

**BEFORE THE PENNSYLVANIA HOUSE
CONSUMER AFFAIRS COMMITTEE**

Representative Joseph Preston, Jr., Chairman

Testimony of

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**Regarding
Telecommunications**

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Chairman Preston and Members of the House Consumer Affairs Committee

My name is Sonny Popowsky. I have served as the Consumer Advocate of Pennsylvania since 1990, and I have worked at the Office of Consumer Advocate since 1979. Thank you for inviting me to testify here today regarding telecommunications in Pennsylvania. Although this hearing is intended to address both the telecommunications and cable industries, I will confine my remarks to telecommunications issues. That is because my Office has no jurisdiction to represent cable service customers. As you will undoubtedly learn over the course of today's hearing, however, the lines between telecommunications companies and cable companies are becoming increasingly blurred.

The last time I testified before this Committee on telecommunications issues was during the debate over House Bill 30. That Bill became law as Act 183 of 2004, and replaced the prior version of Chapter 30 of the Public Utility Code that had governed the rates and services of Pennsylvania telephone companies since 1993. As some members of this Committee will recall, I opposed the initial version of House Bill 30 because I believed that it would produce substantial rate increases for customers, while not doing enough to advance the deployment of broadband services or to provide other benefits to Pennsylvania consumers. After lengthy debates, negotiations and amendments to House Bill 30, I supported the final version of the legislation that became law. In my view, the final bill included a number of important rate protections, particularly for basic residential service customers. The final law also contained several new requirements and programs that I thought would enhance the ability of all Pennsylvanians to benefit from technological advances in a more timely manner.

I am pleased to report to this Committee today on how well I think the promises of Act 183 have been fulfilled.

First, with respect to broadband deployment, Act 183 provided local exchange companies with the option of accelerating the universal deployment of broadband service from 2015 to 2008, in exchange for the ability to increase non-competitive service rates each year at the rate of inflation with no productivity offset. Interestingly, each of the nearly three dozen small incumbent local exchange companies in Pennsylvania took this option. This means that, by the end of 2008, all customers in the service territories of our smallest and most rural telephone companies will have the ability to purchase at least some form of high-speed Internet service. This will typically be digital subscriber line (DSL) service at a speed of at least 1.544 megabits per second. The only companies that did not accept the 2008 deployment option were Verizon PA (formerly Bell Atlantic), Verizon North (formerly GTE North), Embarq (formerly Sprint) and Windstream (formerly Alltel). The two Verizon Companies continued with their prior Chapter 30 commitment to complete deployment by 2015, while Embarq and Windstream selected the 2013 deployment option.

Before moving on to those larger companies, I would note one other significant development with at least a few of the smaller companies – that is, they have not fully taken advantage of the inflation-based basic rate increases that they would be permitted to take under their Commission-approved Chapter 30 rate plans. In some of these companies' annual rate filings, it was acknowledged that it was neither in the companies' nor in their customers' best interest to raise rates above their current levels. Some of these smaller local exchange companies stated that their reluctance to raise rates reflected competitive concerns that, if their

local landline rates become too high, customers may switch entirely to alternative forms of telecommunications, such as cell phones. While I am not convinced that this type of competitive pressure is a reality in all locations or for all consumers – and I believe that, for most people, cell phone service is a supplement to, not a substitute for, basic landline service -- it is good to see at least some of our companies thinking twice before they raise rates to the maximum level allowed by law. In addition, in all cases, the smaller rural companies have continued to honor the \$18 local basic service residential rate ceiling that was agreed to by those companies in an earlier settlement before the PUC that was essentially codified in the final version of House Bill 30.

In the case of Sprint and Alltel, now Embarq and Windstream, as well as Commonwealth Telephone and the five former Citizens/Frontier Telephone Companies (Breezewood, Canton, Lakewood, Oswayo River, and Pennsylvania), we have also seen some benefits as a result of settlements that were entered into in merger and restructuring cases. At the time of its spin-off from Sprint, for example, Embarq agreed to cap its basic residential and business rates through June 30, 2009, and to expand its broadband availability to 80% of its customers by the end of 2007 and 85% of its customers by the end of 2010. Similarly, in its spin-off from Alltel, Windstream agreed to cap its basic residential and business rates through June 1, 2009, and to accelerate its broadband availability commitment to 84% of its customers by December 31, 2010. More recently, when Citizens Communications Company acquired Commonwealth Telephone Company, those companies all agreed to reduce their maximum rate increases in 2007, 2008, and 2009, maintain the \$18.00 rate cap throughout that period, and expand the availability of a higher speed (3 megabits per second) broadband service to at least 88,000 lines.

Verizon PA and Verizon North raised their rates by a combined total of approximately \$20 million in both 2006 and 2007 pursuant to the rate formula approved for those companies under Act 183, though the Commission did not agree with the Companies' calculation of their rate increase for 2006 and recently reduced that increase by approximately 20%. These rate increases are higher than Verizon would have received under the rate formulas that were in effect prior to Act 183. Under the prior rate formula, for example, Verizon Pennsylvania's rates would not have increased at all in 2006. I would note, however, that even with these recent rate increases, the basic residential service rates charged by the Verizon companies are still below the \$18 rate ceiling that was implemented by the PUC for the non-Verizon companies prior to the enactment of Act 183.

I would also note, however, that, in contrast to the cases involving Sprint, Alltel, Commonwealth and Citizens that I referenced above, the PUC Order approving the merger of Verizon with its former competitor MCI included no Pennsylvania-specific conditions that would produce benefits for Pennsylvania consumers. My Office appealed that decision to the Commonwealth Court because we believed that the Commission Order did not comply with Pennsylvania appellate law holding that a merger or acquisition of a Pennsylvania public utility cannot be approved unless it provides substantial affirmative benefits to the Pennsylvania public. The Commonwealth Court, in a 6-1 decision authored by Judge Pellegrini, agreed with my Office's position and reversed the Commission's Order. The matter was remanded to the Commission with directions either to reject the merger or to impose conditions that would meet the standards for approval under Pennsylvania law. Both Verizon and the PUC have now petitioned the Pennsylvania Supreme Court to allow an appeal of the Commonwealth Court

Order. My hope, however, is that the case will ultimately go back to the Commission and that conditions, such as reduced rate increases or more accelerated broadband deployment, will be imposed so that Pennsylvania consumers will in fact see some benefit from the merger as they have enjoyed in the other cases that I mentioned above. I would note in this regard that, in order to win Federal Communications Commission approval of their recent merger, AT&T and BellSouth agreed to make broadband service available to 100% of the customers throughout their 22-state service territory by the end of 2007. The definition of broadband in the AT&T/BellSouth agreement (200 kilobits per second) is lower than the requirements of Act 183 (1.544 megabits per second), and up to 15% of the AT&T/BellSouth commitment may be met through wireless and satellite, rather than wireline technologies. But the fact that AT&T and BellSouth agreed to such a commitment in order to gain approval of their merger suggests that Pennsylvania may wish to obtain a more rapid broadband commitment from Verizon and MCI as a way of sharing some of the benefits of that merger with the Pennsylvania public.

Speaking of MCI, some members of this Committee will recall that one of the leading opponents of Verizon during the debates on House Bill 30 was MCI – which now, of course, is part of Verizon. Similarly, Verizon’s other major opponent was AT&T, which remains AT&T in name only, but is actually now a part of another former Bell Company, SBC (and, as noted above, is merging with yet another former Bell Company, BellSouth.) The kind of competition between and among local and long distance telephone companies that was envisioned at the time our state laws and the federal Telecommunications Act of 1996 were passed is now effectively over. Instead of competing with each other, these companies have either merged or decided to divide the United States markets among themselves as in the case of

the surviving Verizon/MCI and SBC/ BellSouth/AT&T. The critical question with respect to competition is whether the failed competitive model of the 1996 Federal Telecommunications Act will be replaced by more vigorous competition among different types of communications entities, such as the telephone and cable companies that are appearing before your Committee today. It is certainly my hope that we will soon see real competition for all types of communications services among landline telephone companies, wireless companies, cable companies and voice over internet providers. My concern though is that much of that competition might only occur for so-called “high end” users. That is, for example, customers who wish to purchase the “triple play” of voice, video and high speed Internet service as part of a single package. What about customers who still just want “plain old telephone service” or perhaps just basic local and long distance service with just a few, rather than a lot of, bells and whistles? It is those customers who are still protected, and I believe must continue to remain protected, under Act 183 and the other provisions of the Public Utility Code. We must not lose sight of the fact that basic telephone service – the ability to dial 911 in an emergency, the ability to stay in contact with local businesses, family and friends – is not a luxury, but a necessity of modern life. In my view, universal service, that is, the availability and affordability of basic telephone service to every Pennsylvanian who desires to have such service, must remain the paramount goal of Pennsylvania regulatory policy.

It is for this reason that, at the time of the debates on House Bill 30 in 2003 and 2004, I devoted so much of my effort to the issue of Lifeline service. The Lifeline discount that was addressed in Act 183 is funded by the federal Universal Service Fund which is in turn funded by a charge on the interstate portion of all telephone bills. Lifeline permits qualified low

income customers to avoid paying the federal subscriber line charge of up to \$6.50 per month as well as \$1.75 of the local telephone company's basic monthly charge.

Act 183 made two changes in the Pennsylvania Lifeline program. First, it eliminated restrictions on the ability of customers to subscribe to optional services, as long as those customers pay the full tariffed rate for such services. Second, it required the telephone companies to work with the Department of Public Welfare to notify all qualifying low income consumers of the availability of Lifeline to help those customers pay for their monthly service. According to the statistics provided by the Federal Communications Commission, the number of Lifeline subscribers in Pennsylvania grew from 124,589 in 2003 to 160,408 in 2005. This is an important improvement, but still represents only a small percentage of Pennsylvania households who qualify for this benefit. In Ohio, for example, there were 313,450 Lifeline subscribers in 2005, while in New York, the number was 427,168. Because this program is funded from the federal Universal Service Fund that all Pennsylvania consumers pay into, we should do everything within our power to ensure that the maximum number of Pennsylvania consumers obtain the benefit of that program. I look forward to continuing to work with the telephone companies, the Public Utility Commission, the Pennsylvania Utility Law Project, and the Department of Public Welfare to expand participation in this vital program.

A second program arising from Act 183 that our Office seeks to promote is the Bona Fide Retail Request (BFRR) program in which individuals in communities that are not yet receiving broadband service can get together and request such service from their local telephone company. This program is available in the service territories of the larger telephone companies – Verizon, Embarq, and Windstream – that have deferred completion of their broadband

deployment plans until 2013 or 2015. With the BFRR program, if enough members of the community request such service – either 50 customer access lines or 25% of the access lines in the community, whichever is less -- they have a means of moving to the “head of the line” and receiving that service sooner. It is my understanding that 53 communities have met the requirements for a BFRR request so far and either have obtained or are in the process of obtaining high speed internet service. I also understand, however, that there are many hundreds of other individual consumers who have requested broadband service but who have not yet met the statutory criteria for service in their communities.

I believe that the BFRR program is an excellent idea, with great potential to benefit consumers, but I also think it is a daunting process for many consumers. My Office has recently participated in meetings with the Commission, the telephone companies, and the Department of Community and Economic Development in order to find ways to promote and educate consumers about this program. We have also worked with individual consumers who have contacted our Office seeking assistance. We hope to assist consumers in meeting the requirements of the BFRR process, just as we have helped many consumers over the years in obtaining toll-free calling, or extended area service, in their communities. If the members of this Committee are aware of any of your constituents who are seeking to become part of the BFRR program and who need assistance, please ask them to contact us. Our toll-free number is 800-684-6560.

Three other programs that arose from Act 183 are the Broadband Outreach and Aggregation Fund (BOAF), the Education Technology Fund (E-Fund), and the Business Attraction or Retention Program (BARP), all of which were designed to enhance the ability of

Pennsylvania consumers, businesses, students, and educators to obtain the benefits of advanced telecommunications services. My Office has not been directly involved in the implementation of those programs, but I have reviewed the testimony of a hearing on these programs held last month by the Senate Communications and Technology Committee, and there was substantial support presented regarding the benefits of those programs throughout Pennsylvania.

In sum, I would conclude that the results of Act 183 have been about what were anticipated. Some rates have gone up – particularly for the largest Pennsylvania telephone company, Verizon, but all companies’ basic residential rates have remained at or below the previously established \$18 ceiling. In addition, there have been a number of important advances with respect to deployment of modern broadband services and other benefits to Pennsylvania consumers. Competition between and among local and long distance telephone companies has declined, but competition among wholly different types of telecommunications providers has begun to expand.

I would urge this Committee to continue to hold hearings like this one, and to monitor carefully the progress of our telecommunications policies in Pennsylvania. The economic and social well-being of our residents, businesses, and the Commonwealth as a whole are all vitally tied to the success of those policies. Thank you again for inviting me to participate in this hearing. I would be happy to answer any questions you may have at this time.

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