

**FINAL REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**The Effects Of The
Changes In The
Telecommunications Industry
On The Citizens And
Businesses In The
Commonwealth**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



House Document No. 24

**COMMONWEALTH OF VIRGINIA
RICHMOND
1986**

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INTRODUCTION

In 1982, the General Assembly, realizing that the state government had a role to play in the development of the changing telecommunications industry to ensure that the high quality and availability telephone services were maintained for the citizens and businesses of the Commonwealth, established a joint subcommittee to study the changes and to make recommendations to it. The industry at that time was beginning to shift from a traditionally regulated monopolistic structure to an increasingly competitive market. Because of the complexity of the issues and the continuous changes taking place, the study which was established pursuant to House Joint Resolution No. 84 of 1982 was continued in 1983 by House Joint Resolution No. 63, in 1984 by House Joint Resolution No. 53, and in 1985, for its last year of study, by House Joint Resolution No. 240. House Document No. 30 of the 1984 General Assembly summarizes the first two years of the study.

HOUSE JOINT RESOLUTION NO. 240

Continuing the joint subcommittee of the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor studying the effects of diverse changes in the telecommunications industry upon the citizens and businesses of the Commonwealth.

WHEREAS, House Joint Resolution No. 84 of the 1982 General Assembly established a joint subcommittee to study the effects of the changes in the telecommunications industry on the citizens and businesses of the Commonwealth; and

WHEREAS, legislation allowing competition among long distance telephone carriers for interexchange service and providing for competition within local market areas after January 1, 1986, was recommended by the joint subcommittee and passed by the 1984 General Assembly; and

WHEREAS, many diverse and complex changes have resulted from this legislation and continue to be made at the national level in the telecommunications area; and

WHEREAS, although the joint subcommittee has worked diligently and has made progress in its study, the changes that are occurring at both the state and federal levels make it necessary to continue this study so that the joint subcommittee can continue to monitor the changes to ensure that the citizens and businesses of the Commonwealth have efficient telephone service; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the joint subcommittee of the House Committee on Corporations, Insurance and Banking and the Senate Committee on Commerce and Labor studying the effects of the diverse changes in the telecommunications industry upon the citizens and businesses of the Commonwealth is hereby continued. The present members of the joint subcommittee shall continue to serve, and any vacancies in the membership shall be filled by the Speaker of the House in the case of the House members and by the Senate Committee on Privileges and Elections in the case of Senate members; and, be it

RESOLVED FURTHER, That this study should not continue past the 1986 Session of the General Assembly.

The joint subcommittee shall conclude its work and submit any recommendations it deems appropriate to the 1986 Session of the General Assembly.

The costs of this study, including direct and indirect costs, are estimated to be \$16,410.

Delegate Marian Van Landingham of Alexandria served as Chairperson of the joint subcommittee. Other members of the House of Delegates appointed to serve were Lewis W. Parker, Jr., of South Hill, Richard M. Bagley of Hampton, Gladys B. Keating of Franconia, and Frank D. Hargrove of Glen Allen.

Senator Clive L. DuVal, 2d of McLean served as Vice-Chairperson of the joint subcommittee. Other Senators appointed to serve were Peter K. Babalas of Norfolk and Virgil H. Goode, Jr., of Rocky Mount.

C. William Cramme', III, Senior Attorney and Terry Mapp Barrett, Research Associate, of the Virginia Division of Legislative Services served as legal and research staff for the subcommittee. Ann Howard and Barbara Hanback of the House Clerk's Office provided the administrative and clerical staff assistance.

WORK OF THE SUBCOMMITTEE

During the final two years of the study, the joint subcommittee met several times to discuss and hear testimony on the changes taking place in the telecommunications industry. In 1984, meetings were held on April 19, July 8 and December 6, and, in 1985, on January 7, January 15, June 7, and December 4.

Throughout the course of the study the joint subcommittee heard a large amount of oral testimony and received position papers from the following organizations: the State Corporation Commission, the Department of Telecommunications, the Department of Public Service Taxation, the Attorney General's Office, Chesapeake and Potomac Telephone Company, Continental Telephone, the Virginia Telephone Association (formerly the Virginia Independent Telephone Association), the Virginia Association of Realtors, Quality Communications, Southern Telephone Company of Virginia, Shenandoah Telephone Company, United Inter-Mountain Company, the Roanoke Botetourt Telephone Company, American Telephone and Telegraph, MCI, GTE Sprint, Bell Atlantic Mobile Systems, Bell Atlantic Management Services, Inc., the Virginia Citizens Consumer Council, the American Association of Retired Persons, and two communications consulting firms: Carruthers, Deutsch, Garrison and Williams, Inc., and Cresap, McCormick and Paget.

The 1984 General Assembly passed the following four pieces of legislation, copies of which (as they appear in the 1984 Acts of Assembly) are attached to this report as Appendix 1, which greatly affected the telecommunications industry in Virginia.

House Bill No. 189 allowed more than one radio common carrier to be certificated to provide business in a locality if the State Corporation Commission determined that the competition was justified by public interest. It also gave the Commission the authority to promulgate rules and regulations for carrying out these provisions.

House Bill No. 483 allowed competition among long distance telephone carriers for interexchange service where the Commission determined that such competition was justified by the public interest. It also allows competition within local market areas or local access and transport areas (latas) after January 1, 1986.

House Bill No. 484 authorized the Commission to designate a business operating a telephone or telecommunications company as a public service corporation.

House Bill No. 870 authorized the Commission to set rates for interexchange long distance telephone carriers on a competitive basis.

House Bill Nos. 463 and 484 had been recommended by this joint subcommittee.

The major issues discussed during the first two meetings of 1984 included the effects of the legislative changes on the industry and on the tax revenues of the State Corporation Commission and equal access. The joint subcommittee learned that the State Corporation Commission had held a certification and ratemaking hearing to consider rules and regulations to implement the changes resulting from the passage of House Bill Nos. 483 and 870. A copy of the final regulations agreed to by the industry and the Commission appears as Appendix 2 of this report. The Commission testified that the legislature had taken the appropriate action by recognizing the need for competition among long distance carriers and that everyone would like for universal long distance and local service rates to be as low as possible, yet the legislative changes would cause long distance rates to be lower and local rates to be higher.

Regarding equal access, the Virginia Telephone Association expressed concern that some of the small telephone companies were going to have serious problems providing equal access because of the necessity of having to purchase new switches to provide such service and of the large amount of depreciation on old switches still on the books. They pointed out that companies would be "stuck" if they were unable to accelerate the old depreciation, yet if it was written off too quickly, the companies' customers would have much higher rates. They noted that some companies may never be able to provide it and that, for others, it may take a very long time. It was explained, however, that technology is changing which may make competition in rural areas more feasible as small companies may be able to network together to provide common outlets for long distance to which larger companies could connect.

Regarding the impact of the legislative changes on the revenues to the Commission, the subcommittee learned over the course of their three meetings in 1984 that tax collections for the year would be approximately \$5.5 million less, yet this figure did not include what would be offset by collections from two newly certificated companies. The Commission explained that a large portion of the shortfall was due to the loss of revenues by C&P from the leasing of equipment that was transferred to AT&T as part of the divestiture. They explained further that

although the state was losing revenues, the localities were not as the loss from the leasing did not affect their revenues, and that overall property assessments were up despite large losses by AT&T and C&P. Sales tax revenues on telephone purchases and rentals were providing additional revenues to the localities. It was noted that some of the losses could be picked up by increases in sales tax revenues from the purchase of equipment by customers, yet that many customers would continue to lease their equipment.

The purpose of the last meeting in 1984, on December 4, was to find out how the deregulation of long distance services was working and to determine if any modifications to the existing law were needed. Several other issues were discussed including: the demonopolization of pay phones, the easing of regulation of small and independent companies, the maintenance of universal service without market service areas, Senator Emick's carry-over bill and local measured service.

Prior to updating the subcommittee on how the deregulation was working, the Commission reminded the members that in their 1983 report to the Commission, the consultant's had indicated that urgent attention was needed in the areas of long distance competition and radio common carriers and cellular providers. They pointed out that both areas were addressed during the 1984 Session and that, although they did not know exactly how the deregulation was working, they were monitoring it. They noted that the radio common carrier and cellular issues were being addressed by Delegate Keating's subcommittee established pursuant to House Joint Resolution No. 62 of the 1984 Session (report - HD 19 of 1985).

The Commission testified that its long term policy of maintaining universal service was holding up at the local level due to the offering of an economy service (\$5/month + 10.6 cents per outgoing call) by C&P which serviced eighty percent of the state. They anticipated that other companies were moving toward providing this type of service and indicated that local rates were going up as a result of the AT&T divestiture and the changes in the regulation of long distance carriers. They noted that measured service alternatives were expected to come from this and that some people had already switched over from a flat rate to a measured alternative.

The American Association of Retired Persons and the Virginia Citizens Consumer Council indicated their strong opposition to local measured service. The AARP testified that they oppose it since most of their members have phones as necessities and because they feel the service will continue to grow, resulting in flat rates being increased due to the loss of revenues from the switchovers. The VCCC testified that they oppose four element local measured service which is based upon the number of calls, the distance called, the time of day and the length of the call, because it creates a hardship for low income families, the handicapped and the elderly. They pointed out that a simple form of measured service based upon the number of calls, and existing flat rates and economy services, are easily understood and adequate for fulfilling the universal service concept and, therefore, should not be replaced by the highly complicated four-element local measured service.

Regarding local measured service, C&P informed the subcommittee that they feel that a maximum number of options, sensitive to their customers' needs are necessary to maintain universal service and that their array of options enable their customers to tailor their rates to their use of the service. They explained that in the early 1980s four element local measured service was introduced in five exchanges and then described the various options they offer. They further explained that their entire rate structure is designed to recognize usage so that low users benefit from low rates and high users benefit from the flat rate and indicated that they intend to keep the flat rate structure. They stated that their customers are notified about the various options and costs and are given the option to change the type of service if they are dissatisfied.

Regarding the pay phone issue, C&P testified that the Federal Communications Commission's recent decision to permit anyone to provide pay telephones was an indication of increasing competition. They stated that this problem was an indication of a broader problem and encouraged the subcommittee not to take measures that were so restrictive that may have benefits in the short-term but could hurt telephone customers in the long-term.

The State Corporation Commission pointed out that the pay phone issue also entails the resale of service and smart building issues. They stated that a problem exists for the phone companies when an individual installs a pay telephone on a flat rate line and collects all the revenues.

C&P then explained that the bypass problem entails owners' of buildings subscribing to bulk service and reselling the service to their tenants thus bypassing the telephone companies and making money at the telephone companies' expense. They explained that this reduces their revenues and puts upward pressure on all other rates and, in the long run, the basic customer

would suffer because of the bypassing by large customers. The subcommittee requested legislation addressing the pay telephone and smart building problems.

AT&T informed the subcommittee that they and all competing carriers are required to provide the State Corporation Commission with information on the amount of business they are doing in the state and with operational data so that the Commission can determine the extent of the competition that exists in the Commonwealth. Attached as Appendix 3 to this report is an article that appeared in *The Washington Post* regarding the competition between long distance carriers in the Commonwealth. AT&T stated that they must also report to C&P the minutes of use of the system upon which they (AT&T) pay access charges (to C&P) and indicated that they were working with the Commission to arrive at a rate for access charges that would enable them to lower their long distance rates. AT&T pointed out that if something is not done to reduce access charges and thus long distance rates, large companies will bypass the system, forcing local rates up. They stated that the answer to the problem is relief in access charges, yet noted that if C&P reduces its access charges, it will have to increase its local rates to make up for the loss in revenues, therefore it would have to be juggled somehow.

Regarding Senator Emick's bill, Senate Bill No. 239, which permitted the State Corporation Commission to regulate the rates telephone companies charge local governments and which was carried over by the House Committee on Corporations, Insurance and Banking for study during the interim, C&P testified that, until recently all localities had paid their regular tariff rates but were now withholding a part of their payments because they felt they were being over charged. They indicated that they would like to lower the rates for localities yet had to find some type of balance in the competitive environment so that all needs are met and interests are balanced.

At the end of the meeting, the Virginia Telephone Association informed the subcommittee that the issue of the streamlining of regulations for small and independent companies would be addressed legislatively in 1985.

During the two meetings held in January, the subcommittee discussed and heard testimony on the legislation they were considering. The first piece of legislation considered was a bill that would lessen the regulatory load on small cooperatives by eliminating the need for hearings in uncontested rate cases. It was explained that for cooperatives, the filing costs are often as much as the increase in rates they are seeking therefore the increase they must request is double that which would have been necessary without the filing. It was pointed out that the streamlining of regulations resulting in lower costs in rate cases would benefit the members of the cooperative who are also the owners. It was also pointed out that the bill would affect cooperatives but not mutuals and that there is only one mutual in the Commonwealth. Attached as Appendix 4 to this report is a copy of the bill as it appears in the 1985 Acts of Assembly that addressed this issue which was introduced by Delegate Parker.

Regarding the resale and smart building issue, the State Corporation Commission stated that five states have adopted legislation addressing this issue. The bill under consideration contained permissive language giving the State Corporation Commission the discretion to consider various tariff alternatives for the resale of local service or for the providing of pay telephone service by a person other than the telephone company. Concern was expressed that allowing local measured service to be charged to resellers might be "the nose under the tent." C&P pointed out that the legislation did not mandate local measured service but allowed it to be an option as, in some instances, it might be to the pay phone owner's advantage. They noted that smart buildings are a more critical problem than pay telephones as, although bypass is prohibited, some companies are working around the prohibition thus causing them to lose revenues.

The Virginia Citizens Consumer Council reiterated their concerns on local measured service and that economy rate service be maintained and expanded throughout the state. C&P testified that it is not going to replace the economy rate service with local measured service, but will offer the local measured service as an option. The Virginia Association of Realtors also expressed some concern about local measured service. It was pointed out that the Attorney General's Office opposes four element local measured service as it is very difficult for customers to calculate how they can save money under it or even understand it.

The subcommittee determined that legislation addressing the smart building and resale problem, a copy of which as it appears in the 1985 Acts of Assembly appears as Appendix 5 to this report, should be introduced in the 1985 Session. Three resolutions were also recommended, one of which would request the State Corporation Commission to simplify the regulation of small, investor-owned utilities (Appendix 6), one of which would express the sense of the General Assembly that local measured service not replace message and economy rate services (Appendix 7) and one which would continue the study as changes were constantly taking place in the marketplace and unresolved issues still existed (see first few pages of this report).

The legislation recommended by the joint subcommittee was enacted by the 1985 General Assembly and the study was carried over for one additional year.

Bypass, its potential and its effect on consumers and local operating companies was the subject of the June 7 meeting. The subcommittee learned that bypass is a very real and highly complicated and technical problem in Virginia therefore there was a need to minimize its long-term impact on telephone customers. C&P presented an explanation of bypass and its impact on Virginia consumers to the subcommittee. They stated that when large users of long distance no longer subsidize local service, the revenue has to be recouped from somewhere and that they plan to recoup it on a gradual basis so as to moderate the impact on all customers. They explained that if they do not take any action, large users will bypass the system and other users will immediately have to make up for the loss. C&P stated that they have carefully designed their rate schedule to keep the potential losses down and residential rates as low as possible. They noted that two percent of their customers generate fifty percent of their revenues and pointed out that they will continue to offer economy rate service. A more detailed account of their remarks appears as Appendix 8 to this report.

AT&T testified that long distance carriers are generally in the position to encourage bypass but are not in the position to discourage it as large users look to them for the types of services they provide and prices they offer. They indicated that they intend to use local operating companies as their first source of access since they are the most economic and efficient providers but that they were concerned that the local companies' prices do not reflect this. AT&T stated that they believe that C&P's proposal for phasing out nonsensitive traffic charges over the next five years is good yet pointed out that if access charges are reduced, the local companies will have to recover their revenue requirements from local ratepayers. They estimated that there would be a \$2.40 monthly increase in phone bills for local service if the subsidies were eliminated today. AT&T once again stressed that the key to dealing with bypass is access charges. Other small telephone companies expressed their concerns over the bypass problem to the subcommittee.

The Commission testified that they would like to maximize revenues from long distance carriers for as long as they could while minimizing the threat of bypass.

The Virginia Citizens Consumer Council presented a position paper, a copy of which is attached to this report as Appendix 9, to the subcommittee on the issue of bypass.

The final meeting of the subcommittee which was held on December 4 consisted mostly of discussion and testimony on three issues: unsolicited computer telephone calls, local phone rates, and federal action. At the beginning of the meeting the Chairperson, Delegate Van Landingham, informed the other members that C&P had filed a tariff with the State Corporation Commission reducing access charges for long distance carriers by twenty percent in each of the next five years in an effort to forestall bypass.

Regarding the unsolicited computer telephone call issue, the subcommittee learned that Virginia has a criminal statute that makes it a misdemeanor if the computer does not disconnect when the person called hangs up. They also learned that in 1977 a telephone solicitation ethics committee established a voluntary code to be used by businesses, yet not all businesses comply with it. C&P indicated that this has been a concern of theirs for several years and that the voluntary code has recently be revised. They pointed out that this code contains an address of a service to whom individuals who wish to have their names removed from mass calling lists may write. They noted, however, that this is not well known and that they will consider bill inserts to advise their customers of this. C&P explained that the major problem is with interstate calls which must be controlled at the federal level. The Virginia Citizens Consumer Council expressed their concern about this problem.

The Virginia Telephone Association testified that there has been no loss of customers due to rising local rates, in part, due to the offering of economy rate services by most local operating companies.

Regarding recent federal actions, C&P stated that in each of the last two sessions of Congress major legislation has been proposed but was withdrawn after the Federal Communications Commission modified its proposal to limit access charges to one dollar and to encourage lifeline rates. It was explained that the general consensus of Congress is to put things on hold because of the threat of bypass if too much of a load is placed on the toll user and to see how the FCC proposal works.

At the end of the meeting, Chairperson Van Landingham stated that the subcommittee would stand prepared to consider legislation affecting shared tenant services should such legislation be

deemed necessary as the result of a State Corporation Commission hearing on January 15. In looking back at the four years of study, Chairperson Van Landingham stated that they had been able to effectively anticipate the legislative changes necessitated by the changing industry, had been able to provide a forum and to arrive at a consensus between the industry, consumer groups and the State Corporation Commission.

Respectfully submitted,
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Marian Van Landingham, Chairperson
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Clive L. DuVal, 2d, Vice-Chairperson
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Peter K. Babalas
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Richard M. Bagley
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Virgil H. Goode, Jr.
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Frank Hargrove
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Gladys B. Keating
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Lewis W. Parker, Jr.

CHAPTER 297

An Act to amend and reenact § 56-508.6 of the Code of Virginia, relating to the issuance of a certificate for operation in the established service area of another radio common carrier.

[H 189]

Approved March 31, 1984

Be it enacted by the General Assembly of Virginia:

1. That § 56-508.6 of the Code of Virginia is amended and reenacted as follows:

§ 56-508.6. Issuance of certificate for operation in established service area of another carrier.— *A. The Commission shall not may grant a certificate for a proposed radio common carrier operation or extension thereof into the an established service area which will be in competition with or duplication of any other another certificated radio common carrier unless if it shall first determine that the existing service is inadequate to meet the reasonable needs of the public and that the corporation operating the same is unable to or refuses or neglects after hearing on reasonable notice to provide reasonably adequate service find the proposed application justified by public interest, and under such terms, limitations and restrictions as may be prescribed by the Commission .*

In determining the public interest, the applicant shall demonstrate, and the Commission shall determine, before issuing a certificate, that the applicant has the financial, managerial and operational experience, abilities and capabilities to provide adequate service to the public within the requested certificated areas. The applicant shall satisfy marketing, public need, and such other public interest criteria as determined by the Commission to carry out the provisions of this section.

B. The Commission may promulgate rules and regulations to carry out the provisions of this section. If such rules and regulations are promulgated, they shall include consideration of the adverse effect on service within the Commonwealth by other certificated carriers, and consideration of any unnecessary duplication of facilities and services and shall apply such rules and regulations in consideration of applications for certificates.

C. Any applicant certificated under this section shall not be allowed to begin service until March 1, 1985.

CHAPTER 382

An Act to amend and reenact §§ 56-1 and 56-265.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-265.4:4, relating to public service companies and telephone utilities under the Utilities Facility Act.

[H 483]

Approved April 3, 1984

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-1 and 56-265.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-265.4:4 as follows:

§ 56-1. Definitions.—Whenever used in any chapter under this title, the following terms, words and phrases shall have the meaning and shall include what is specified in this section, unless the contrary plainly appears, that is to say:

The words "the Commission" shall mean the "State Corporation Commission".

The word "corporation" or "company" shall include all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this State *Commonwealth*, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the State *Commonwealth*.

The words "interexchange telephone service" shall mean telephone service between points in two or more exchanges, which is not classified as local exchange telephone service.

The words "local exchange telephone service" shall mean telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at rates and charges specified in local exchange tariffs filed with the Commission.

The word "person" shall include individuals, partnerships and corporations.

The words "public service corporation" or "public service company" shall include gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, telegraph companies, and all persons authorized to transport passengers or property as a common carrier, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the State *Commonwealth*.

The word "railroad" shall include all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

The words "railroad company" shall include any company, trustee or other person owning, leasing or operating a railroad.

The word "rate" shall be considered to mean "rate charged for any service rendered or to be rendered."

The words "rate," "charge" and "regulation" shall include joint rates, joint charges and joint regulations, respectively.

The words "transportation company" shall include any railroad company, any company transporting express by railroad, and any ship or boat company.

§ 56-265.4. Certificate to operate in territory of another certificate holder.— *Except as provided in § 56-265.4:4, no certificate shall be granted to an applicant proposing to operate in the territory of any holder of a certificate unless and until it shall be proved to the satisfaction of the Commission that the service rendered by such certificate holder in such territory is inadequate to the requirements of the public necessity and convenience; and if the Commission shall be of opinion that the service rendered by such certificate holder in such territory is in any respect inadequate to the requirements of the public necessity and convenience, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate in such territory.*

§ 56-265.4:4. Certificate to operate as a telephone utility.—A. No certificate shall be granted to an applicant proposing to furnish local exchange telephone service in the territory of another certificate holder unless and until it shall be proved to the satisfaction of the Commission that the service rendered by such certificate holder in such territory is inadequate to the requirements of the public necessity and convenience. If the Commission shall be of the opinion that the service rendered by the existing certificate holder in such territory is in any respect inadequate to the requirements of the public necessity and convenience, that certificate holder shall be given reasonable time and opportunity to remedy the inadequacy before any certificate shall be granted to an applicant proposing to

operate in that territory.

B. The Commission may, however, grant certificates to competing telephone companies for interexchange service where it finds that such action is justified by public interest, and is in accordance with such terms, conditions, limitations, and restrictions as may be prescribed by the Commission for competitive telecommunications services. Any company so certificated shall not be allowed to offer services within local market areas as defined by the State Corporation Commission or in local access and transport areas as established under federal court order until January 1, 1986.

CHAPTER 648

An Act to amend the Code of Virginia by adding a section numbered 56-1.1, to authorize the State Corporation Commission to designate a business as a public service corporation.

[H 484]

Approved April 8, 1984

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-1.1 as follows:

§ 56-1.1. Designation as public service corporation.— The State Corporation Commission may designate a business enterprise operating as a telephone or telecommunications company to be a public service corporation when, upon appropriate inquiry and public hearing, the Commission determines that the enterprise is engaged in any of the public utility services described in § 56-1. However, this section shall not apply to any mutual telephone association existing prior to January 1, 1984.

CHAPTER 721

An Act to amend and reenact §§ 56-55, 56-76 and 56-241 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 56-481.1, 56-482.1 and 56-482.2, relating to interexchange telephone companies; penalties.

[H 870]

Approved April 9, 1984

Be it enacted by the General Assembly of Virginia:

That §§ 56-55, 56-76 and 56-241 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 56-481.1, 56-482.1 and 56-482.2 as follows:

§ 56-55. Definitions.—The term "public service company" when used in this chapter shall mean every person, firm, corporation or association, or their lessees, trustees or receivers, other than a municipal corporation, now or hereafter engaged in business in this State Commonwealth as a public utility and subject to regulation as to rates and service by the State Corporation Commission under the provisions of Chapter 10 (§ 56-232 et seq.) of this title; ~~provided, that~~ however, the term shall not include and the provisions of this chapter shall not be deemed to refer to common carrier railroad companies, the issuance of the stocks and securities of which are under regulation by the Interstate Commerce Commission.

The terms "Securities" and "loan" as used in §§ 56-68 and 56-75; shall be construed to embrace and include ~~each and~~ every obligation, written or otherwise, the issuance of, or entry into, which is required to be approved or validated by this chapter.

§ 56-76. Definitions.—The term "public service company" when used in this chapter shall mean every person, firm, corporation or association, or their lessees, trustees or receivers, other than a municipal corporation, now or hereafter engaged in business in this State Commonwealth as a public utility and subject to regulation as to rates and service by the State Corporation Commission under the provisions of Chapter 10 (§ 56-232 et seq.) of this title; ~~provided, that~~ however, the term shall not include and the provisions of this chapter shall not be deemed to refer to transportation companies subject directly or indirectly to the control of the Interstate Commerce Commission.

The term "affiliated interest" when used in this chapter shall mean and include the following:

(a) Every corporation, partnership, association, or person owning or holding directly or indirectly ten ~~per centum~~ percent or more of the voting securities of any public service company engaged in any intrastate business in this State *Commonwealth* .

(b) Every corporation, partnership, association, or person, other than those specified in paragraph (a) hereof, in any chain of successive ownership of ten ~~per centum~~ percent or more of voting securities, the chain beginning with the holder or holders of the voting securities of such public service company.

(c) Every corporation, partnership, association, or person ten ~~per centum~~ percent or more of whose voting securities are owned by any person, corporation, partnership, or association owning ten ~~per centum~~ percent or more of the voting securities of such public service company or by any person, corporation, association, or partnership in any such chain of successive ownership of ten ~~per centum~~ percent or more of voting securities.

(d) Every corporation, partnership, association, or person with which such public service company has a management or service contract.

(e) Every corporation in which two or more of the corporate directors are common to those of such public service company, or which is managed or supervised by the same individual, group or corporation.

(f) Every corporation or person which the Commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such public service company even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section.

(g) Every person or corporation which the Commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and action of such public service company in conjunction with one or more other corporations or persons with which or whom they are so connected or related by ownership or blood relationship or by action in concert that when taken together they are affiliated with such public service company within the meaning of this section even though no one of them alone is so affiliated.

But no such person or corporation shall be considered as affiliated within the meaning of this section if such person or corporation is otherwise subject to the jurisdiction of the Commission or such person or corporation shall not have had transactions or dealings other than the holding of stock and the receipt of dividends thereon with such public service company during the two-year period next preceding.

§ 56-241. Rates of telephone companies.—The power of the Commission over the rates of telephone companies shall be as defined (i) by this chapter and ~~by § 56-481 or (ii) by § 56-481.1 of chapter 15 of this title~~ .

§ 56-481.1. Rates, charges, and regulations for interexchange telephone service.—If under Chapter 10.1 of this title a certificate of public convenience and necessity is issued to a telephone company to provide interexchange service, the Commission may, if it determines that such service will be provided on a competitive basis, approve rates, charges, and regulations as it may deem appropriate for the telephone company furnishing the competitive service, provided such rates, charges, and regulations are nondiscriminatory and in the public interest. In making such determination, the Commission may consider (i) the number of companies providing the service; (ii) the geographic availability of the service from other companies; (iii) the quality of service available from other companies; and (iv) any other factors the Commission considers relevant to the public interest. The Commission is authorized to promulgate any rules necessary to implement this provision; provided that any such rules so promulgated shall be uniformly applicable to all telephone companies that are subject to the provisions of this section.

§ 56-482.1. Reports required of interexchange telephone companies.—Each interexchange telephone company shall provide to the Commission in a timely manner any report or information concerning its usage of local exchange telephone services and facilities required under the effective access charge tariffs or schedules of a local exchange telephone company. The Commission shall prescribe rules and regulations to effectuate the purpose of this section.

§ 56-482.2. Penalties.—Any interexchange company which willfully and knowingly fails to provide on time a report required by § 56-482.1 or willfully and knowingly understates the volume or type of use of service or facilities in such report shall be liable to the local exchange telephone company covered by such report. In the case of an unprovided report, the liability shall be two times the amount of the charges for the services and facilities as actually used. In the case of an understated report, the liability shall be for two times the difference between the charges for the services and facilities as actually used and the charges as computed on the basis of an understated report.

APPENDIX 2

AT RICHMOND, JUNE 29, 1984

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of adopting CASE NO. PUC840017
rules governing the certification and
setting of rates for inter-LATA, inter-
exchange telecommunications carriers

FINAL ORDER

By order dated May 9, 1984, the Commission invited written comments from the public governing the granting of certificates of public convenience and necessity and setting of rates based upon competition for inter-LATA, inter-exchange telecommunications carriers pursuant to §§56-265.4:4, 56-481.1, and 56-482.1 of the Code of Virginia, 1950, as amended. Written comments were received from interested persons by June 5, 1984, and the Commission Staff filed its reply comments on June 12, 1984. A public hearing was held June 19, 1984, and extensive oral argument was heard concerning the proposed rules, the comments of interested parties, and the reply comments of the Commission's Staff.

Before discussing the proposed rules, it would be appropriate to discuss the "level playing field" concept that permeated the adoption of House Bill No. 483 and House Bill No. 870. That same concept guided the Commission's derivation of the following rules. The General Assembly desired to make the transition from regulated, monopoly long distance service to competitive service in a manner that was entirely fair and even-handed, showing favoritism to neither existing carriers nor to proposed carriers. This intent is clearly evinced in the final sentence of §56-481.1: "The Commission is authorized to promulgate any rules necessary to implement this provision; provided that any such rules so promulgated shall be uniformly applicable

to all telephone companies that are subject to the provisions of this section (emphasis added)." The Commission has adhered strictly to this principle. The rules that follow give no competitive edge to any carrier. Thus, all carriers are free to compete on a "level playing field" with no artificial or contrived restraints or advantages.

Based upon the extensive comments submitted and the oral argument presented at the June 19, 1984, hearing, the Commission is of the opinion that the proposed rules as published pursuant to the May 9, 1984, order should be substantially modified in certain respects. The modifications will be discussed in numerical sequence.

Proposed Rule 1 drew no controversy but Rule 2 was quite controversial. The Commission is of the opinion that the first sentence of Rule 2, concerning who shall receive notice of the application for a certificate, should be changed to require that all local exchange carriers and the Division of Consumer Counsel, Office of the Attorney General receive notice. The most controversial part of Rule 2 was the sentence which read "Applicants shall attest that they will abide by the provisions of §56-265.4:4B of the Code of Virginia and not provide intra-LATA service unless and until the Commission certifies these Applicants to provide that service." The Commission is of the opinion that that sentence is acceptable down through the words "Code of Virginia" but that the remainder of the sentence should be deleted because of the question raised that the prohibition on providing such service goes further than the statute's prohibition on "offering" such service. Instead of the deleted language, the Commission would insert the following sentences:

Inter-exchange carriers will not be permitted to offer intra-LATA calling at this time. Incidental intra-LATA

calls that occur shall either be blocked, or the local exchange companies shall be compensated for revenues lost as a result of such incidental intra-LATA calls. The certificate application of each inter-exchange carrier shall include its plan for either blocking or paying for such incidental calling.

The balance of Rule 2 as well as the entirety of Rule 3 are left unchanged.

There was no controversy as to parts (a) and (b) of Rule 4 but substantial controversy as to parts (c) and (d). In its reply comments the Commission Staff had recommended deleting the second sentence of the published Rule 4(c) and had recommended that (d) be modified to read as follows:

Those applicants not capable of originating inter-exchange messages throughout the entire State at the time their application is filed may petition for a regional certificate of public convenience and necessity, specifying those areas the Applicant desires to serve. The Commission may attach conditions it finds appropriate to any certificate issued under §56-265.4:4.

This modification to Rule 4(d) was acceptable to most parties. However, the Commission is of the opinion that Rule 4(d) should be deleted in its entirety. It is anticipated that carriers will be granted the authority to serve throughout the Commonwealth but that the areas in which service is actually provided will not be imposed by the Commission but rather by the forces of competition and the perceptions of the carriers as to market demands that need to be met. However, the discretion of the Commission to place conditions upon certificates is fully spelled out by the first sentence of §56-265.4:4B which states:

The Commission may, however, grant certificates to competing telephone companies for inter-exchange service

where it finds that such action is justified by public interest, and is in accordance with such terms, conditions, limitations, and restrictions as may be prescribed by the Commission for competitive telecommunication services.

The Staff's reply comments recommended rewriting Rule 4(c) as follows:

Technical abilities shall be indicated by a description and map of the applicant's owned or leased facilities within the Commonwealth. An additional map should be filed showing the applicant's points of presence within its proposed service area.

The Commission adopts this change.

Rule 5 was not controversial and is adopted as proposed.

The Staff's reply comments recommended deleting the third sentence of Rule 6 which required the reporting of held orders. This issue was not contested and the Commission will adopt it.

The controversial part of Rule 6 was the requirement that carriers maintain their Virginia books according to the Uniform System of Accounts. The Commission is of the opinion that it is sufficient if such books are kept according to generally accepted accounting principles with a proviso that will make possible the Commission's assessment of all taxes and the performance with of its regulatory responsibilities. Accordingly, the first sentence of Rule 6 shall be rewritten as follows:

Each inter-LATA, inter-exchange carrier annually shall file a current financial report with the Commission, shall maintain Virginia books, and shall maintain such books in accordance with generally accepted accounting principles and, in any event, as shall be required by the Commission to facilitate its assessment of all taxes and to facilitate the performance of its regulatory responsibilities.

The remaining sentence of Rule 6 is acceptable as written.

Rule 7 was not controversial, but it was suggested that due process provisions be added to assure that affected carriers be given notice and a chance to be heard prior to Commission action. Accordingly, the following sentence shall be added to Rule 7:

In all proceedings pursuant to this Rule 7, the Commission shall give notice to the carrier of the allegations against it and provide the carrier with an opportunity to be heard concerning those allegations prior to the suspension or revocation of the carrier's certificate of public convenience and necessity.

Rules 8 and 9 are adopted as proposed.

Rule 10 is acceptable with due process language similar to that added to Rule 7 above. Hence, Rule 10 is modified to read as follows:

Should the Commission ever determine, after notice to the public and any affected inter-exchange carriers and after an opportunity is afforded for any interested party to be heard, that competition, although previously found by the Commission to exist, has ceased to exist among inter-LATA, inter-exchange carriers, it may, pursuant to §56-241 of the Code of Virginia, require that the rates of such carriers be determined pursuant to Chapter 10 of Title 56 of the Code of Virginia.

Rule 11 as published proposed 30 days of notice between a carrier's filing for a rate change and its implementation of the change. Most of the comments directed against this rule requested a 14 day notice period or a 5 day notice period. The Commission is of the opinion that if a carrier has been granted the right to set rates competitively, the marketplace shall determine what rate levels are appropriate. Thus, we are of the opinion that the proposed rate changes should not be filed with the Commission and should not be subject to Commission review. A subscriber who finds

a proposed rate change to be undesirable can seek service from a competitive carrier. Hence, the text of the published Rule 11 will be stricken and that portion of the published Rule 12 which will be approved below shall be renumbered as Rule 11.

Published Rule 12 was a follow-up to published Rule 11. It required notice be given to subscribers of proposed rate changes and provided instructions as to how a proposed rate change could be challenged within the 30 day period between filing and implementation of rates. In light of the deletion of published Rule 11, the bulk of published Rule 12 can also be eliminated. However, the Commission believes that subscribers should be given notice of proposed rate changes in order that they can plan on absorbing the increased rates or switching to an alternative carrier. Thus, the first two sentences of published Rule 12 will be adopted and they will be renumbered as Rule 11.

In order to let the marketplace be sole determinant of the propriety of competitive rates, the Commission has also chosen to delete the text of published Rule 13 which had given the Commission the authority to examine existing rates and determine whether or not they were unreasonably discriminatory or were contrary to public interest.

Published Rule 14 was deleted in the Staff's reply comments because the question of the protection of proprietary information was too extensive to address in this docket. It was recommended that it be addressed on a case by case basis or that it be made the subject of a subsequent proceeding. This change did not meet serious objection at the hearing on June 19, 1984, and the Commission considers it appropriate to delete published Rule 14.

The Staff's reply comments proposed a new Rule 14 which provided "These rules shall not apply to domestic

cellular radio telecommunications carriers." The Commission considers this rule excluding providers of cellular telecommunications to be proper and accordingly will adopt it and renumber it as Rule 12.

The rules, as so amended, are as follows:

RULES GOVERNING THE CERTIFICATION OF
INTER-LATA, INTER-EXCHANGE CARRIERS

PURPOSE

These rules are promulgated pursuant to §§56-265.4:4, 56-481.1, and 56-482.1 of the Code of Virginia, 1950, as amended, and are effective July 1, 1984.

Rule 1 - An original and fifteen (15) copies of Applications for Certificates of Public Convenience and Necessity shall be filed with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216, and shall contain all the information and exhibits required herein.

Rule 2 - Notice of the application shall be given to each existing inter-exchange carrier; the Division of Consumer Counsel, Office of the Attorney General; and to each local exchange carrier, and shall be provided to governmental officials as required by the Commission in its initial order setting the case for hearing. Each applicant shall publish notice in newspapers having general circulation throughout the State in a form to be prescribed by the Commission. Applicants shall attest that they will abide by the provisions of §56-265.4:4B of the Code of Virginia. Inter-exchange carriers will not be permitted to offer intra-LATA calling at this time. Incidental intra-LATA calls that occur shall either be blocked, or the local exchange

companies shall be compensated for revenues lost as a result of such incidental intra-LATA calls. The certificate application of each inter-exchange carrier shall include its plan for either blocking or paying for such incidental calling. Applicants shall submit information which identifies the applicant including (a) its name, address and telephone, (b) its corporate ownership, (c) the name, address, and telephone of its corporate parent or parents, if any, (d) a list of its officers and directors or, if Applicant is not a corporation, a list of its principals and their directors if said principals are corporations, and (e) the names, addresses, and telephone numbers of its legal counsel.

Rule 3 - Each incorporated applicant for a Certificate shall demonstrate that it is authorized to do business in the Commonwealth as a public service company.

Rule 4 - Applicants shall be required to show their financial, managerial, and technical ability to render inter-LATA, inter-exchange telecommunication service.

(a) As a minimum requirement, a showing of financial ability shall be made by attaching Applicant's most recent stockholder's annual report and its most recent SEC Form 10-K or, if the Company is not publicly traded, its most recent financial statements. (b) To demonstrate managerial experience, each applicant shall attach a brief description of its history of providing inter-exchange telecommunication service and shall list the geographic areas in which it has been and is currently provided. Newly created companies shall list the experience of each principal officer in order to show its ability to provide service.

(c) Technical abilities shall be indicated by a description and map of the applicant's owned or leased facilities within the Commonwealth. An additional map should be filed showing the applicant's points of presence within its proposed service area.

Rule 5 - No inter-exchange carrier shall abandon or discontinue service, or any part thereof, established under provisions of §56-265.4:4 except with the approval of the Commission, and upon such terms and conditions as the Commission may prescribe.

Rule 6 - Each inter-LATA, inter-exchange carrier annually shall file a current financial report with the Commission, shall maintain Virginia books, and shall maintain such books in accordance with generally accepted accounting principles and, in any event, as shall be required by the Commission to facilitate its assessment of all taxes and to facilitate the performance of its regulatory responsibilities. Carriers shall file with the Commission on a monthly basis, a report showing monthly usage of local exchange telephone services and facilities as required by §§56-482.1 and 56-482.2 of the Code of Virginia.

Rule 7 - No carrier shall unreasonably discriminate among subscribers requesting service. Any finding of such discrimination shall be grounds for suspension or revocation of the certificate of public convenience and necessity granted by the Commission. Excessive subscriber complaints against an inter-LATA, inter-exchange carrier, which the Commission has found to be meritorious, may also be grounds for suspension or revocation of the carrier's certificate of public convenience and necessity.

In all proceedings pursuant to this Rule 7, the Commission shall give notice to the carrier of the allegations against it and provide the carrier with an opportunity to be heard concerning those allegations prior to the suspension or revocation of the carrier's certificate of public convenience and necessity.

Rule 8 - Each application for a certificate to provide inter-exchange telecommunication service shall include the carrier's proposed initial tariffs, rules, regulations, terms and conditions. If the Commission finds those tariffs reasonable, they shall be approved with the granting of the Certificate. Any subsequent request to increase rates shall be submitted pursuant to Chapter 10 of Title 56 of the Code of Virginia, unless the requesting carrier has been granted authority by the Commission to set rates and charges pursuant to §56-481.1 of the Code of Virginia.

Rule 9 - Any carrier desiring to have rates based upon competitive factors shall petition the Commission to be granted such authority pursuant to the provision of §56-481.1 of the Code of Virginia. Such petition may be filed simultaneously with the applicant's petition for a certificate of public convenience and necessity. The Commission shall consider the criteria set out in §56-481.1 in making any determination that inter-LATA, inter-exchange telecommunication service will be provided on a competitive basis.

Rule 10 - Should the Commission ever determine, after notice to the public and any affected inter-exchange carriers and after an opportunity is afforded for

any interested party to be heard, that competition, although previously found by the Commission to exist, has ceased to exist among inter-LATA, inter-exchange carriers, it may, pursuant to §56-241 of the Code of Virginia, require that the rates of such carriers be determined pursuant to Chapter 10 of Title 56 of the Code of Virginia.

Rule 11 - Carriers shall give notice of proposed rate changes to subscribers by means of billing inserts or publication for two consecutive weeks as display advertising in newspapers having general circulation in the areas served by the carrier. The notice shall state the subscribers' existing rates, the proposed rates, and the percentage change between the two.

Rule 12 - These rules shall not apply to domestic cellular radio telecommunications carriers.

The Commission is further of the opinion that these rules should be effective concurrently with §§56-265.4:4, 56-481.1, and 56-482.1 of the Code of Virginia, 1950 as amended.

Accordingly, IT IS ORDERED that the proposed rules set forth above are hereby adopted, effective July 1, 1984.

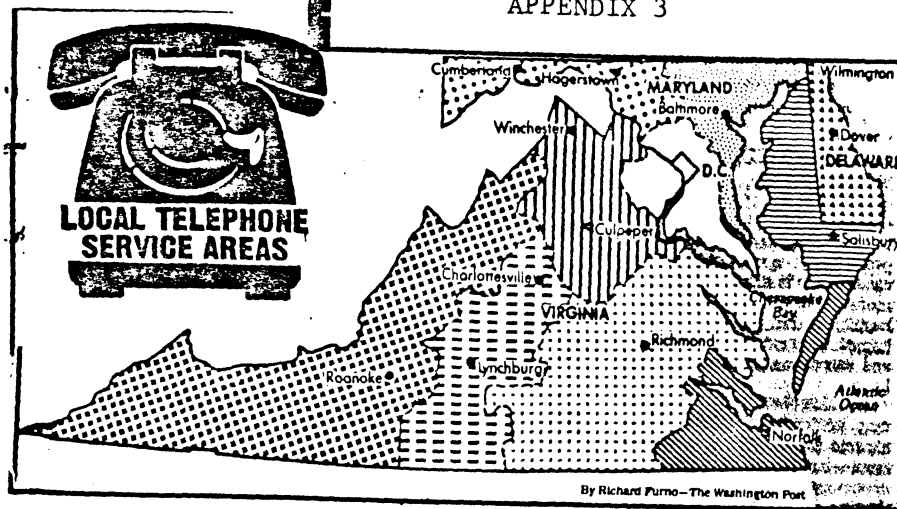
ATTESTED COPIES hereof shall be sent by the Clerk of the Commission to the parties shown on the service list attached hereto as Attachment A; to local exchange telephone companies of the State of Virginia as shown on the service list attached hereto as Attachment B; to the Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, 5th Floor, Richmond, Virginia 23219; and to the Commission's Divisions of Communications, Accounting and Finance, and Economic Research and Development.

A True Copy

Teste



Clerk of State Corporation Commission



AT&T's Rivals Expanding Services

AT&T Rivals Expanding Their Scope

By Elizabeth Tucker
Washington Post Staff Writer

State regulatory commissions have begun permitting American Telephone & Telegraph Co.'s smaller rivals to compete with AT&T in providing long-distance service within the same state.

The most recent example is Virginia. The State Corporation Commission said it would consider requests from carriers such as MCI Communications Corp. and GTE Sprint to handle calls from one end of the state to the other.

The break-up of AT&T on Jan. 1 divided Virginia and the rest of the United States into more than 150 local service areas (local access and transport areas, or LATAs). While the Virginia suburbs of the District are in one area, Richmond is in another.

Local telephone companies—such as the Chesapeake & Telephone companies—were restricted to providing service only within local service areas, while AT&T was assigned to handle calls between the areas—whether within a state, or between states.

It was left to public utility commissions to determine whether other long-distance carriers could compete with AT&T for service between local service areas within states. Some commissions also are considering allow-

See PHONE, D11, Col. 1

Wednesday, July 4, 1984

THE WASHINGTON POST

PHONE, From D10

ing competition within local service areas.

The move by Virginia's SCC is meant to stimulate competition, lower rates to consumers, and increase revenues for local telephone companies, which receive "access fees" from long-distance carriers for calls originating and terminating over local telephone equipment, said Ned Addison, the SCC telecommunications director.

The Virginia SCC will not be regulating the rates that carriers charge within the state. "We want to see how it works without any regulation," Addison said. "If it needs fixing, we will phase in regulation. We are allowing the free market to work here."

The SCC already has begun receiving applications, including one from MCI, and applications are expected from other long-distance carriers such as AT&T and GTE/Sprint.

Addison said the SCC had another reason for opening intrastate service to the smaller long-distance carriers: They were already in the business.

"We know that MCI and Sprint were handling some of the calls and switching them in the District [while] channelling them into Virginia. We don't know how much, but we know they were handling some," said Addison. At the same time, the companies were not paying gross receipts taxes, which are levied on revenues before expenses are deducted, he said.

Long-distance carriers switching calls now will be required to pay gross receipts taxes, Addison said.

More revenues also will be generated for the local telephone companies in Virginia as greater cut-rate price competition between long-distance carriers increases the volume of customer calls that must be switched over their equipment, Addison said.

"The long-distance carriers—AT&T, MCI, GTE/Sprint—will be paying the local companies—C&P Telephone Co. of Virginia and 20 other independents—access fees for all calls that originate or terminate in their areas on a per-call basis, and also per-minute-of-use basis," Addison said. "To the extent that [in-state] long-distance calling is stimulated this will generate more revenue for the local companies," he said.

The SCC's Addison said one advantage to lower rates is less incentive for big business to bypass the telephone system with private satellite or microwave systems.

Beach said MCI had been granted authority to switch calls between but not within local service areas in seven states—Illinois, Indiana, Kentucky, Massachusetts, New Jersey, Oklahoma and California. Interim approval has been granted in Minnesota, West Virginia, and Pennsylvania, he said.

According to Beach, MCI has received permission to carry both calls within and between local service areas in Texas, Ohio, Florida, New York State and Alabama. Tariffs for those states have been approved, he said. There has not been a final decision in Maryland and Iowa.

If competition is opened up within local service areas, local telephone revenues may be hurt, C&P officials say. "It opens up the possibility that it would affect local revenues because C&P would face some competition that it does not now have," said a spokeswoman.

Whether long-distance carriers might undercut local telephone company rates by raising their long-distance rates "would depend on each individual commission, and whether they would allow long-distance carriers to set their own rates," she said.

"Competition within [local service areas] could result in an upward pressure on local rates which individual customers pay," said Sam Ford, vice president for external affairs for Bell Atlantic. "It is not going to make rates go down, it is going to drive them towards their cost," he said, adding that telephone companies now provide local service at half the real cost.

"The states are just now deciding what will happen," said Genny Morelli, an attorney for the National Association of Regulatory Utility Commissioners. The commissions are focusing on stimulating competition to reduce consumer rates not on who has the lion's share of the local service area market, she said. She also said commissioners could prevent excessive rate undercutting by regulating tariffs.

The tendency among state commissions in general, according to MCI's Beach, is to retain the power to veto tariffs filed with them, but to begin withdrawing tight regulations which require hearings before approval of tariffs.

CHAPTER 405

An Act to amend and reenact §§ 56-501 and 56-502 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 56-501.01, relating to telephone cooperatives.

[H 1682]

Approved March 18, 1985

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-501 and 56-502 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-501.01 as follows:

§ 56-501. Rates and services.— *A. A cooperative formed hereunder shall be required to furnish reasonably adequate services and facilities, subject to the regulations of the State Corporation Commission, as provided in § 56-502. The charge made by any such cooperative for any service rendered or to be rendered, either directly or in connection therewith, shall be nondiscriminatory, reasonable and just, and every discriminatory, unjust or unreasonable charge for such service is prohibited and declared unlawful. Reasonable and just charges for service within the meaning of this section shall be such charges as shall produce sufficient revenue to pay all legal and other necessary expense incident to :*

1. The operation of its system, to include maintenance cost, operating charges, interest charges on bonds or other obligations ; ;

2. The providing to provide for the liquidation of bonds or other evidences of indebtedness ; to provide ;

3. The providing of adequate funds to be used as working capital, as well as reasonable reserves and funds for making replacements ; and also

4. The providing for the payment of any taxes that may be assessed against such cooperative or its property ; it being the .

B. The intent and purpose hereof of this section is that such the charges described in subsection A of this section shall produce an income sufficient to maintain such cooperative property in a sound physical and financial condition to render adequate and efficient service. Any rate too low to meet the foregoing requirements shall be unlawful. The Commission is authorized to promulgate any rules necessary to implement this provision.

§ 56-501.01. Rate filings.—*A. Whenever there shall be filed with the Commission a protest or objection to any schedule stating a change of rate, toll, charge, rule and regulation, which is filed by or on behalf of twenty or more persons subject to such rate, toll, charge, rule and regulation, the Commission may suspend the enforcement of any or all of the proposed rates, tolls, charges, rules and regulations, for a period not exceeding 150 days from the date of filing. During the 150-day period, the Commission shall investigate the reasonableness or justice of the proposed rates, tolls, charges, rules and regulations and thereupon fix and order substituted therefor such rates, tolls, charges, rules and regulations as shall be just and reasonable. Notice of the suspension of any proposed rate, toll, charge, rule or regulation shall be given by the Commission to the cooperative, prior to the expiration of the thirty days' notice to the Commission and to the public as prescribed in subsection B of this section. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the cooperative making the filing, the proposed rates, tolls, charges, rules or regulations shall go into effect. Where increased rates, tolls or charges are thus made effective, the Commission shall, by order, require the cooperative to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, and upon completion of the hearing and decision, to order such cooperative to refund the portion of such increased rates, tolls or charges by its decision found not justified.*

B. Unless a protest or objection is filed as provided in subsection A of this section, after thirty days' notice to the Commission and to the public, any change in any rate, toll, charge, rule and regulation of any cooperative shall be deemed approved by the Commission, provided that such notice shall have been mailed to each customer not less than thirty days prior to the time any such changed rate, toll, charge, rule and regulation shall take effect.

§ 56-502. Regulation by State Corporation Commission.—*Every cooperative organized under this chapter shall be subject to the jurisdiction of the State Corporation Commission in the same manner and to the same extent as are other similar utilities under the laws of Virginia except that the powers of the Commission over the rates and service of cooperatives shall be as defined by this chapter .*

CHAPTER 389

An Act to amend and reenact § 56-241.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-241.2, relating to the approval of certain types of telephone rates.

[H 1314]

Approved March 18, 1985

Be it enacted by the General Assembly of Virginia:

1. That § 56-241.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-241.2 as follows:

§ 56-241.1. Certain types of telephone rates not to be approved.—The Commission shall not approve any mandatory tariff for local service of any telephone company based on the number of calls, length of call, distance or time of day, not in effect on January one, nineteen hundred seventy-nine 1, 1979 . Provided, however, nothing Nothing contained herein shall prohibit the Commission from approving the voluntary tariff of any telephone company based on the number of calls, length of call, distance or time of day.

§ 56-241.2. Approval of rates for the resale of telephone service.—Notwithstanding the provisions of § 56-241.1, the Commission may approve a mandatory tariff based only on the number of calls for any telephone company if such tariff is limited to the rates charged for the resale of local business service or for the providing of coin telephone service by a person other than the telephone company.

HOUSE JOINT RESOLUTION NO. 280

Requesting the State Corporation Commission to investigate the regulatory procedures for small telephone companies.

Agreed to by the House of Delegates, February 4, 1985

Agreed to by the Senate, February 20, 1985

WHEREAS, the scheme of public utility regulation in Virginia has been fashioned principally to address large investor-owned utilities; and

WHEREAS, a number of public utilities operating in Virginia are small investor-owned telephone companies which serve relatively few customers; and

WHEREAS, the small telephone utilities possess characteristics dissimilar to large investor-owned utilities; and

WHEREAS, the cost of compliance with the current scheme of regulation is disproportionately greater for small public utilities and creates expenses that must be borne by their customers; and

WHEREAS, small telephone utilities are exposed to annual increases in costs and expenses, many of which are beyond their control; and

WHEREAS, such utilities will have to contend with the dynamic changes occurring in the telephone industry, but have limited means to promptly respond to such changes; and

WHEREAS, it is in the public interest for the regulatory process to recognize the particular needs of small telephone companies and their customers, to tailor the process in such a manner as to reflect the size, resources and characteristics of small telephone utilities and to provide the means for responding to the changing costs and conditions under which they must provide service; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the State Corporation Commission is requested to investigate and implement regulatory procedures and methodologies for small telephone companies which will reduce the cost of regulation for such utilities and their customers and which will allow for timely changes in rates to meet increasing costs and other changes occurring in the telephone industry; and, be it

RESOLVED FURTHER, That the State Corporation Commission is requested to report on its findings to the 1986 Session of the General Assembly of Virginia.

SENATE JOINT RESOLUTION NO. 100

Expressing the sense of the General Assembly regarding optional local telephone services.

Agreed to by the Senate, January 30, 1985

Agreed to by the House of Delegates, February 14, 1985

WHEREAS, dramatic changes are occurring in the telephone industry as a result of advances in telecommunications technology and the divestiture of AT&T; and

WHEREAS, the restructuring of the telephone industry along competitive lines in addition to technological advances has produced many new options for telephone users of long-distance service but far fewer options for users of local service where service is still provided as a monopoly; and

WHEREAS, it is in the public interest to assure that local telephone service provides as many options for users as possible so that the needs of a wide range of consumers are met and universal service is maintained; and

WHEREAS, the types of local residential telephone service presently and most commonly used in the Commonwealth are (i) monthly flat rate service where the customer pays a flat rate per month for an unlimited number of outgoing local calls; (ii) untimed message rate service where the customer pays a flat rate per month for a specified number of calls per month plus a specified charge for each additional call per month; and (iii) economy service where the customer pays a small flat rate for dial tone service plus a specified charge for each outgoing local call; and

WHEREAS, such types of service are preferred by many telephone users in Virginia because, among other things, the monthly cost of any such residential telephone service can always be predetermined with certainty; and

WHEREAS, telephone utilities in Virginia have long sought to promote for both residential and business use, local measured service, sometimes known as four-element local service, the cost of which is computed on the basis of the number of local calls made, the time duration of each local call made, the time of day each local call is made, and the distance of each call made; and

WHEREAS, it is difficult, if not impossible, for any residential telephone user whose service is a four-element local measured type of service to predetermine with any accuracy the monthly cost of his or her telephone service under such an option; and

WHEREAS, § 56-241.1 of the Code of Virginia provides that the State Corporation Commission "shall not approve any mandatory tariff for local service of any telephone company based on the number of calls, length of call, distance or time of day not in effect on January 1, 1979," but authorizes the Commission to approve types of local measured service if offered on an optional or voluntary basis; and

WHEREAS, in 1984, the State Corporation Commission authorized a telephone utility providing residential service in Virginia to offer four-element local measured service as an option to residential users throughout the Commonwealth; and

WHEREAS, the telephone utility, in 1985, testified before the Joint Telecommunications Subcommittee of the General Assembly that it intended to offer four-element local measured residential service in different areas of the Commonwealth not merely as an option but to replace untimed message rate service and economy service, but later decided to retain such services in addition to offering four-element local measured service; and

WHEREAS, it is undesirable to deprive the citizens of Virginia of access to residential service options which are easily understood by them and the cost of which can be readily predetermined; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That it is the sense of the General Assembly that while four-element local measured service may be offered by telephone utilities as options to Virginia customers, such optional service should not replace existing service options such as untimed message rate service and economy service.

June 5, 1985
(Final Draft)

C&P OF VIRGINIA

PRESENTATION ON BYPASS TO THE JOINT SUBCOMMITTEE STUDYING THE EFFECTS OF THE CHANGES IN THE TELECOMMUNICATIONS INDUSTRY

"BYPASS AND THE IMPACT ON VIRGINIA CONSUMERS"

Chart #1 - "Bypass And The Impact On Virginia Consumers"

- o Introduction
- o The topic of bypass has received much debate at many forums. There is much confusion about the topic and many conflicting views. The issue of bypass has been called a "Red Herring", a "Myth", a concern but not an imminent threat, and a "Boogieman" that hasn't proved to be real.
- o The intent of this presentation is to show primarily that bypass is an issue of concern for Virginia consumers. This presentation will:
 - Put forth a definition of bypass and examine the various types of bypass
 - Briefly describe the causes of bypass
 - Present the results of two analyses that demonstrate the reality of bypass and its potential impact on Virginia consumers
 - Identify some areas of corrective actions to be pursued

Charts #2 and #3 - "Communications Within The Lata" and "Accessing A Long Distance Carrier"

- o Definition
 - "Bypass" typically is used to refer to the origination and/or completion of communications by users, long distance carriers, or other providers of communications services without the use of the local telephone companies services or facilities. Any attempts, however, to define "bypass" more precisely, or to distinguish between "economic" and "uneconomic", or even "good" or "bad" forms of Bypass defer the more important questions concerning consequences and causes of bypass (of any variety), and the actions which should be taken to avoid bypass.

It is useful however, to distinguish two important types of bypass. The following charts depict two types of bypass that can occur:

TYPE 1 - Communications within the LATA - This occurs entirely with the service territory of the local exchange carrier, replacing potentially, a wide variety of the Local Telephone Companies services including local, toll, private lines, etc.

TYPE 2 - Accessing a long distance carrier - This type replaces the Local Telephone Company access service which provides "access to the world" without the use of the local facilities. Access service provides the connection from long distance carriers to customers and the capability to enter long distance networks that provide communication outside the LATA. Customers and carriers have the ability to avoid charges for access in two ways:

- o Direct facility bypass where a customer is linked to a long distance carrier with facilities not provided by the local telephone company. A variety of technologies are typically used including microwave, coaxial cable, satellite, etc.

- o Service bypass, as it has been identified, occurs when a large customer is linked to a long distance carrier by a private line leased from the local telephone company (as available in special access tariffed service). Special access is directly substituted for switched access with no difference in service. This service allows customers to avoid excessive charges in switched access, the access service commonly used by customers, as we will discuss shortly.

- o Another type of bypass that may occur is used for communications outside the LATA - while this type extends beyond the market area of the local exchange carrier, along the way it replaces many of the same components as the previous examples.

- While these descriptions are obviously simplistic, the point of this depiction is to demonstrate that local telephone networks are made up of several components, any one or all of which may be bypassed in the course of providing end-to-end services. Any attempt by the Telephone Company to charge more than the cost of supplying for these components of the local network will cause consumers to seek alternatives.

Chart #4 - "Primary Causes of Bypass"

- o In order to understand the causes of bypass, a little history is necessary. Over the years, in order to keep local telephone rates down, state and federal regulators engaged in a compact where more and more of the costs of local telephone service were placed in the long distance rates. This was done to keep local rates low and encourage universal service. However, beginning in the 1960's, the very largest users of our long distance network began to realize that they were paying additional costs to cover the cost of local service. But not just large users were paying this; everyone who uses long distance pays this additional cost when they make long distance calls to support local telephone service. But the problem here is this, these large users have both incentive and the financial means to be able to abandon the use of the public telephone network and build their own private systems.
- o The cost recovery mechanism in the access charges creates an artificial incentive for customers and carriers to seek alternative sources so that they may avoid these additional charges. This charge is meant to recover the fixed cost of telephone plant, more commonly known as local loop costs, poles, wire and conduit. These costs are paid by long distance carriers to the local telephone company for every minute the local network is used in completing long distance calls. The charge, called the carrier common line charge, was developed by the FCC as part of the access charge plan. The costs of these local facilities do not change with variations in telephone use. Yet, because of this cost recovery mechanism, the prices customers and carriers pay do increase as telephone use increases. Local telephone companies are simply not able to charge on the basis of the cost of supplying the service. They must charge on the basis of maintaining a subsidy to local service.
- o As case in point, a large business customer typically places as many as 6000 minutes of use a month over a single access line. The additional charge built in access prices in Virginia is approximately 9 cents per minute; that customer would contribute roughly \$540 per line per month in excess of his own costs. This creates a tremendous incentive for the customer to look for lower cost alternatives.
- o Recovery of these fixed costs on a usage sensitive basis encourages heavy users to seek alternatives. These alternatives may be less efficient and more costly but are priced below the local telephone companies service because they are not similarly burdened with these additional costs.

- o Nationwide Pooling - over the past half century, telephone customers in the Northeast, Midwest and Middle Atlantic states including Virginia have paid billions of dollars in hidden subsidies to telephone companies in the far Southern and Western parts of the country. Pooling is an arrangement where revenues are collected on a nationwide basis and evenly distributed. In this arrangement, low cost companies like C&P of Virginia and their customers, wind up supporting higher cost companies.

The original rationale for these interregional subsidies was to promote extension of telephone service to all Americans by partially underwriting the cost of running new phone lines to sparsely settled or costly-to-wire areas.

Congress embraced the public policy goal of universal telephone service, but few people were fully aware of the massive program of regional subsidies put in place to achieve it.

- The revenue for the subsidies was collected from customers as an invisible part of long-distance charges, and distribution of the money to companies being subsidized was handled internally by the old Bell System.

Now, following the breakup of the Bell System, this regional revenue sharing is coming under scrutiny. It continues to this day as a national welfare program for phone companies even though universal service long since has been achieved.

Under the current arrangement authorized by the Federal Communications Commission, telephone users in the Northeast, Midwest and Middle Atlantic states including Virginia pay an extra \$70 million per month to subsidize telephone companies in other parts of the country.

The cost to telephone users in Virginia in 1984 of this inter-regional subsidy came to more than \$58M. That is, Virginia consumers shipped \$58M to other parts of the country.

While we can see some benefit in public aid to small phone companies in hard-to-reach rural areas, we find it hard to understand why Virginia residents should subsidize phone service in Palm Beach.

These subsidies are not good for the health of today's newly competitive telephone industry.

The additional charge we have to collect from each phone customer provides large businesses with yet another incentive to save millions of long-distance dollars by bypassing the public network and routing communications over special or private networks.

We take pride in our reputation as "low-cost" phone companies, but our customers do not reap the benefits. Instead, we are forced to inflate our charges to support phone companies who have little incentive to contain their own costs.

- o To sum up this discussion Bypass is a way to save money. Bypass, to consumers, is simply a rationale economic choice to fulfill their telecommunications needs. It is nothing sinister or evil. Bypass is nothing more than competition for network services. Customers, including long distance carriers, make economically rational choices and local telephone companies must provide them with economically rational alternative or they'll go elsewhere to fulfill their needs. The telephone companies must be allowed to use their efficiencies in order to compete in what has become an intensely competitive market.
- o Next, I'll discuss the results of two bypass studies recently completed in Virginia. The first study a large business customer survey, examined the extent to which bypass is now occurring in Virginia and the second entitled "Access Charging and Bypass Adoption" quantifies revenue loss that may occur from bypass. Both studies focus on business users. Local Telephone companies receive a tremendous amount of revenue from very few large business customers. 2% of C&P of Virginia's large business customers generate approximately 50% of long distance revenues. So the significance of their bypass activities and the potential for tremendous impact is fairly obvious.

Chart #5 - "Virginia Large Business Customer Survey (National Analysts)"

- o An assessment of the use of competitive alternatives by Bell Atlantic's large business customers. These alternatives allow customers to leave the local network.
- o Designed as follow-up to 1983 survey to provide "time series" and trend analysis. Explores alternative facilities and services:
 - Current Use
 - Planned Use
 - Serious Consideration

- Technology Type and Application:
 - o Direct Access to Long Distance Carrier
 - o Inter/Intra LATA
 - o Inter/Intra State
- Motivations For Use
- Displaced Telco Service

- o Interviewed 108 large business customers from Virginia
- o Alternative facilities are defined as owned facilities not provided by the local telephone company and used for intraLATA or interLATA transmission or for accessing a long distance carrier.
- o Alternative services are defined as resale of intraLATA service and shared tenant arrangements. Resale occurs when a third party leases services or facilities to the primary user.
- o Planning was defined as having "plans on the drawing board" to implement an alternative within two years. Serious consideration included consideration of implementing alternatives within the next five years.
- o Results:
 - The number of privately owned alternative facilities has increased marketly since 1983 and will continue to increase

	<u>1983</u>	<u>1985</u>	<u>1987</u>	<u>1990</u>
Establishments	16	21	29	45
(Increase)		(30%)	(38%)	(55%)

- Use of alternative services prevalent and will continue to increase

	<u>1985</u>	<u>1987</u>	<u>1990</u>
Establishments	25	30	52
(Increase)		(20%)	(73%)

- Fully 60% of all C&P of Virginia's large business customers are currently engaged in the use, planning and/or consideration of alternatives

	<u>CURRENT</u>	<u>PLANNING</u>	<u>CONSIDERING</u>
Establishments	40	8	17
(% of Total)	(37%)	(7%)	(16%)

- Study found significant use, plans and consideration of alternative facilities for direct access to long distance carriers and for intraLATA transmission

<u>FACILITIES</u>	<u>CURRENT</u>	<u>PLANNING</u>	<u>CONSIDERING</u>
Direct Access	8	4	14
IntraLATA	29	12	10

- Significant amounts of traffic (40% on average) are handled by the alternative facilities and services

<u>TRAFFIC HANDLED BY:</u>	<u>AVERAGE</u>
Alternative Facility	11%
Alternative Service	29%
BOC	60%

- Vendors are actively marketing alternatives and customers are actively analyzing alternatives
- Cost efficient transmission capabilities are and will be the driving force behind the decision to use alternatives

Chart #6 - "Virginia Access Charging and Bypass Adoption Study"

- o Current access tariffs, as we've discussed, provide the incentive for large customers to connect to long distance carriers with "bypass" facilities in order to reduce costs. Alternatively, long distance carriers can economically substitute special access for switched access. Although such substitution does not bypass local exchange carriers, it can substantially reduce their revenues.
- o Substituting special access for switched access involves virtually no risk and is extremely easy to carry out. Adopting bypass is also relatively safe and trouble free. Historical analysis demonstrates that telecommunications suppliers and users have rapidly adopted many innovations that were much riskier and more troublesome than special access or bypass.
- o The analysis projects rapid substitution of special access for switched access over the next three years, unless switched access rates are substantially reduced. It also projects significant adoption of bypass within five years and pervasive adoption within 10 years. If rates for special access rise substantially, rapid adoption of bypass could occur in the next five years.

- o The revenue projections for 1990 are as follows:
 - 1) If switched access charges are not reduced the projects that C&P of Virginia will lose 35% of business switched access revenue. Most of these projected losses are due to substitution of special access for switched access.
 - 2) Raising all rates for special access helps very little, reducing losses to 30%. The main effect of this policy is to drive users of special access to bypass.
 - 3) If C&P of Virginia were to charge only its traffic sensitive costs for switched access not the additional charges we've been discussing, revenue losses would be only nine percent of current business switched access revenues.
- o The bypass problem will worsen with time, as the costs of electronics fall and customers gain greater experience with bypass. Projected revenue losses for C&P of 51 percent by 1995 -- unless switched access charges are significantly reduced. Bypass accounts for almost half of these projected losses.

Chart #7 - "Virginia Bypass"

- o The percentages of losses equate to the revenues presented on this chart. These potential losses are substantial. \$83M by 1990 and \$142M by 1995 if no corrective action is taken. These revenues equate to a per customer access line impact of \$3.21 in 1990 and \$5.24 in 1995.

Chart #8 - "Corrective Action"

- o C&P of Virginia has already taken strides to ensure that these predicted losses do not occur. The Virginia intrastate access tariff change proposal will go a long way in minimizing the bypass threat. The Virginia access tariff changes represent an important step towards an economically efficient price structure. This proposal will phase out the excessive burden in access charges over a five year period. C&P is working to make other improvements as well. Economic pricing through optional calling plans and other flexible approaches will ensure customers receive a service at a price competitive with the alternatives available in the market place. C&P's timely responsiveness to its customers needs will

ensure its viability in the Virginia economy and will ensure it's ability to continue to provide telecommunications services efficiently, at affordable rates to the consumers of Virginia.

- o While the hidden subsidies in nationwide pooling may well have provided construction of a nationwide network in an era of monopoly it makes no sense in today's competitive environment. While the need exists for an orderly transition today's new realities require that each company get on an economically sound basis as quickly as possible.

- o C&P of Virginia must continue to work with its regulators to improve and develop the flexible approaches needed to respond to customer needs quickly and with economically efficient prices. Some of these steps have already been taken but more is needed. Telecommunication's policies and regulations will be the major factor in shaping the future of the local telephone companies in the competitive telecommunications market. These will either encourage and perpetuate artificial incentives to use alternative suppliers, leading to the debilitation of the local telephone companies and the abandonment of the public network, or they will guide the evolution of a fully competitive telecommunications market, where all participants and the public benefit.



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THE BYPASS ISSUE IN TELEPHONE COMMUNICATIONS

The Virginia Citizens Consumer Council recognizes that increasing competition and technical capabilities in the telecommunications industry may stimulate efforts to bypass dominant common carrier networks. To the extent that such bypass by business customers (which are apparently the greatest source of existing carrier revenue) would necessarily tend to increase monthly bills of residential customers, some regulatory and/or legislative preventive measures should be adopted.

Such action, however, should be taken only after careful examination of specific cases and trends by the Corporation Commission and appropriate legislative committees. The burden of proof should rest with the common carrier affected by a bypass situation to demonstrate clearly whether and why: (1) such situation would, in fact, decrease its revenues significantly; (2) residential rates would necessarily have to be increased to cover a revenue shortfall; (3) the carrier's service and pricing makes bypass economically feasible.

A stringent proof standard is necessary, we believe, to prevent a carrier from using bypass as an unjustified excuse for seeking rate increase. It also seems necessary in order to protect innovative communications networks, which might eventually qualify for (or be required to certify for) common carrier status, from being stifled in their developmental stages.

If competition in long distance telephone service proves beneficial to all customers, competition in local service appears to offer similar potential. It should be encouraged on an equitable basis with existing common carriers.

Since changes are rapid in the complex communications field, we believe that continuous regulatory and legislative monitoring and oversight are essential to assure that all parties share equitably in responsibilities and benefits.

(Submitted to the Joint Subcommittee Studying Effects of Changes in the Telecommunications Industry by Paul A. Miller, consumer communications adviser, on behalf of The Virginia Citizens Consumer Council, Helen Savage, President.)

