

Committee on Commerce, Science, and Transportation

Hearing on Promoting Local Telecommunication Competition: The Means to Greater Broadband Deployment

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Testimony of Senator Mary Jo White
21st District, Pennsylvania

Several years ago when we were looking for a catchy slogan for Pennsylvania, some wag suggested ‘Two Big Cities with a Lot of Trees in Between’. It fits our image. Everyone knows Pittsburgh and Philadelphia. What most people do not know is that Pennsylvania has beautiful forests and farmlands and the largest rural population of any state in the country. My name is Senator Mary Jo White and I represent a quarter million of those citizens in the Pennsylvania Senate.

Tools such as the Internet offer rural areas and small cities and towns unprecedented opportunity to diminish the importance of distance and to link businesses and potential customers. Telecommuting, access to data, and improved emergency response systems can transform rural Pennsylvania. Instead, many of us have the telecommunications infrastructure and services of a third world country. I live in the former GTE service area, now Verizon North, where we do not have reliable telephone service much less affordable access to broadband technology.¹

This is particularly frustrating because Pennsylvania has been a leader in promoting utility competition. We were one of the early states to successfully deregulate electricity and natural gas. In 1993, well in advance of the federal telecommunications act, the Pennsylvania General Assembly enacted the ‘‘Alternative Form of Regulation of Telecommunications Services’’, also known as Chapter 30. The expressed statutory intention of the act was to foster the ‘‘accelerated deployment of a universally available state-of-the-art, interactive public-switched broadband telecommunications network in rural, suburban and urban areas...’’ of the Commonwealth. ILEC’s were offered an alternative form of regulation if they committed to construction of a broadband network. Unfortunately, the legislature let the incumbents set the

¹ When I called my Harrisburg office to get information for this testimony I received a recorded message that ‘‘all circuits are busy, try your call later’’. This is not an uncommon occurrence. According to the PUC’s ‘‘2000 Utility Consumer Activities Report and Evaluation’’ issued in October, 2001, complaints about poor service and delivery of telephone service escalated to unprecedented levels for the third consecutive year in a row—Verizon saw a 61% jump and Verizon North (formerly GTE) increased 17% over the previous year. Verizon North historically has had the highest number of verified consumer complaints.

time line. All of this was to have been accomplished by 2015; we neglected to set interim benchmarks. Competitive pressures have accelerated progress in the profitable urban and suburban areas, while rural improvements are proceeding at a snail's pace. Chapter 30 did not specify a technology but a performance standard. The Chairman of the Public Utility Commission has recently instituted a proceeding to determine whether Verizon has repudiated its obligations by substituting DSL.²

Unhappy with the availability and price of high-speed information services across the Commonwealth, three of us in the senate, two rural Republicans and an urban Democrat, introduced a package of bills designed to jump start local competition. One of the bills called for structural separation.

In March 1998 the PUC held a hearing on the state of local competition. Their findings were that ILEC's controlled 97% of the lines within their service territory. There were complaints by would be competitors that they were being denied access to lines and services and there was a logjam of cases. Virtually every issue was being appealed at the Commission or in the courts. Competition appeared to have stalled. Consumers who switched to competitive services experienced service interruptions, billing nightmares, and some even found their business numbers deleted from telephone directories. The Commissioners attempted a Global Settlement but after several months, the process collapsed. They then began a formal Global Proceeding. There were six days of en banc testimony, generating 32 bound volumes (almost 10,000 pages) of testimony, cross-examination and exhibits. The Global Opinion and Order issued in September 1999 resolved 19 proceedings before the Commission and generated 12 state and federal court proceedings.

Among other things, the PUC found that Verizon had a virtual monopoly in the local exchange market, and had abused its market power by providing competitors with less than comparable access to its network or engaged in other discriminatory conduct that deterred customers from switching. As a remedy, it ordered structural separation concluding "for purposes of this docket...structural separation is the most efficient tool to ensure competition where a large incumbent monopoly controls the market." (Global Order, p. 37)

I can't possibly describe the tortured path of this ruling in the time allotted. It was, of course, appealed to the courts. The Commonwealth Court and state Supreme Court affirmed the Commission's power to issue such an order. Nevertheless, after a massive advertising

² Chapter 30 defines broadband as, "A Communication channel using any technology and having a bandwidth equal to or greater than 1.544 megabits per second." 55 Pa.CS.3002. The definition makes no distinction between upstream and downstream service; therefore the bandwidth requirement must be met in both directions. It should be noted that 1.544Mbps is the minimum bandwidth that may be considered "broadband" under Chapter 30, and the statute states explicitly that the Commission may require a greater bandwidth. It is clear from the record that Verizon committed to broadband capability at a bandwidth of 45 Mbps upstream and downstream in its network modernization plan approved by the Commission.

campaign and a change in commission membership, the commission reversed itself and opted instead for “functional separation”, a code of conduct, and fines for non-compliance. This is not a particularly effective method of changing behavior when a company regards fines as a cost of doing business.³

I remain convinced that structural separation makes sense and is the only way to assure competitors non-discriminatory access to customers’ homes and businesses. It is too much to expect that companies that learned monopoly at Ma Bell’s knee will cooperate with their competitors to benefit consumers. My experience has convinced me that this will not happen on its own. Measures such as Tauzin-Dingell are disingenuous. This has not been about calling Granny. This has been and continues to be a battle to break the monopoly stranglehold on high-speed data access.

³ In 2001 Verizon paid CLECs remedies payments amounting to \$10,940,000. Payments to the Commission for that same time period amounted to \$951,000. The PUC estimates that resources devoted to metrics and code of conduct monitoring for Verizon and Verizon North include \$711,675 for one time expenses (software, training, etc.) and \$555,197 estimated annual monitoring expenses.