues. Can you tell us a little bit more about how that works and what kind of services they provide?

Mr. ROWE. Sure. NARUC established the National Regulatory Research Institute about 26 years ago to support our efforts to provide high-quality service both to the industry and to the customers. They do research in all of the utility areas. I am on the board of directors. In the telecommunications area, they have a very active, long-term research agenda, as well as working on particular short-term projects.

For example, the question that Chairman Tauzin asked about future regulatory public policy regimes is at the top of their research agenda right now. So they are a key part of the work that NARUC does to add value to the work of our members.

Mr. OXLEY. So are they essentially a think tank for NARUC?

Mr. ROWE. That is how we like to think of them, yes.

Mr. OXLEY. Now they are not exclusively, though, with NARUC? Or are they?

Mr. ROWE. NARUC is its primary funding source. Most of their work, special projects, the long-term work is for the State members. They do also, however, contract to do projects, for example, for State legislatures on electric restructuring; I think things like that.

Mr. OXLEY. Thank you.

Ms. Dixon, I am sorry I wasn't here for your testimony, but I was noticing your summary of major points, and you say, the second point, "The role of States and the FCC in the implementation of the Telecomm Act must be more clearly defined. The FCC, with cooperation of State commissions, should develop a master plan for the purpose of defining the roles of each entity."

So are you saying to the Congress we should, in fact, make those definitions? Or could that be done through joint cooperation between the FCC and the State regulatory bodies?

Ms. DIXON. In the haste of putting the summary together—we were kind of called at the last minute—I think my staff kind of converged all the things together. The first thing was there should be a master plan. There was no master plan when we actually implemented the act. We are not sure exactly, as we unfold, what the intent was and what you all were thinking. We realize that the roles were not clearly defined. I think that is why we ended up in court a couple of times.

My State commission is a constitutional body. We are elected. If you want to challenge us, you take us to court. The problem is we send things to the FCC, and they just deny them, and that is a bit of a problem. We are closest to the people at the State level. We feel economically, and otherwise, we kind of know a little bit more about what they need. That is what we were talking about. We want to work hand in hand with the FCC. We didn't think anybody should kind of be over and under anybody else.

Mr. OXLEY. But do you want to put us in the position of being the referee or—

Ms. DIXON. No, I want you to develop a master plan. I want all of the entities to come together at a table and develop a plan, so we can know what the United States will be like in 2010, 2020, as we unfold all this new technology, because much more is coming. If you think we can't manage what we have now, and every day it is being developed—we don't always know what is coming; sometimes we know what is coming. But we don't have the kind of relation with the FCC to guard against and protect the public, get out there and educate it. We just pointed out that some commissions are small. Mr. Tauzin, we are one of the smallest commissions in the United States, and we have one of the biggest jobs to do. And, yes, we do—

Mr. TAUZIN. You produced Governors already. You have got a pretty good record.

Ms. DIXON. Well, we still have a big job, but we do electric; we do water; we do tel. We do everything, the same commission. We do it all.

Mr. MARKEY. Which is the toughest?

Ms. DIXON. Right now, electric, and we haven't even gotten there yet. But just based on telecomm, we know what it is going to be like.

Mr. OXLEY. Well, what—

Ms. DIXON. Okay, I'm sorry.

Mr. OXLEY. No, I would just ask if the other commissioners would agree with her statement, particularly as it related to telco and trying to further define the roles of the State commission vis-a-vis the FCC. And if, indeed, you do agree, we ought to be doing that. If we didn't do it in the act, should we redo it in the act or should it be done in a cooperative fashion, as she pointed out?

Mr. ROLKA. Mr. Representative, I am Dave Rolka from Pennsylvania. I serve on one of these formal joint boards with the FCC. I would respectfully suggest that there is a joint role, that some of these problems should be worked out together. Perhaps the joint board itself is not the most productive way to do that. As Commissioner Rowe has suggested, we have sponsored the idea of a conference, a joint conference between regulators and legislators, to try to clarify some of those things. I think we do need a forum, but if the forum were as formalistic as the joint board on which I serve, I am not real optimistic that we would actually get where we needed to go.

Mr. OXLEY. Thank you. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Oxley. The gentleman from New York, Mr. Engel, for a round of questions.

Mr. ENGEL. Thank you, Mr. Chairman.

Mr. Rolka, you had mentioned—I was interested in your testimony—about the FCC mandates distributing new phone numbers in blocks of 10,000, talking about 1,000. I get a lot of complaints from constituents and others about the whole issue, when an area code needs change, whether there ought to be an overlay of area codes or split geographical area. I was wondering if you, or any of the other commissioners, had thoughts on that. It is a minor thing. It is very annoying to a lot of people. I just would like to hear your views on it.

Mr. ROLKA. About the only thing I would disagree with what you said, sir, is it is not a minor thing.

The decision to affect our constituents, your constituents, with a new code, regardless of whether it is an overlay or a split or a boundary revision, is a major economic decision and it has far-reaching consequences on a lot of the economy, a lot of business entities in particular, the alarms industries—just the list goes on and on when you try to figure out the details of actually implementing one of those things.

The way it is structured right now, and the way the Telecomm Act specifies, is that all the power and authority with respect to those decisions is vested with the FCC. They get to make the decision. The States have the dubious distinction of deciding amongst the lesser of several evils, and the only power that is generically delegated to us is to do one of the three things that I just suggested: Move the boundary, split, or overlay. Once we have made that distinction, then we gain a little bit of authority with respect to the implementation, about how the implementation is carried out, but not much more than that.

What I have suggested is that that authority be brought down to a little lower level, and that we be vested with some more authority, certainly it is necessary that FCC have overriding guidelines on how we operate, because you don't want to put the numbering system into pandemonium, but we do need the authority to do things like 1,000-number pooling, the breakdown—

Mr. ENGEL. I am sorry, can you say that—

Mr. ROLKA. One-thousand-number pooling. Right now the telephone numbers are given out at the rate of 10,000 at a time.

Mr. ENGEL. And many go to waste?

Mr. ROLKA. Very many go to waste. I made the example earlier in my testimony, in response to a question, that in Pittsburgh we gave out—Pittsburgh, western Pennsylvania—in 1 day we gave out 130 of those 10,000 blocks, 1.3 million numbers, for an area that has a third that many people in it. And already everybody pretty much has a telephone. We have 97 percent saturation. We need to be able to handle those numbers a little bit more efficiently, and we need to be able to do it at the local level.

Mr. ENGEL. And you right now cannot do that, because the FCC must approve?

Mr. ROLKA. Correct.

Mr. ENGEL. I am wondering if any of the other commissioners would comment on their views about the area codes, in terms of an overlay or geographic split, or what is least disruptive?

Mr. GILLIS. We have gone with a geographical split. In the State of Washington we have an urbanized region in the Seattle metro-

politan area. I think we were one of the early States to make that split. It was a difficult venture for us, partly because of the fact that it imposes a fair burden, particularly on small businesses that have to change their letterhead and change their numbers. There is a balancing act of making sure that there are an adequate amount of numbers available, so that the competitive provisions of the act can be fulfilled. We don't want to shortchange the amount of numbers that are available, but at the same time I generally agree with the need to more efficiently manage.

Mr. ENGEL. I know the bell has rung, Mr. Chairman, but I would just ask one more question.

Mr. TAUZIN. Yes.

Mr. ENGEL. Why would there be a need, if the decision is made to go to 10 numbers, or an overlay, for someone with the same area code to have to dial 10 numbers, not just 7?

Ms. DIXON. We went with the geographic split in Louisiana. Quite frankly, when we did hearings, people did not want to dial 10-digit numbers. They were very up in arms. Now it may not make much sense, but they didn't want it.

Mr. ENGEL. No, I know that.

Ms. DIXON. And I don't know what the problem is. We tried to tell them, you are dialing 10 digits anyway if you are dialing a long distance number. They didn't care. Most of the impact came from AARP and the seniors. I don't know; I think it is a memory thing. They don't like the thought of having to dial all of that.

I know you are punching buttons now, and you are not doing the rotary. They don't like it. They don't like change. It is a hell of an effort just to get them to a computer.

Mr. ENGEL. But why do 10 digits if it is the same—this is what I am trying to understand—why do 10 digits—

Ms. DIXON. Because it is more to remember.

Mr. ENGEL. No, I understand that. I am asking the opposite question.

Ms. DIXON. Okay.

Mr. ENGEL. In other words, if you are calling someone across the street that has the same area code as yours, even though there is now a new area code in the system, cannot a system be devised where you would still dial seven digits if you are calling the same area code?

Ms. DIXON. Oh, you are asking a technical question. The gentleman at the end might be able to help you.

We don't work for telephone companies. We regulate them.

Mr. ROLKA. The answer is that you reuse the numbers. You reuse the basic telephone number when you do an overlay, and you need the 10 digits so you can distinguish the fact that I have "7-6-1" and four other numbers, in fact, but use "7-6-1" again when you lay another area code over the top of it. That is why you need 10. Otherwise, you will have two people with my number.

Ms. DIXON. The same number, and that doesn't make sense.

But, you know, that is a good question. You ought to ask industry to try to manipulate that and work on that a little bit.

Mr. ROLKA. If we could do less than 10,000 numbers, you could preserve the life of seven digits.

Ms. DIXON. Absolutely.

Mr. ENGEL. Right. Let my colleague—maybe he is asking it clearer than I am asking it. He understands what I am trying to say.

Mr. TAUZIN. If you will yield quick, because I want to give—have you got it.

Mr. ENGEL. Go ahead. I yield back my time.

Mr. TAUZIN. I remember the seniors told me why they didn't like it, but I can't remember.

Any other member with a question on this side? Mr. Vito Fossella of New York.

Mr. FOSSELLA. Just a quick question—thank you, Mr. Chairman—for Mr. Lafferty. Your testimony indicates that RMAS reports that you file with the FCC are duplicative with reports you provide for the States. Do you have any estimate of how much duplication of paperwork exists between the Federal and State level, and how much this costs your company? Second, do you have estimates of cost of regulations on your company, what amounts specifically to customers ultimately?

Mr. LAFFERTY. Yes and no. Our company—

Mr. FOSSELLA. Okay, thank you.

Mr. LAFFERTY. We have released the study—and, actually, I believe that it is being made available to the members of this committee—that shows that our company spends over \$23 per customer to comply with State and Federal regulations throughout all the territories and the States that we serve. We serve in 13 States, as well as, of course, regulated by the FCC.

We have broken that down in total State and total Federal, but we have not broken it down to the specific State level. It is about \$10 million on the Federal side in total that we spend and about \$12 or \$13 million on the State side in total that we spend, but I do not have available the specifics for each State for that amount.

Now we have identified several areas of overlap of State and Federal regulation, as I pointed out in my written testimony and my comments earlier today. As far as the cost associated with just the overlap, we have not made that determination yet.

But just one example is the Service Quality Reports alone at the FCC will cost us over a million dollars in the next 12 months to comply and to file and to prepare. That is based on the OMB estimates on time, not on some internal estimate. We provide basically the same information; the States have the authority to regulate the exact same thing.

Mr. FOSSELLA. Thank you, Mr. Chairman.

Mr. TAUZIN. Let me introduce to you Paul Gillmor, the vice chairman of our full committee. Paul is not going to ask a question right now, but I want to introduce him to you. He is chairing the task force on this side. So if you will continue to communicate your thoughts and ideas on how we build this partnership and transition into the future, Mr. Gillmor will be the point man for our committee on this side; of course, Mr. Markey, the ranking member on the Democratic side.

Again, we thank you for your—

Ms. DIXON. One quick thing?

Mr. TAUZIN. Irma, yes, please.

Ms. DIXON. I want you, if you don't mind, the last question of the gentleman—Mr. Fossella I think it is—he asked, what was the cost

of imposing on the companies regulation as it relates to handling all the requirements of the States and the Feds.

Mr. TAUZIN. Yes.

Ms. DIXON. Let me point out, I would like you to investigate what the cost is on the States to actually handle the requirements of the Feds, actually implementing and doing what you are asking us to do, staff and cost. We just ask you to look at it, because we are doing the best we can.

And thank you for having us today.

Mr. TAUZIN. That would be good, too.

Thank you very much. The hearing stands adjourned.

[Whereupon, at 3:42 p.m., the subcommittee was adjourned.]