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COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
HOUSE CONSUMER AFFAIRS COMMITTEE

IRVIS OFFICE BUILDING  
ROOM G-50  
HARRISBURG, PENNSYLVANIA

MONDAY, MARCH 10, 2008  
9:37 A.M.

IN RE: SENATE BILL 1000

BEFORE:

- HONORABLE JOSEPH PRESTON, JR., CHAIRMAN
- HONORABLE ROBERT W. GODSHALL
- HONORABLE JOSEPH F. BRENNAN
- HONORABLE RON BUXTON
- HONORABLE R. TED HARHAI
- HONORABLE TIM F. HENNESSEY
- HONORABLE ROB W. KAUFFMAN
- HONORABLE CHRIS KING
- HONORABLE WILLIAM C. KORTZ, II
- HONORABLE BOB MENSCH
- HONORABLE SCOTT PERRY

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(CONT'D)

HONORABLE HARRY READSHAW  
HONORABLE DOUGLAS REICHLEY  
HONORABLE CHRIS SAINATO  
HONORABLE TIMOTHY J. SOLOBAY  
HONORABLE EDWARD P. WOJNAROSKI, SR.

ALSO PRESENT:

GAIL DAVIS, MAJORITY EXECUTIVE DIRECTOR  
JAKE SMELTZ, MINORITY EXECUTIVE DIRECTOR  
TIM SCOTT, RESEARCH ANALYST  
COLIN FITZSIMMONS, RESEARCH ANALYST  
MARCI SANTORO, COMMITTEE LEGISLATIVE ASSISTANT  
ROBERT ORTH, COMMITTEE INTERN

BRENDA S. HAMILTON, RPR  
REPORTER - NOTARY PUBLIC

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## P R O C E E D I N G S

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CHAIRMAN PRESTON: Good morning. The hour of 9:30 having come and gone by, I'd like to call to order the meeting of the Consumer Affairs Committee for the public hearing on Senate Bill 1000.

The first order of business, I would like for the members to introduce themselves and then afterwards we will have the appropriate staff introduce themselves just as well. And we'll start to my right and to your left.

REPRESENTATIVE SOLOBAY:

Representative Tim Solobay representing the 48th district and Washington County.

REPRESENTATIVE HARHAI:

Representative Ted Harhai, 58th Legislative District, Westmoreland and Fayette County.

REPRESENTATIVE GODSHALL: Bob

Godshall, Montgomery County.

REPRESENTATIVE KING: Representative

Chris King, 142nd, Bucks County.

REPRESENTATIVE SAINATO:

Representative Chris Sainato. I represent the

1 9th legislative, which is parts of Lawrence  
2 and a section of Beaver County.

3 REPRESENTATIVE PERRY: Representative  
4 Scott Perry from the great 92nd, northern York  
5 County and southern Cumberland County.

6 REPRESENTATIVE MENSCH: Good  
7 morning. I'll mention the fighting 147th.

8 CHAIRMAN PRESTON: Gentlemen.  
9 Gentlemen. Gentlemen. Yes. Or I'll have to  
10 introduce my cochairman here, and then we'll  
11 have to start all over again.

12 And the appropriate staff, starting  
13 with Colin and we'll work over.

14 MR. FITZSIMMONS: Colin Fitzsimmons,  
15 legislative analyst, Republican caucus.

16 MR. SMELTZ: Jake Smeltz, the  
17 committee director for the Republican Caucus.

18 MS. DAVIS: Gail Davis, executive  
19 director, Democratic caucus.

20 MR. SCOTT: Tim Scott, research  
21 analyst, Democratic caucus.

22 MR. ORTH: Robert Orth. I'm  
23 interning in the committee.

24 MS. SANTORO: Marci Santoro,  
25 committee legislative assistant.

1           CHAIRMAN PRESTON: Marci is really my  
2 boss.

3           First, I want to be able to  
4 apologize, and today with the rush of the  
5 hearing and starting early, staff was even  
6 trying to push me to nine o'clock, but I do  
7 want to apologize, and I -- and I guess we had  
8 scheduled this hearing before and I was told  
9 by members of the -- from leadership that the  
10 scheduled hearing that we were having earlier  
11 had to be canceled.

12           I'm not going to -- I'll be -- to say  
13 it very lightly, my disappointment was when  
14 they canceled the session day for the day we  
15 had a hearing, scheduled the hearing.

16           Also for those who made travel plans  
17 or canceled plans for the previous hearing,  
18 I -- I understand that. This is a very  
19 important issue.

20           And I do want to thank the many of  
21 you who sent me get well cards because it's  
22 the first hearing that I had missed when we  
23 had the 1490. It was a very interesting  
24 situation, but I did lose about 15 pounds. So  
25 there was some good that did come out of it.

1           I wanted to be able to say that as we  
2 got started. There's -- there's -- these are  
3 issues that we've been dealing with over the  
4 last four, five, six years, as we start to  
5 look at the infrastructure and development  
6 across the Commonwealth of Pennsylvania so  
7 that we can be much more competitive with  
8 other areas and to be able to help those areas  
9 who haven't had some of the growth patterns  
10 but can offer some of the opportunities and  
11 then the areas that have the growth patterns,  
12 that they just as well stay abreast of the  
13 technological areas that are happening as we  
14 come along the levels of technology.

15           That being said, I offer for my  
16 co-chair, Brother Godshall, if you have any  
17 comments.

18           REPRESENTATIVE GODSHALL: I have no  
19 comments really at this time, but I do agree  
20 with you. Sometimes these hospital stays can  
21 help you in the long run.

22           I had a hip replaced in September. I  
23 lost about 15 or 20 pounds and I'm struggling  
24 to keep it down. So in the long run I think  
25 I'm the winner on that deal, too.

1           I just wanted to add, we've had a lot  
2 of information coming through to our office.  
3 I won't say that I understand this issue at  
4 all and where the different sides are coming  
5 from. And I'm also -- you know, feel grateful  
6 that we have a hearing on this so maybe we can  
7 get to understand a little bit better, you  
8 know, just exactly what we have here.

9           Thank you.

10           CHAIRMAN PRESTON: Thank you,  
11 Mr. Chairman.

12           Also, I guess, I will be introducing  
13 members as they come. A lot of them are still  
14 on the road getting here.

15           I did want to really say that I had  
16 originally scheduled the two different bills  
17 back to back because, as members know, we  
18 spent the last year and a half getting  
19 familiar with different forms of the  
20 nomenclature as we deal with telecommunication  
21 and infrastructure development with all the  
22 utilities.

23           I am encouraging members that, as you  
24 have different thoughts in the coming weeks,  
25 that you write them down and be able to send

1       them to the appropriate staff.

2               And for those of you who will be  
3       testifying today, if you're offering different  
4       amendments or different thoughts that you  
5       have, I would encourage you to be able to put  
6       them in writing and deal with the respective  
7       executive directors. And if you submit them  
8       to Ms. Davis, everybody will be guaranteed to  
9       get a copy.

10              But the first person to come before  
11       us -- I guess to those in the audience, I have  
12       no reason to be able to say his name because  
13       when he stands up everybody knows him. He is  
14       famous in his own right, and I have always  
15       respected those people in the upper chamber.

16              I want to make sure that he lets his  
17       colleagues know that I truly respect those  
18       members in the upper chamber.

19              Help me welcome Senate Robert  
20       Wonderling, who is chairman of the Senate  
21       Communication and Technology Committee in the  
22       upper chamber.

23              Senator, welcome, and we appreciate  
24       your comments. We appreciate you spending  
25       time out of your busy schedule to come forth

1 so you can give us your comments on your bill  
2 and some of the thoughts that you may have.

3 SENATOR WONDERLING: Well, thank you,  
4 Chairman Preston, and I humbly submit  
5 greetings from my colleagues from the upper  
6 chamber. And to Representative Godshall as  
7 well, and to the other members of the  
8 committee. I really do appreciate the  
9 opportunity for allowing me to kick off this  
10 hearing and describing my intent behind Senate  
11 Bill 1000.

12 And knowing that you're on a very  
13 compressed schedule, with an outstanding  
14 docket of folks to be presenting testimony,  
15 I'll be very brief and then if the chairman so  
16 desires I can answer questions at that time.

17 The very precise and specific  
18 intent, from my perspective, of Senate Bill  
19 1000 is to provide consumers greater  
20 flexibility and choice as relates to emerging  
21 communication technologies.

22 Now, I want to underscore the word  
23 choice and work you through exactly what a  
24 consumer must do to take advantage of Voice  
25 Over the Internet Protocol communication

1 technology.

2 First, the individual consumer must  
3 have dial-up capacity, ability to access the  
4 Internet.

5 Second, there has to be a provider,  
6 of which there are many and growing, not just  
7 in this Commonwealth but in other parts,  
8 willing and able to provide service.

9 It's at that point in time that the  
10 individual then makes a choice and determines  
11 for a whole lot of reasons, one of which we  
12 can never really presume, at least from a  
13 governmental perspective, to opt out of  
14 traditional telephone service, to choose if  
15 technically available, the Internet service,  
16 and then proceed.

17 And, of course, in the marketplace,  
18 in the communications marketplace or any  
19 marketplace, if that individual is satisfied,  
20 they will continue to purchase that service.

21 But if that individual is  
22 dissatisfied, once again, that consumer can  
23 choose perhaps another carrier, if available,  
24 or to return back to what we commonly refer to  
25 as traditional telephone service.

1           So that's the -- the underlying  
2           intent of Senate Bill 1000.

3           I will also add that the bill is  
4           consistent with current federal policy. The  
5           FCC has opined on this matter, as well as  
6           various court cases, to suggest that it is a  
7           information service and, therefore, not  
8           subject to the regulatory framework at the  
9           federal and state level, as we would, again,  
10          call traditional telephone service.

11          I also think this legislation is  
12          consistent with what surrounding states have  
13          done, such as New Jersey, Ohio, and Maryland,  
14          and seven other states that have already  
15          passed similar legislation.

16          Let me stress, in conclusion, what  
17          this bill does not do. This bill does not,  
18          quote, deregulate traditional telephone  
19          service in the Commonwealth. In fact, it  
20          seeks to create a new statutory environment  
21          for emerging communication services such as  
22          Voice Over the Internet Protocol.

23          What the bill also does not do is to  
24          allow for these emerging service providers to  
25          shirk their responsibility as relates to, say,

1 paying a proportionate share of 91 fees -- 911  
2 fees and other related service fees which are  
3 important as relates to issues of public  
4 safety and consumer protection, et cetera.

5 So with that, Mr. Chairman, I would  
6 welcome and entertain any questions you or the  
7 committee may have.

8 CHAIRMAN PRESTON: First -- first,  
9 we've been joined by Representative Hennessey  
10 and Representative Readshaw.

11 On the issue of questions, let me --  
12 oh, I'm sorry. And Representative Kortz. I  
13 apologize, sir.

14 This is being recorded. It's being  
15 recorded, not presented live, because of  
16 something happening in the upper chamber at  
17 this moment. So I encourage people to put  
18 your phones on buzz, no ringing.

19 Also to the members, I would  
20 appreciate so that everyone can have an equal  
21 amount of time, if you have more than one  
22 question, if you'll ask just the one question  
23 and then we will come back to you.

24 The first person being Representative  
25 Solobay.

1           REPRESENTATIVE SOLOBAY: Thank you,  
2 Mr. Chairman.

3           Rob, going under legislative intent  
4 and the question I ask is kind of a little  
5 complex. Mr. Chairman, I hope I get a little  
6 latitude on that one-question portion because  
7 they're kind of rolling together. And maybe  
8 some of the other presenters may also want to  
9 address this whenever they -- when they  
10 present.

11           You addressed the one issue about the  
12 911 and obviously the surcharge things,  
13 because we know that as things go along, the  
14 hard line service has been taking a heavy hit  
15 and the money that that surcharge is being  
16 used for at the 911 centers is still very  
17 important.

18           So hopefully the intent of that is  
19 that maybe that money rolls over to what the  
20 hard line surcharge is being served for.

21           The other thing, I guess, my main  
22 question then, is intent, your intent on that,  
23 with the voice over technology, some of the  
24 concerns that I've heard back through is  
25 whenever that connects back into a hard line

1 service somewhere, whether a smaller telephone  
2 operator or a larger telephone operator with  
3 -- on the receiving end, not having that type  
4 of technology, there's a cost associated with  
5 receiving that call back in.

6           Is there anything in your -- in your  
7 mind to address or -- that intent? I guess  
8 that's an access charge-type thing is what's  
9 being questioned or concerned about and that  
10 the costs that would be, I guess, levied over  
11 onto the smaller operators to be able to deal  
12 with accepting a call like that?

13           SENATOR WONDERLING: There is --  
14 under current statute there's currently a  
15 process in place for which a local telephone  
16 service provider can enforce, in the form of a  
17 tariff, all of the costs to be borne through  
18 the system from the point at which the call  
19 originates.

20           And, in fact, they have the -- the  
21 ability to set that rate and work it back  
22 through the various interchanges that touch  
23 that call.

24           And so we're confident that those  
25 interests that have issues over access charges

1 already have an existing statutory process  
2 from which to -- to manage those costs.

3 REPRESENTATIVE SOLOBAY: Thank you.

4 CHAIRMAN PRESTON: There being no  
5 other questions, Senator, we appreciate it.

6 SENATOR WONDERLING: Thank you.

7 CHAIRMAN PRESTON: And, again, tell  
8 my brothers in the upper chamber that I  
9 welcomed you well.

10 SENATOR WONDERLING: Will do. Thank  
11 you.

12 REPRESENTATIVE GODSHALL: I'd just  
13 like to comment on our caucus. Senator, in  
14 our caucus, sometimes the flowery language  
15 that was -- that was displayed a little  
16 earlier this morning isn't quite as flowery,  
17 you know, when some of the actions of the  
18 higher chamber come down to the lower  
19 chamber.

20 So I just want to let you know that  
21 it isn't always up here, you know, but it's --  
22 sometimes we question some of the things that  
23 come down.

24 SENATOR WONDERLING: Duly noted.

25 REPRESENTATIVE GODSHALL: Yeah. And

1 you probably do, too.

2 CHAIRMAN PRESTON: Well said,  
3 Mr. Chairman.

4 The next testifier is Wendell  
5 Holland, who is the chairman of the Public  
6 Utility Commission.

7 Welcome, sir, and when you are  
8 comfortable and have introduced yourself, you  
9 may begin.

10 MR. HOLLAND: Thank you, Chairman  
11 Preston and Chairman Godshall and members of  
12 the committee for the opportunity to present  
13 my comments on S.B. 1000.

14 I am joined with my counsel, David  
15 Screven, as we talk of hospital stays, who's  
16 somebody who literally broke a leg to get  
17 here.

18 I initially would like to say also  
19 that I submitted prefiled written direct  
20 testimony, and I will read parts of that.

21 And also note that my comments are  
22 comments of my own and don't necessarily  
23 represent the views of the Public Utility  
24 Commission as a whole.

25 First, let me say I congratulate

1 Senator Wonderling of the upper chamber for  
2 his leadership and his vision on this bill.

3 I've watched it as it worked its way  
4 through the Senate and I will continue to  
5 watch it.

6 I will start my testimony with my  
7 agency's treatment of VoIP since as I've been  
8 chairman. As a regulatory agency we faced the  
9 VoIP challenge in 2004. In our final order in  
10 2004, the commission said that VoIP represents  
11 a world of opportunities for Pennsylvania  
12 consumers and significantly, as one of my  
13 former colleagues recently noted, we accepted  
14 regulatory restraint as the law of this land  
15 and we've seen competition flourish in this  
16 industry, as we hoped it would, in other  
17 traditionally regulated industries.

18 It's my opinion that consumers have  
19 embraced VoIP service, driven by choice and  
20 the opportunity to save money. Competition is  
21 fierce among VoIP providers and consumers are  
22 the ultimate winners in this competition.  
23 It's my firm belief that we did the right  
24 thing for Pennsylvanians.

25 Some have argued that Senate Bill

1 1000 represents a timely opportunity to codify  
2 the Commonwealth's current regulatory  
3 treatment of VoIP. Yet while we go forward,  
4 we should do so cautiously so that we can send  
5 a message throughout the country that  
6 Pennsylvania will embrace technology, promote  
7 competition, and allow its customers to reap  
8 rewards.

9 More substantively, Senate Bill 1000  
10 proposes to prohibit the regulation of VoIP  
11 and other IP-enabled services and products.

12 The proposed bill defines VoIP as any  
13 service that enables two-way real-time voice  
14 communication that originates or terminates  
15 from the user's location.

16 This includes any service that  
17 permits users generally to receive calls that  
18 originate in the Public Switched Telephone  
19 Network.

20 Consequently, the bill prohibits the  
21 commission, the Public Utility Commission,  
22 from regulating any service capability,  
23 functionality, or application that uses  
24 Internet protocol or subsequent protocol.

25 Senate Bill 1000 also limits our

1 authority over VoIP.

2 At this time, let me express just a  
3 few concerns that I'd like to share with this  
4 body.

5 First, the scope of the proposed  
6 legislation could be, not necessarily will,  
7 but could be interpreted to imply that the  
8 conversion of the traditional telephone  
9 network by telephone companies into an  
10 IP-enabled network could inadvertently  
11 deregulate basic telephone service.

12 I take comfort from Senator  
13 Wonderling's comments just moments ago that  
14 the intent of this bill is not to deregulate  
15 basic telephone service.

16 It's my further understanding that  
17 the committee is considering ways of further  
18 addressing this issue.

19 Second, under the proposed  
20 legislation, I want to be sure you recognize  
21 that a customer who chooses to purchase a VoIP  
22 service offering would not be able to come to  
23 the PUC to resolve any service-related  
24 complaint that they may have about their VoIP  
25 product as would a traditional public utility

1 customer.

2 Today, if a customer uses the  
3 traditional phone network to make a call and  
4 the service for that call or the company's  
5 treatment of that customer is not reasonable  
6 or adequate, the consumer has several  
7 options.

8 First, the consumer can call the PUC  
9 and file an informal or formal complaint to  
10 mediate the dispute or, if that fails, the  
11 consumer can obtain a written decision from  
12 the commission on how the dispute should be  
13 resolved.

14 In actual practice, most complaints  
15 are resolved informally by the commission's  
16 Bureau of Consumer Services without resorting  
17 to hearings or any sort of legal proceeding.  
18 The utilities pay assessments to fund that  
19 commission service.

20 Secondly, we have available to us  
21 public advocates. The Consumer Advocate is an  
22 avenue that the customer can call.

23 Finally, the Office of Small Business  
24 Advocate is another avenue that the consumer  
25 can call to complain about their service.

1           Therefore, under the current law,  
2           telephone network calls are subject to  
3           Consumer Advocate, Office of Small Business  
4           Advocate, and PUC enforcement.

5           An argument could well be made that  
6           consumers should continue to have these  
7           options available to them to resolve  
8           service-related issues regardless of the  
9           technology used to make their telephone call.

10           But as drafted Senate Bill 1000  
11           treats telephone calls using IP or VoIP  
12           different from calls made over Pennsylvania's  
13           current telephone network.

14           Under the regime of Senate Bill 1000,  
15           if the consumer makes the same telephone call  
16           using IP or VoIP, Senate Bill 1000 limits  
17           consumer protection to enforcement of  
18           unfair -- unfair trade practices.

19           More specifically, Section 5 of the  
20           bill limits consumer protection to the  
21           enforcement of laws or regulations that apply  
22           generally to consumer protection or unfair or  
23           deceptive trade practices.

24           The question here becomes: Who will  
25           enforce those provisions?

1           Calls made under this legislation  
2           that use IP or VoIP are subject to enforcement  
3           by the Attorney General, not the traditional  
4           statutory public utility advocates. As a  
5           result, any consumer complaint may be subject  
6           to mediation or enforcement by the Attorney  
7           General or brought as a private civil action  
8           before a local court.

9           This may be viewed as a more onerous  
10          burden to resolving consumer complaints than  
11          is presently available to telephone  
12          consumers.

13          I don't know if the General Assembly  
14          intended to change the manner in which  
15          consumers resolve the service-related issues  
16          based on merely -- on the type of technology  
17          used to provide voice telecommunication  
18          service to them, but the Senate bill as  
19          construed appears to do just that.

20          Finally, Section 4 of Senate Bill  
21          1000 prohibits the commission's regulation of  
22          any rates, terms, and conditions of VoIP  
23          service or IP-enabled service.

24          In order to make a call, a person  
25          needs to possess a broadband connection. It

1 could be from a cable operator or digital  
2 subscriber line or from their company.

3 As an aside, I note that the  
4 definition of broadband as set forth in the  
5 proposed legislation should be revised to  
6 refer to 1.4 -- 1.54 mps or greater so that  
7 the legislation is consistent with the current  
8 Chapter 30 mandate on broadband services.

9 The third and final issue relates to  
10 access charges. Some have argued -- and I  
11 think this debate will continue -- that this  
12 legislation will undermine the ability of some  
13 carriers to collect access charges.

14 I'd say that this bill may not change  
15 the current rules that would -- and would add  
16 that this legislature in passing Act 183  
17 provided an express remedy for any carrier  
18 that believes that it's not been paid access  
19 payments that are properly due.

20 I recognize the whole issue of access  
21 charges is a very complicated issue currently  
22 before the FCC. The PUC will act  
23 appropriately when the FCC provides further  
24 guidance.

25 In summary then, there are three

1 issues that warrant consideration when  
2 evaluating this legislation.

3 First, the legislation may  
4 unintentionally deregulate basic telephone  
5 service. I think we've taken care of that.

6 Second, the legislation changes the  
7 forum for resolving consumer complaints  
8 regarding IP and VoIP services compared to  
9 basic telephone service.

10 And, third, while the legislation may  
11 not change the current rules on access  
12 charges, there's no doubt the technology is  
13 affecting access charge structure.

14 From a broader perspective, the PUC  
15 has done the right thing for Pennsylvania  
16 consumers. The bill provides consumers  
17 greater flexibility and choice as relates to  
18 technology.

19 Accepting regulatory constraint? Our  
20 VoIP provider was the right thing for the  
21 Public Utility Commission to do. It was the  
22 right decision in 2004 and now four years  
23 later I can say that it has served  
24 Pennsylvanians well.

25 We look forward to continuing to work

1 with the General Assembly on this issue.

2 Thank you, Mr. Chairman.

3 CHAIRMAN PRESTON: Thank you. Thank  
4 you very much.

5 First, Representative -- let me  
6 introduce the members that have come in. I  
7 see we've been joined by Representative Rob  
8 Kauffman, and we've also been joined by  
9 Representative Chris King.

10 Oh, Representative Brennan. I  
11 apologize. They're both over six feet tall,  
12 and I've also announced Representative  
13 Readshaw.

14 First question, Representative  
15 Mensch.

16 REPRESENTATIVE MENSCH: Good morning,  
17 Mr. Chairman.

18 MR. HOLLAND: Good morning,  
19 Representative Mensch.

20 REPRESENTATIVE MENSCH: Your comments  
21 regarding the -- the appeal process, and  
22 moving from the PUC perhaps to the Small  
23 Business Advocates Office, do you -- will that  
24 provide the same remedy for a client or  
25 customer who -- who feels they have an issue?

1 I'm quite familiar with how the  
2 process works today. Do you think it will  
3 mirror that?

4 MR. HOLLAND: We -- we hope it will.  
5 The process of which I spoke, at least under  
6 this bill, changes the complaint process to  
7 one viewed by, say, three public advocates,  
8 the Office of Consumer Advocate, the Office of  
9 Small Business Advocate, and us to the  
10 Attorney General.

11 We hope that consumers will have as  
12 much ease as -- in pursuing their complaints  
13 as they experienced at the PUC.

14 REPRESENTATIVE MENSCH: Thank you.

15 CHAIRMAN PRESTON: Any other  
16 questions? Any other questions by members?

17 Mr. Chairman, you're not just a  
18 member. You're a chairman, so I just wanted  
19 to ask. Chairman Godshall.

20 REPRESENTATIVE GODSHALL: Good  
21 morning, again.

22 MR. HOLLAND: Good morning.

23 REPRESENTATIVE GODSHALL: In the last  
24 page of your testimony on two occasions you  
25 used the word may, and I'm not sure exactly

1 what may means. You say I would say that this  
2 bill may not change, and that is also -- you  
3 used that word in the last paragraph.

4 Does may mean shall? Does may --  
5 exactly what does may mean?

6 MR. HOLLAND: May is a soft predictor  
7 of the future. That's all. It's certainly  
8 not as forceful as shall. I think that an  
9 argument could be made that may could be  
10 construed as shall.

11 But for the sake of making my -- my  
12 opinions clear, I used may instead of shall.

13 REPRESENTATIVE GODSHALL: Or will?

14 MR. HOLLAND: Yeah. Shall or will.  
15 Yes. May instead of shall or will. Yes, sir.

16 REPRESENTATIVE GODSHALL: So in your  
17 mind, it probably will, but you are not saying  
18 definitely?

19 MR. HOLLAND: That's right.  
20 Sometimes the future is hard to predict,  
21 Mr. Chairman.

22 REPRESENTATIVE GODSHALL: Thank you.  
23 That was my only question.

24 Thank you, Mr. Chairman.

25 CHAIRMAN PRESTON: Well, thank you

1 again, Mr. Chairman. Once again, you've  
2 enlightened us and we appreciate it and look  
3 forward to working with you in the future

4 MR. HOLLAND: Thank you,  
5 Mr. Chairman. It's always a pleasure. Thank  
6 you.

7 CHAIRMAN PRESTON: The next presenter  
8 will be Sonny Popowsky, consumer advocate for  
9 the Commonwealth of Pennsylvania.

10 I'll say to anyone in the back,  
11 there's a chair over here and another chair  
12 over here, if someone wants to sit.

13 And I also notice, I think -- is that  
14 chair over there vacant?

15 That's Sonny Popowsky's chair. I  
16 would never do that. You're with the Attorney  
17 General's Office.

18 Welcome, Sonny, and you may begin  
19 your presentation whenever you so choose.

20 MR. POPOWSKY: Thank you very much,  
21 Chairman Preston, Chairman Godshall, members  
22 of the committee and staff.

23 I have presented some written  
24 testimony, and I'd like to summarize it at  
25 this time.

1 CHAIRMAN PRESTON: Thank you very  
2 much.

3 MR. POPOWSKY: My name is Sonny  
4 Popowsky. I'm a consumer advocate of  
5 Pennsylvania, and I've been doing this job  
6 since 1990, and I have worked at the Office of  
7 Consumer Advocate since 1979.

8 When it comes to this particular  
9 issue, VoIP, this is an issue that I've been  
10 working on really since 2004 when it first  
11 arose in the Chapter 30 debate, which I'm sure  
12 many of the members of this committee will  
13 recall.

14 Back in 2004, in House Bill 30, there  
15 was a provision in -- in one of the versions  
16 of the bill that would have deregulated VoIP  
17 or would have prohibited regulation of VoIP.

18 At that time in the hearing before  
19 Senator Corman I testified against that  
20 provision because of my concern that VoIP was  
21 defined so broadly and Internet technology and  
22 telecommunications technology was changing so  
23 rapidly that we might inadvertently, as  
24 Chairman Holland just mentioned, might have  
25 inadvertently deregulated basic telephone

1 service through the passage of that bill.

2 That provision, as you probably  
3 recall, Chairman Preston, was removed from  
4 the -- from the act and, as I mentioned in my  
5 testimony, Governor Rendell specifically  
6 mentioned that point as a positive factor in  
7 signing House Bill 30 into law. He expressed  
8 the same concern, that VoIP deregulation might  
9 have had unintended consequences.

10 With respect to Senate Bill 1000.  
11 This is an issue which, again, has come up and  
12 which I feel very strongly about. To me  
13 it's -- it's the key issue. My key concern is  
14 that Senate Bill 1000, as it came out of the  
15 Senate, still has that problem; that is, the  
16 definition of VoIP is such that not today, but  
17 sometime in the future, as the telephone  
18 network migrates or moves toward a more  
19 Internet-based network, more of what's called  
20 a packet switching network, which I think is  
21 inevitable.

22 As we move to that network, we may be  
23 inadvertently -- through passage of Senate  
24 Bill 1000, may inadvertently be deregulating  
25 even the most basic protected telephone

1 services.

2           Again, you'll recall from House Bill  
3 30, Chapter 30, there's a category of services  
4 called protected services. Even though we  
5 allowed a lot of deregulation in Chapter 30,  
6 even though we -- we created pathways to  
7 deregulation, we still established a set of  
8 basic protected services so that all across  
9 Pennsylvania customers would still have this  
10 opportunity to -- to secure what's called  
11 plain old telephone service at a reasonable --  
12 at a reasonable price.

13           I don't want the passage of Senate  
14 Bill 1000 to -- to defeat that purpose. So I  
15 have proposed an amendment. It's set forth in  
16 my -- in my testimony. It's along the lines  
17 of the other clauses that you'll see in -- in  
18 Senate Bill 1000.

19           There are references in that senate  
20 bill to preservation or at least we're not --  
21 we're not trying to in any way eliminate the  
22 requirements for 911 service, for example, or  
23 universal service or telephone relay service.

24           But there was nothing in Senate Bill  
25 1000 that said that notwithstanding this bill

1 there will still be basic protected service  
2 regulated in the future by the PUC. As long  
3 as there is a tariff with basic service  
4 regulated by the PUC, this bill would not  
5 deregulate it.

6 So the intent of -- of my proposed  
7 amendment, which is on Page 4 of my written  
8 testimony, simply says that nothing in this  
9 act shall be construed to remove or expand  
10 regulatory authority under any other law that  
11 governs the rates, terms, or conditions of  
12 protected services that are provided under  
13 tariffs that are subject to approval by the  
14 Pennsylvania Public Utility Commission.

15 The point being that even if in the  
16 future, if the utility -- if the telephone  
17 companies move to a more Internet-based --  
18 Internet-protocol-based network with packet  
19 switching throughout the -- the network, an  
20 Internet protocol right up to the customer's  
21 home, there will still be a tariff regulated  
22 service that customers can rely on.

23 And with that, if -- if that type of  
24 amendment would be -- I would appreciate it if  
25 it would be considered by this committee.

1 I've certainly discussed it with a number of  
2 you and -- and also with other advocates for  
3 this bill.

4 And I hope that that protection can  
5 be carved out so that, whether or not you go  
6 forward with this bill, at least we know that  
7 there will be a -- a level of protected basic  
8 telephone service for your constituents in the  
9 future.

10 So with that, I'll close my testimony  
11 and I'll be happy to answer any questions.

12 CHAIRMAN PRESTON: Are there  
13 questions from members?

14 Representative King.

15 REPRESENTATIVE KING: Mr. Popowsky,  
16 thank you for being here.

17 MR. POPOWSKY: Thank you.

18 REPRESENTATIVE KING: Just very  
19 briefly. Obviously, I think your amendment  
20 goes to this issue.

21 But out of curiosity, what about a  
22 sunset provision? We'd put this into law and  
23 after so many years sunset it, kind of for the  
24 same concerns. We don't know what's going to  
25 happen in the future.

1           Any thoughts on that or would you  
2           rather see something like your amendment?

3           MR. POPOWSKY: Oh, I would want my  
4           amendment to be in there permanently. And, by  
5           the way, even under Chapter 30, there are  
6           provisions that some day the company may say,  
7           hey, there's so much competition that we don't  
8           need to regulate basic service anymore.

9           What I'm concerned about is that we  
10          do not deregulate service through the back  
11          door inadvertently or we just -- that we don't  
12          inadvertently deregulate just simply by  
13          defining it in such a way that technologically  
14          it will be deregulate -- deregulated.

15          CHAIRMAN PRESTON: Thank you.

16          Any other questions?

17          First, Mr. Popowsky, I want to be  
18          able to say thank you very much for your  
19          testimony.

20          And for the audience and for the  
21          general public, for the other members, I've  
22          encouraged any presenter to be able to put  
23          those thoughts in writing.

24          I wanted us to be able to sit down  
25          and be able to digest whatever information.

1 And I encourage people, if you have thoughts  
2 or amendments, I don't -- I'm not going to  
3 look kindly on them trying to spring them at  
4 the last minute when we've had more advanced  
5 notice.

6 I also want to be able to say that  
7 there is -- we have not -- I and the staff  
8 have not sat down and even talked about the  
9 vote on either Bill 1490 or 1000. I want to  
10 let everybody know that. Because I've been  
11 stopped in the hall. I've been stopped in the  
12 men's room. I've been stopped in the  
13 cafeteria. And I want to be able to -- to say  
14 that.

15 And also to be fair, because this is  
16 a very competitive issue and I can remember,  
17 for those members who weren't here, be glad  
18 you weren't here when it was Chapter 30.

19 This is a very competitive issue, and  
20 I want us to be able to have questions asked  
21 and answered. And sometime, if there's  
22 somebody saying, well, I can't agree to that,  
23 I say, well, what is it you can't agree to?  
24 And let's sit down and try to look at this.

25 Because this is what government is

1 supposed to be about, and it shouldn't be at  
2 the last minute. We should have open, verbal  
3 discussion and, Sonny, I want to appreciate  
4 you being able to do this, and I know you've  
5 been working here with the unit here on a lot  
6 of different things.

7 For your contribution, again, thank  
8 you for coming, and appreciate your testimony  
9 today.

10 MR. POPOWSKY: Thank you. I look  
11 forward to working with you and the members of  
12 the committee as this debate goes forward.

13 CHAIRMAN PRESTON: Next we have Jim  
14 or James D'Innocenzo, vice president of  
15 legislative services at Comcast.

16 I don't know, Mr. Chairman. The  
17 first one breaking the rule. Is that lunch  
18 for everybody?

19 While they are being set up, I'd like  
20 to introduce, since we're in the home city  
21 that he represents, Representative Ron Buxton.

22 REPRESENTATIVE BUXTON: Thank you.

23 CHAIRMAN PRESTON: Mr. D'Innocenzo,  
24 whenever you're ready.

25 MR. D'INNOCENZO: Good morning,

1 chairman. I'd like to thank you for the  
2 opportunity to be here today. I, too, am  
3 going to summarize my written comments.

4 But prior to that, I'd like to answer  
5 a question Representative Solobay had asked.  
6 Representative, if you take a look at Senate  
7 Bill 385, which is at the Emergency  
8 Preparedness Committee. I think it was  
9 drafted by Senator Corman.

10 It addresses the E9-1-1 issues and  
11 mandates that VoIP providers pay one dollar, I  
12 believe, per -- per household per month into  
13 that fund. Also provides for the collection  
14 of it and the disbursement of it.

15 So take -- take a look at that and I  
16 think it should address some of your  
17 concerns.

18 My name is Jim D'Innocenzo, and I'm  
19 the vice president of legislative affairs for  
20 Comcast. Seated with me are Liz Murray and  
21 Don Laub. They're senior regulatory folks at  
22 Comcast. They're going to answer any of your  
23 tough questions.

24 As mentioned several times by several  
25 folks earlier today, in 2004 our PUC adopted

1 an order which currently guides the  
2 commission's policy of regulatory restraint on  
3 VoIP providers, which leads me to take issue  
4 with opponents' claims that codifying the  
5 commission's order into statute, as Senate  
6 Bill 1000 does, will result in increased rural  
7 telephone rates, the loss of employees, and  
8 have a negative impact on access rates.

9 It's just not plausible,  
10 Mr. Chairman.

11 The regulatory status of VoIP has  
12 absolutely nothing to do with the problems of  
13 access charges or, more importantly, its  
14 solution.

15 In 2004, the PUC said it is premature  
16 to make a conclusive jurisdictional or policy  
17 determinations or to take action until the FCC  
18 provides guidance.

19 Although the FCC has yet to issue  
20 guidance for all VoIP providers, they have  
21 ruled that all providers are required to  
22 deliver essential protections, like E9-1-1,  
23 access for the hearing impaired, CALEA, and  
24 payment into the federal, but not state, USF.

25 As a matter of fact, just last week a

1 federal court determined that states are  
2 prohibited from requiring VoIP providers to  
3 pay into the state USF.

4 Limited FCC rulings regarding VoIP  
5 providers, such as the Vonage decision, have  
6 had the peculiar effect of keeping so-called  
7 over-the-top providers out of the jurisdiction  
8 of states without offering a similar assurance  
9 to facilities-based VoIP providers.

10 As a result, VoIP providers, like  
11 Comcast that invest in and build networks,  
12 manage their voice traffic to improve service  
13 quality, and employ tens of thousands of  
14 Pennsylvanians to make it all work are the  
15 only ones not afforded protection from state  
16 regulation.

17 That, Mr. Chairman, is why a  
18 coalition of competitors has joined together  
19 to support Senate Bill 1000.

20 It was the Commonwealth's (sic)  
21 decision to exercise regulatory restraint four  
22 years ago and the continuation of that policy  
23 by the current commission that has made this  
24 promising market possible.

25 It is an incredibly exciting and

1 challenging time to be in the communications  
2 industry. More importantly, it's a great time  
3 to be a consumer.

4 With every passing day, we're seeing  
5 more choices, more innovation, and more value  
6 delivered by many of the companies represented  
7 in this room and a host of other wire line,  
8 wireless, and Internet-based companies with  
9 whom we're all competing.

10 That's right, Mr. Chairman. We're  
11 competing. As you're aware, the phone  
12 companies are making a big push into cable  
13 television and cable companies and a host of  
14 other VoIP providers are competing for voice  
15 customers.

16 But it's important to remember that  
17 VoIP providers are still new in this voice  
18 market. A little over three years ago,  
19 Comcast introduced our IP -- our IP-based  
20 voice service. Today, we're the fourth  
21 largest telephone provider in the United  
22 States.

23 But we still have a relative small  
24 market share in contrast with traditional wire  
25 line and wireless providers.

1           Even with this great story of growth,  
2           there's still almost no voice choice, VoIP or  
3           otherwise, in rural areas of our  
4           Commonwealth. Without Senate Bill 1000 there  
5           likely never will be as it is simply not  
6           economic to serve those areas while also  
7           incurring the significant expense of complying  
8           with unnecessary rules.

9           A heavy regulatory hand must not  
10          smother nascent businesses.

11          Competitive markets discipline all  
12          participants. Competitors, more than others,  
13          as they are the ones that have to win  
14          customers and retain them by providing quality  
15          services at fair prices.

16          Regulations unnecessarily add costs  
17          and limit investment in the Commonwealth  
18          without providing any real benefit to  
19          consumers.

20          Take, for example, that Pennsylvania  
21          is part of the eastern division of Comcast,  
22          along with neighboring states New Jersey,  
23          Maryland, Delaware, and the Commonwealth of  
24          Virginia.

25          Each of those states have drawn a

1 regulatory line that prohibits its utility  
2 commission from regulating VoIP, thereby  
3 creating a favorable climate for investment of  
4 scarce capital dollars needed to expand and  
5 upgrade broad base networks.

6 Capital is drawn to favorable  
7 regulatory environments. It's that simple.

8 Since the passage of the 1996  
9 Telecommunication Act, the common wisdom was  
10 that facilities-based providers were the ideal  
11 competitors because they could offer a real  
12 alternative to consumers without being held  
13 hostage to the pricing, services, and plant of  
14 the incumbent providers and because they would  
15 create family-sustaining jobs.

16 I cannot overstate the irony of  
17 leaving our Pennsylvania facilities-based  
18 voice providers exposed to the profit --  
19 prospect of regulation while those who neither  
20 create nor -- create job, nor invest in the  
21 Commonwealth continue to get a free ride.

22 Mr. Chairman and members of the  
23 committee, the next couple of years will  
24 determine whether facilities-based competition  
25 will flourish. This is a critical period of

1 transition.

2           You have a great deal of power to  
3 determine whether we succeed in bringing real  
4 choice to the marketplace or whether choice  
5 will be a pipe dream.

6           Thank you for the opportunity to  
7 testify. I look forward to your support and  
8 working with you on Senate Bill 1000.

9           CHAIRMAN PRESTON: Well, thank you  
10 for your excellent presentation and thank you  
11 also for your testimony.

12           Are there questions by members?

13           What current rules prohibit the  
14 growth of Vo -- of VoIP in your opinion?

15           I want to be able to ask that basic  
16 question so that the members and maybe the  
17 general public can hear what we're -- what  
18 we're doing this from -- about -- in the  
19 layman form and terms.

20           MS. MURRAY: I think I would say  
21 that -- that because the Public Utility  
22 Commission has refrained from regulation for  
23 the past roughly four years, there has been  
24 the opportunity for us to sort of grow and  
25 hire more workers, expand our network, et

1 cetera.

2 And so we have not, at least in my  
3 experience, been held back by regulation. I  
4 think what we're asking you to do today is  
5 kind of continue that environment and -- and  
6 that will permit us or continue to let us  
7 grow.

8 Don, do you have any?

9 MR. LAUB: I think just to add to  
10 that, one of the best things that the  
11 government can do for any corporation that's  
12 providing service in a competitive market is  
13 give the investment community the assurance  
14 that they won't see random blips on the radar  
15 screen, if you will.

16 Basically by codifying the  
17 commission's 2004 order, the investment  
18 community gets that assurance and we're free  
19 to go out and continue to invest and grow our  
20 service.

21 CHAIRMAN PRESTON: In other words,  
22 we're increasing competition?

23 MR. D'INNOCENZO: Correct.

24 MS. MURRAY: Yes.

25 CHAIRMAN PRESTON: Any other

1 questions?

2 Representative Mensch.

3 REPRESENTATIVE MENSCH: Good  
4 morning. You -- you bring up the issue of  
5 phantom traffic in your testimony and you  
6 talked to the cooperation you had with Embarq  
7 on the issue.

8 In -- in your opinion -- perhaps  
9 you've quantified it -- what -- to what degree  
10 does Comcast, if any, contribute to the  
11 phantom traffic phenomenon?

12 MR. D'INNOCENZO: To the best of my  
13 knowledge, we don't contribute at all to it.

14 REPRESENTATIVE MENSCH: Could you  
15 explain?

16 MR. D'INNOCENZO: To the problem.

17 REPRESENTATIVE MENSCH: Yes.

18 MR. D'INNOCENZO: Don, can you?

19 MR. LAUB: Oh, absolutely. We  
20 provide the -- the local exchange carriers to  
21 which we terminate traffic all the information  
22 they need to bill the -- bill us for that  
23 traffic as per their tariffs or as per the  
24 interconnection agreements that we have with  
25 those carriers.

1           So we contribute not at all to  
2 phantom traffic. To the contrary, we  
3 understand the incumbent's problems with  
4 phantom traffic. We experience it, too.

5           We have filed comments with the FCC  
6 proposing solutions to the elimination, to the  
7 solution of phantom traffic.

8           I'll hasten to add that phantom  
9 traffic isn't necessarily a problem that is  
10 caused by VoIP providers.

11           CHAIRMAN PRESTON: Maybe, to help so  
12 everybody can understand, us civilians, can  
13 you give us the definition, first, of phantom  
14 traffic?

15           MR. LAUB: Certainly. Phantom  
16 traffic is traffic that is handed over to a  
17 carrier, say an Embarq or one of the PTA  
18 members, or Comcast or Verizon, without any --  
19 without sufficient information to allow us to  
20 render a bill to the carrier that originated  
21 that traffic.

22           So we get a minute of traffic from a  
23 carrier and we don't have any of the  
24 information associated with that minute of  
25 traffic that allows us to figure out which

1 carrier to bill for that traffic and how much  
2 we should bill.

3 Which are really two separate  
4 issues. We believe that there are some fairly  
5 simple requirements that the FCC could impose,  
6 basically letting us -- making sure that any  
7 call that comes to us, or any terminating  
8 carrier, can identify the number from which  
9 that call came and has a little bit of  
10 information that allows us to identify the  
11 jurisdiction from which the call came.

12 That would enable us to bill the  
13 carrier and bill the carrier the appropriate  
14 rate. We -- we think that's fine.

15 And I think you probably wouldn't  
16 find a lot of disagreement in this room as to  
17 the nature of the problem and how you fix it.

18 I think we might go a little bit  
19 farther in how you fix it, but that's  
20 certainly beyond the scope of this hearing  
21 today, I believe.

22 REPRESENTATIVE MENSCH: Let me ask,  
23 how would you fix it? And without -- without  
24 going too -- too beyond this -- this testimony  
25 today.

1           MR. LAUB:  There are -- the first  
2           simple fix is -- one of the reasons why there  
3           is phantom traffic is because there's a whole  
4           array of charges out there that a carrier can  
5           apply to a particular call.  And those charges  
6           range anywhere from maybe a tenth or a quarter  
7           of a cent a minute to tens of cents per  
8           minute.

9           And certainly whenever you've got  
10          that wide array of charges out there,  
11          they're -- they're incentives.

12          But I think the most important thing  
13          is to make sure -- adopt regulations -- and  
14          the FCC is certainly looking at those  
15          regulations right now -- that would require  
16          every originating carrier to hand over the  
17          information to the terminating carrier that  
18          allows the terminating carrier to render an  
19          accurate bill.  And it's that simple.

20          REPRESENTATIVE MENSCH:  And if I  
21          understand what you're saying then, this is  
22          really an issue, for the PUC to be able to  
23          deal with effectively, the FCC needs to render  
24          a decision first?

25          MR. LAUB:  Absolutely.  And, as a

1 matter of fact, as recently as last week,  
2 Verizon, Embarq, and a number of carriers  
3 filed ex-parte, or basically communications,  
4 with the Federal Communications Commission  
5 outlining their particular solutions to  
6 phantom traffic.

7 We have -- Comcast agrees with those  
8 solutions in some portion. So, you know,  
9 certainly the FCC has it on their plate, and  
10 it's a fairly simple matter for the FCC to  
11 fix.

12 REPRESENTATIVE MENSCH: One last  
13 question. Are you --

14 CHAIRMAN PRESTON: Well --

15 REPRESENTATIVE MENSCH: If I may,  
16 Mr. Chairman?

17 CHAIRMAN PRESTON: We will come back  
18 to you.

19 REPRESENTATIVE MENSCH: I'm sorry.  
20 Okay.

21 CHAIRMAN PRESTON: Please write your  
22 question down so that -- because I want to  
23 make sure you get your answer.

24 Representative Kortz, you have a  
25 question?

1                   REPRESENTATIVE KORTZ: Thank you,  
2 Mr. Chairman.

3                   Thank you for your testimony. A  
4 quick question.

5                   If Senate Bill 1000 would become law,  
6 does Comcast anticipate a greater investment,  
7 a more significant investment in expanding  
8 this across Pennsylvania?

9                   In other words, has there been some  
10 hesitation, holding back of investment  
11 monies --

12                   MR. D'INNOCENZO: There's that, of  
13 course.

14                   REPRESENTATIVE KORTZ: -- and  
15 determining where it goes?

16                   MR. D'INNOCENZO: Yes. I think  
17 fairly clearly in the middle of my testimony I  
18 laid it out. Certainly in the written but  
19 definitely in the oral.

20                   I mean you think of -- Comcast has  
21 five separate regions throughout the country.  
22 The part that we're in is the eastern  
23 division. And the eastern division is the  
24 District of Columbia, which I don't think I  
25 mentioned in my testimony, Delaware, New

1 Jersey, Maryland, and the Commonwealth of  
2 Virginia.

3 All of those areas, I believe D.C.  
4 may be next week or --

5 MR. LAUB: D.C. is.

6 MR. D'INNOCENZO: Passing the dereg  
7 bill. So all of those areas will have -- have  
8 defined that their -- the market -- is the  
9 group that is regulating Voice Over Internet  
10 Protocol. So they know exactly what's  
11 happening in those areas.

12 So it's pretty clear that economic  
13 dollars for this division will go to those  
14 areas to build, plant, and to upgrade plant  
15 for the procurement and services of Voice Over  
16 Internet Protocol before they would go to  
17 areas where there's uncertainty.

18 CHAIRMAN PRESTON: Representative  
19 Mensch.

20 REPRESENTATIVE MENSCH: I'm going to  
21 give my time to Representative Perry.

22 CHAIRMAN PRESTON: You're giving your  
23 time to Representative Perry?

24 REPRESENTATIVE MENSCH: I didn't want  
25 to continue to monopolize, so Representative

1 Perry can have a --

2 CHAIRMAN PRESTON: Representative  
3 Perry, I recognize you.

4 REPRESENTATIVE PERRY: Thank you,  
5 Mr. Chairman.

6 It's only because Representative  
7 Mensch's questions have put a question in my  
8 mind. So I just want to follow up on that  
9 then. I didn't originally have a question.

10 Thanks, Jim, for your testimony.

11 Regarding the phantom traffic and  
12 you're saying that -- that you don't  
13 contribute to the independent's problem with  
14 phantom traffic and I guess you would quantify  
15 that.

16 And then based on your testimony,  
17 you're saying that if the companies that are  
18 transmitting would deliver that transmission  
19 with a certain amount of information that  
20 the -- that the incoming receiver of that  
21 would be able to tell where it came from?

22 So I guess the question is does  
23 Comcast already transmit that information so  
24 when it comes across the switch of the  
25 independent telecom they can already tell that

1 it's yours or whoever it is or it's not  
2 yours?

3 MR. LAUB: Absolutely. We convey all  
4 the information that's necessary to accurately  
5 bill us for the call we hand to the  
6 independents.

7 REPRESENTATIVE PERRY: Okay. So  
8 that's how Comcast quantifies that there are  
9 no phantom calls coming to the independents  
10 from Comcast?

11 MR. LAUB: Absolutely.

12 REPRESENTATIVE PERRY: Thank you.

13 CHAIRMAN PRESTON: Chairman Godshall.

14 REPRESENTATIVE GODSHALL: On the --  
15 excuse me. On the issue of phantom traffic,  
16 as you said, it can be fixed because you don't  
17 know what the right charge is, and there could  
18 be a tenth of a cent, it could be ten cents,  
19 or whatever.

20 How are you paying now for those  
21 charges when they come through, say, to  
22 Comcast?

23 MR. LAUB: We pay --

24 REPRESENTATIVE GODSHALL: Or who are  
25 you paying?

1           MR. LAUB: We pay the appropriate  
2 tariff rates of the independent telephone  
3 company. So if the -- the charge that's  
4 appropriate is an intrastate switched access  
5 charge, that's what we pay. If the charge  
6 that's appropriate is the local termination  
7 charge through our interconnection agreements,  
8 that's what we pay.

9           We offer the independents, and  
10 Verizon, all the information they need to  
11 render an accurate bill, and we pay that bill.

12           REPRESENTATIVE GODSHALL: Who makes  
13 it the appropriate rate?

14           MR. LAUB: Largely the entity that  
15 makes it the appropriate rate is the  
16 independent telephone companies or Verizon  
17 switched access tariffs that are approved by  
18 the Pennsylvania Public Utility Commission and  
19 the Federal Communications Commission or the  
20 interconnection agreements that are also  
21 approved by the Pennsylvania PUC.

22           REPRESENTATIVE GODSHALL: If you  
23 already have an approved rate, why are you  
24 going to the FCC to try to get them to fix a  
25 problem which I think you're now telling me

1 doesn't exist?

2 MR. LAUB: There is a problem. There  
3 are carriers that don't provide all of that  
4 information that is necessary to render an  
5 appropriate bill.

6 It's -- it's a problem for us. There  
7 are carriers that don't provide us with the  
8 relevant information we need and we --

9 CHAIRMAN PRESTON: You stepped away  
10 from the mike.

11 MR. LAUB: Thank you. And we  
12 certainly support the FCC action to require  
13 all carriers to provide the relevant  
14 information that allows the terminating  
15 carrier to offer an -- an accurate bill.

16 MR. D'INNOCENZO: Mr. Chairman, I  
17 think more to the point is it's an issue that  
18 is not easily resolved, nor should be resolved  
19 in Senate Bill 1000, period.

20 REPRESENTATIVE GODSHALL: Thank you.  
21 That's all I have.

22 CHAIRMAN PRESTON: I won't comment.  
23 Because it's not for me to say what should be  
24 or what shouldn't be. It is up really to you  
25 and your opinions, and I'm sure somebody else

1 will come along here --

2 MR. D'INNOCENZO: I'm sure they will.

3 CHAIRMAN PRESTON: And I think that's  
4 the object of what we've tried to always do  
5 with every hearing we have had, to be able to  
6 get the members to ask any question they have  
7 and to be able to give equal time to the  
8 presenters, whether they're for or against,  
9 and I think we've always demonstrated that  
10 we've never been really one-sided of people  
11 being able to give -- to give their opinions  
12 because we find that's how consensus does  
13 work.

14 So we want to thank Comcast. I do  
15 use your product. And I look forward -- I  
16 look forward it. Thank you very much.

17 MR. D'INNOCENZO: Thank you.

18 CHAIRMAN PRESTON: Next we have Alex  
19 Minishak who is the staff representative for  
20 Communication Workers of America, District 13,  
21 AFL/CIO.

22 Glad you could join us.

23 MR. MINISHAK: Thank you,  
24 Mr. Chairman.

25 CHAIRMAN PRESTON: Take your time and

1 when you're ready to present.

2 MR. MINISHAK: Chairman Preston, it's  
3 good to see you back. Chairman Godshall,  
4 members of the committee, and committee  
5 staff.

6 My name is Alex Minishak. I'm an  
7 international staff representative with  
8 Communication Workers of America.

9 I make that distinction because I'm  
10 here to speak on behalf of the 22,000 members  
11 that reside here in the Commonwealth.

12 Represent -- as I said, CWA  
13 represents more than 22,000 employees in  
14 Pennsylvania who are employed at Verizon,  
15 AT&T, Comcast, and other public and private  
16 sector organizations in telecommunication,  
17 airlines, publishing, government,  
18 broadcasting, and manufacturing.

19 These individuals are not strictly  
20 members of our union. They're also  
21 stakeholders in an issue that's of paramount  
22 importance to them as residents of this  
23 Commonwealth.

24 CWA strongly opposes -- opposes  
25 Senate Bill 1000, an act prohibiting the

1 regulation of telephone service that uses  
2 voice over Internet technology.

3 Just for clarification purposes,  
4 because I know coming out of that industry  
5 after 30 years, it's very acronym oriented so  
6 to simplify that for those that aren't really  
7 clear, VoIP is merely a technology that allows  
8 telephone calls to be made over computer  
9 networks like the Internet.

10 It converts analog voice signals into  
11 digital data packets and supports real-time,  
12 two-way transmission of conversation --  
13 conversations using Internet protocol, which  
14 is referred to as IP. This is a telephone  
15 service pure and simple.

16 The bill -- this bill will harm  
17 consumers, allowing telephone rates to  
18 increase and service quality to go down. It  
19 will -- it will create an uneven regulatory  
20 playing field, picking winners and losers in  
21 the marketplace.

22 Most important, there is absolutely  
23 no reason to create a special exemption from  
24 regulation of basic telephone service simply  
25 because the service is delivered using

1 Internet protocol technology.

2 Regulation should be based on the  
3 service provided, not on the equipment used to  
4 provide that service.

5 Some argue that Senate Bill 1000 is  
6 necessary to support development of the  
7 Internet. Certainly, there is no stronger  
8 advocate than CWA for policies to encourage  
9 high-speed broadband deployment.

10 But I want to be clear. Senate Bill  
11 1000 has nothing to do with Internet growth.  
12 Rather, it is using that lofty rhetoric as a  
13 cover for a much more insidious goal, which is  
14 the elimination of protections to ensure that  
15 residents have affordable, reliable telephone  
16 service.

17 Most analysts agree that VoIP is the  
18 future for all telephone calls. I would liken  
19 that, if you will, that the market does drive  
20 certain things. Some of us are old enough to  
21 recall the eight track. Some of us, more so  
22 probably, in this room remember the cassette.  
23 Now we're up to DVD and moving into other  
24 technologies. I would liken that to what's  
25 happening with the communication industry.

1           CHAIRMAN PRESTON: Well, you know,  
2 I'm glad, because, see, I go back to the  
3 78's. And I can remember some people still  
4 saved 22's. You wouldn't even remember those  
5 things.

6           MR. MINISHAK: With all due respect,  
7 sir, I do have 78's. They were in my mother's  
8 collection which I inherited.

9           CHAIRMAN PRESTON: Thanks a lot.

10          MR. MINISHAK: By regulating (sic)  
11 VoIP, Senate Bill 1000 sets the stage for  
12 deregulation of basic telephone services as  
13 communications networks evolve.

14          Already cable companies deliver voice  
15 service primarily over the Internet using what  
16 is called VoIP service. Cable companies have  
17 upgraded their networks and added the next  
18 electronics to provide voice telephony over  
19 the Internet.

20          When you see ads from Comcast or  
21 other cable companies for digital voice  
22 service, they are probably selling VoIP  
23 service.

24          The immediate effect of Senate 1000  
25 would be to remove most cable-provided service

1 from regulatory obligations that apply to  
2 other competitive local exchange carriers.  
3 This would distort the market, in essence  
4 creating winners and losers based on  
5 regulatory arbitrage, rather than better  
6 service or lower prices based on technological  
7 innovation.

8           The telephone companies are also  
9 reconfiguring their networks to transmit voice  
10 calls over the Internet. As Verizon upgrades  
11 to fiber, for example, its voice service will  
12 be over VoIP.

13           Under terms of Senate Bill 1000, in  
14 that not-too-distant future when all voice  
15 calls are transmitted over the Internet,  
16 network providers would be free to raise  
17 telephone rates or cut service at will. There  
18 would be no mechanism, no backstop to protect  
19 consumers.

20           This -- this committee and this  
21 legislature have long recognized that basic  
22 telephone service is essential for public  
23 health and safety and is absolutely necessary  
24 for economic and civic participation.

25           Recognizing this fact, the

1 legislature has mandated regulation of basic  
2 telephone service to ensure that it is --

3 CHAIRMAN PRESTON: Hold on. You want  
4 to hold on just a second?

5 MR. MINISHAK: Absolutely, sir.

6 CHAIRMAN PRESTON: Because I don't  
7 want you to think the competition has arranged  
8 that. Check that.

9 MS. SANTORO: It stopped. Was it  
10 that?

11 CHAIRMAN PRESTON: I don't think so.

12 MS. SANTORO: It stopped.

13 CHAIRMAN PRESTON: See, leave it to  
14 Marci. That's why I work for her.

15 You may begin or go back wherever you  
16 were.

17 MR. MINISHAK: I'll just pick up at  
18 the beginning paragraph, sir.

19 CHAIRMAN PRESTON: I just wanted to  
20 make sure that there was -- to my knowledge  
21 there wasn't anything -- anything about that.  
22 I hope.

23 MR. MINISHAK: All right. This  
24 committee and this legislature have long  
25 recognized that basic telephone service is

1 essential for public health and safety and is  
2 absolutely necessary for economic and civic  
3 participation.

4           Recognizing this fact, the  
5 legislature has mandated regulation of basic  
6 telephone service to ensure that it is  
7 affordable, reliable, and that consumers are  
8 protected.

9           When this committee and the  
10 legislature adopted an alternative regulatory  
11 framework to encourage competition and  
12 innovation, you wisely continued to regulate  
13 basic telephone service.

14           Certainly, local telephone  
15 competition is developing in some Pennsylvania  
16 communities, but the level of competition has  
17 been uneven. The new entrants have tended to  
18 target the most lucrative customers, competing  
19 to serve businesses or high-end residential  
20 customers in metropolitan regions.

21           Most Pennsylvania residents,  
22 particularly in rural and moderate-income  
23 communities, do not have a choice for local  
24 wireline telephone service. They cannot vote  
25 with their feet if service declines or prices

1 increase. In fact, in a thoroughly  
2 deregulated competitive environment, new  
3 entrants and incumbents have every incentive  
4 to raise prices in rural areas or metropolitan  
5 communities where competition is slow to  
6 develop and to lower prices and concentrate  
7 investment in the more competitive regions.

8           Fortunately, members of this  
9 committee and the legislature have understood  
10 that, even in competitive markets, regulation  
11 of basic telephone service is necessary to  
12 ensure the provision of affordable, reliable  
13 service to all customers.

14           The introduction of VoIP technology  
15 does not change this market dynamic.

16           There is an important lesson to be  
17 learned from the disastrous experience of  
18 electric deregulation. Compete -- competitive  
19 markets do not always benefit all consumers.  
20 There are many unintended consequences and  
21 there must continue to be a backstop to  
22 protect consumers. Senate Bill 1000, as I  
23 alluded to earlier, would remove that vital  
24 protection.

25           Some might argue that S.B. 1000

1 simply reaffirms federal preemption of  
2 Internet regulation.

3 In fact, the Federal Communications  
4 Commission has not definitively determined the  
5 jurisdictional issues related to VoIP.

6 Until it does it's premature for the  
7 legislature to remove VoIP from state  
8 regulation. Rather, we should follow the  
9 example of Missouri where the public service  
10 commission recently ordered that Comcast must  
11 receive a certificate of authority to provide  
12 VoIP service in that state. Compass  
13 complied -- Comcast complied with that order.

14 To that end, what I would like to  
15 insert in here is in reviewing that case, as  
16 an aside, the Office of Public Counsel in the  
17 state of Missouri, part of the reply in his  
18 brief, stated that the staff's complaint is  
19 well grounded in public policy and regulatory  
20 law and history which recognized that the  
21 regulation of telephone service is a  
22 partnership between the federal government and  
23 the states. Congress has made local service  
24 as a matter within the scope of state  
25 regulation. Missouri has the right, as do all

1 states, to establish requirements and  
2 procedures for the certification of providers  
3 operating within the state and to -- the right  
4 to regulate the prices, conditions, and terms  
5 of service, the quality of service, safety,  
6 adequacy of service, billing and collection,  
7 and the rights and obligations of customers  
8 and telecommunications providers as a function  
9 of the police power of the state.

10 I cite that specifically because I  
11 think it goes to make the point that this is  
12 clearly within the purview of this legislative  
13 body. That decision was issued in the end of  
14 December of 2000, and it was in the beginning  
15 of January 2008 that Comcast IP, LLC applied  
16 for that certificate.

17 While Senate Bill 1000 will leave  
18 consumers at risk of skyrocketing rate  
19 increases and declining telephone service, it  
20 will do little to encourage high-speed  
21 broadband deployment.

22 There is a much better way to  
23 accelerate build-out of advanced networks, one  
24 that can be found in House Bill 1490.

25 That bill is based on the highly

1 acclaimed Connect Kentucky program, which  
2 increased broadband from 60 percent to near  
3 universal deployment and 18,000 high tech jobs  
4 in three years in the state.

5 House Bill 1490 would create  
6 public/private partnerships to map broadband  
7 infrastructure in our state, identify gaps,  
8 and organize community technology planning  
9 teams to spur broadband build-out and  
10 adoption.

11 CWA urges this committee to reject  
12 S.B. 1000. This sheep in wolf's clothing  
13 masquerades as a bill to promote Internet  
14 technology, but, in fact, takes away essential  
15 consumer protections for affordable, quality  
16 telephone service.

17 And I thank the committee for their  
18 indulgence in the time to present this  
19 testimony today.

20 CHAIRMAN PRESTON: Well, it's been  
21 our -- our pleasure. Thank you for your  
22 time.

23 Are there questions from members?

24 Representative Buxton.

25 REPRESENTATIVE BUXTON: Thank you,

1 Mr. Chairman.

2 Mr. Minishak, we heard testimony  
3 earlier this morning that other states  
4 surrounding the Commonwealth of Pennsylvania  
5 may be taking action similar to the content of  
6 Senate Bill 1000.

7 If that were to proceed in states  
8 surrounding the Commonwealth of Pennsylvania,  
9 what is your opinion on the argument that  
10 there would be a lack of investment coming  
11 into the Commonwealth of Pennsylvania and if  
12 that lack of investment occurred, what impact  
13 would that have on your membership?

14 MR. MINISHAK: Well, let me reply  
15 this way, Representative. I will candidly say  
16 I'm not familiar specifically with that  
17 legislation.

18 As we indicated in the previous  
19 legislative session when there was two other  
20 bills relative to the promotion of  
21 competition, we absolutely support competition  
22 and recognize that it's better, it's in the  
23 best interests of the businesses, as well as  
24 the consumers, because competition, as has  
25 been alleged in previous testimony by

1 businesses represented in this room, when you  
2 have competition, it will drive rates down.

3 I would suggest to you, though, that  
4 because of the technology, there are already  
5 over-builds taking place in this state right  
6 now of FiOS -- of FiOS and infrastructure, and  
7 what some are unclear on is that your  
8 telephone data, telephone in the context of  
9 VoIP, and video all go under the same sheath.

10 So the likelihood of taking out that  
11 one aspect and not utilizing the  
12 infrastructure that's in place to provide  
13 video and Internet services we believe is  
14 highly unlikely.

15 I would welcome the opportunity to  
16 take a look at the other states' legislation.  
17 I have not -- I am not familiar with those at  
18 this time.

19 But I think that based on the  
20 investments already made by the major players  
21 represented in this room, I think it's highly  
22 unlikely that they're going to walk away from  
23 this state.

24 CHAIRMAN PRESTON: Representative  
25 Hennessey.

1           REPRESENTATIVE HENNESSEY: Thank you,  
2 Mr. Chairman.

3           Mr. Minishak, toward the end of your  
4 testimony, you -- you expressed a concern that  
5 Senate Bill 1100 (sic) would leave consumers  
6 at risk of sky rotting -- skyrocketing rate  
7 increases. I understand that concern.

8           Then you go on to say that there's  
9 the prospect of declining telephone service.  
10 Could you explain that portion of your  
11 comments? What -- it seems to me we're in  
12 a -- we're seeing an explosion of the  
13 telephone service.

14           What do you -- what are you looking  
15 at in Senate Bill 1000 that would lead to the  
16 decline of quality?

17           MR. MINISHAK: It's really the  
18 quality of the service that's being provided,  
19 Representative. I can -- one of our concerns  
20 is that we believe that anything related to  
21 telephone service, oversight and regulation,  
22 does fall well within the realm of the Public  
23 Utility Commission.

24           They have the staff. They have the  
25 expertise. They have the know-how for the

1 enforcement capabilities.

2 I can cite you two examples -- and I  
3 won't go into specifics for obvious reasons  
4 because of confidentiality. In Cannonsburg  
5 there was a death due to -- this is land line  
6 service now. There was a death because of  
7 failed restoration of service, the inability  
8 to make a call to 911.

9 There was also an incident in -- I  
10 want to get this clear -- in Warren, PA where  
11 because of the duration of the out of  
12 telephone service that the neighbor found this  
13 individual. When one of our members and  
14 technicians went to that resident's home to  
15 notify the subscriber that the service had  
16 been restored, the emergency EMT's and police  
17 had passed by his work site where he had just  
18 come down and completed restoration of  
19 service. The residence he went to, the  
20 emergency vehicles were going there because  
21 that individual was unable to make a call  
22 because of the out-of-service network and the  
23 neighbor came over and found that individual  
24 in their home. They were -- she was coming  
25 over to take that individual to a medical

1 appointment.

2 We have concerns that VoIP, again,  
3 being telephone service, if that falls out  
4 from under an oversight, regulatory oversight,  
5 and really stronger enforcement. We have  
6 great concerns that that's going to leave  
7 Pennsylvania consumers in the lurch.

8 And this is really a safety issue  
9 that needs to be given serious consideration  
10 to. This isn't just a matter about  
11 technology. It's -- it has to do with  
12 security. It has to do with individuals' well  
13 being.

14 It's -- it's really a very vital  
15 service that -- that we're not expecting the  
16 legislature to mandate a business plan.  
17 That's not the issue.

18 What we believe, though, is what --  
19 what you do have a responsibility to do and  
20 recognize is that to protect consumer rights  
21 and ensure that they have some recourse to  
22 make sure that the service they're paying for  
23 that's so vital is kept in check and  
24 maintained, that it's reliable and safe.

25 REPRESENTATIVE HENNESSEY: Thank

1 you.

2 Thank you, Mr. Chairman.

3 CHAIRMAN PRESTON: Representative  
4 Mensch.

5 REPRESENTATIVE MENSCH: Good morning,  
6 Mr. Minishak

7 MR. MINISHAK: Good morning, sir.

8 REPRESENTATIVE MENSCH: Earlier in  
9 your testimony you talked about the --  
10 your concerns for universal service or the  
11 protected services today as it's referred to.

12 Did you have the opportunity yet to  
13 look at the amendment that Mr. Popowsky talked  
14 about?

15 MR. MINISHAK: I did review it  
16 briefly, sir, and I believe that while that's  
17 obviously a step in the right direction, I  
18 think that by parsing out one aspect of  
19 technology does not go to the better good of  
20 the state's well being, the economy and your  
21 constituents; that there needs to be a  
22 broader-based platform built to deal with this  
23 now because we are already 16th in the world  
24 with regard to infrastructure, and I think  
25 this state could be progressive enough to come

1 up to the 21st state -- 21st Century  
2 technology by dealing with this in a  
3 comprehensive fashion now which we believe  
4 that House Bill 1490 does.

5 REPRESENTATIVE MENSCH: Well, let's  
6 leave 1490 alone today and let's deal with  
7 Senate Bill 1000. I'm not sure that  
8 Mr. Popowsky's amendment parses out any  
9 particular service.

10 I think it talks to the concept of  
11 universe -- universality, and that is that  
12 regardless of which medium the -- or  
13 technology the telephone company would choose  
14 to provide POTS, that POTS will always be  
15 available.

16 I mean that's really the heart of  
17 it. Whether it's IP or whatever the successor  
18 technology might be.

19 So I'm not -- I'm not sure that it  
20 doesn't address your concern. I believe that  
21 it does address your -- the concerns you've --  
22 you've articulated.

23 Another question for you. You just  
24 commented in response to Mr. --  
25 Representative Hennessey that there is a lot

1 of competition and it's increasing all the  
2 time, but we have some spiraling costs in your  
3 cons -- in your testimony. How you do  
4 reconcile those two?

5 How does -- doesn't increasing  
6 competition help to drive down costs?

7 MR. MINISHAK: No, I think I did  
8 reference that, that there had be -- in  
9 previous legislative session -- that some of  
10 the heavy hitters, if you will, in this room  
11 had recognized and requested some relief  
12 through previous legislation that would  
13 generate competition quicker, citing examples,  
14 such as Texas, where there was competition,  
15 that it did, in fact, drive down costs.

16 So we understand that and that is  
17 good for the consumers. And it also, as you  
18 deploy an infrastructure, with Pennsylvania  
19 being as rural as it is -- and I'll, quite  
20 frankly, admit that until I saw the  
21 demographics of the state, I was amazed at how  
22 many people per square mile there are, with  
23 the exception of Philadelphia, Pittsburgh, and  
24 the Tri-city area here in south central  
25 Pennsylvania.

1           There is so much rural area in this  
2 state that they could be left behind, and I  
3 think that there -- that's our underlying  
4 concern about the need for that type of  
5 regulatory oversight and the role that the PUC  
6 could make sure -- and certain legislation  
7 could assist in making sure that no one is  
8 left off the information superhighway, sir.

9           REPRESENTATIVE MENSCH: Doesn't Act  
10 30 address that already?

11          MR. MINISHAK: As far as deployment  
12 goes?

13          REPRESENTATIVE MENSCH: Yes, sir.

14          MR. MINISHAK: Not to the degree that  
15 I believe that the more comprehensive approach  
16 does in current legislation before this  
17 committee.

18          REPRESENTATIVE MENSCH: Doesn't Act  
19 30 mandate everyone's participation, every  
20 provider's participation?

21          MR. MINISHAK: If I recall the last  
22 session, there was a question as far as what  
23 types of technologies that did or didn't do,  
24 and we feel that the role of the committee is  
25 to generate some discussion, and we are always

1 open to discussing what alternatives there are  
2 to meet everyone's needs because we all have a  
3 stake in this one way, shape, or form or  
4 another, and we would welcome the opportunity  
5 to explore what ways any bill could be  
6 tweaked, if you will, to meet the needs of all  
7 our respective parties.

8 REPRESENTATIVE MENSCH: All right.  
9 Thank you.

10 MR. MINISHAK: Thank you, sir.

11 CHAIRMAN PRESTON: For the  
12 information of the members, when we did  
13 Chapter 30, one of the amazing things that I  
14 found out, I take towns like New Castle and  
15 including the capital city area here of  
16 Harrisburg, under the federal guidelines they  
17 are considered to be rural areas.

18 So it was an issue of contention that  
19 a lot of us hadn't looked at. And I just  
20 wanted to, so people can understand how  
21 arbitrary some of the issues that we're  
22 dealing with and thoughts, when we think of  
23 Harrisburg here being listed as a rural area.

24 So that's part of the issues that  
25 we're -- we're looking at and sometimes within

1 those numbers as we've talked about deployment  
2 and I remember a former member, Representative  
3 McIlhattan, representing, how would you say, a  
4 really sparsely populated area, was raising  
5 that issue because then that means that it's  
6 easier to deal with the more populated areas  
7 and because of that some people feel that it's  
8 going to be last as far as the less populated  
9 areas because it's more costly at the -- at  
10 the end.

11 And I wanted some of the members to  
12 be able to understand that when you compare  
13 that, again, that Harrisburg under the federal  
14 rules is considered to be a rural area.

15 Any other questions by the members?

16 There being none, I wanted to thank  
17 you very much.

18 And he got in here late. So I'd also  
19 like to recognize the Secretary/Treasurer of  
20 the AFL-CIO, Mr. Rick Bloomingdale, who also  
21 came along to be here just as well.

22 MR. BLOOMINGDALE: Thank you, Joe.

23 CHAIRMAN PRESTON: With that being  
24 said, I'd like to excuse you and recognize  
25 that Mr. Wojnaroski has also joined us.

1 I see you held everybody here.

2 MR. MINISHAK: I think that that was  
3 my time, sir.

4 CHAIRMAN PRESTON: Yes. And for --  
5 if I could, Mr. Vitale, move up here.  
6 Mr. Vitale is the attorney for the committee.

7 My chairman said that there must be a  
8 Democratic caucus. I don't know, sir. I saw  
9 Democrats and Republicans just as well. And I  
10 know that my delegation, of which there are 19  
11 of us just from Allegheny County, we're having  
12 a meeting right now, too, and I know the  
13 members will be back.

14 Next we have Chris Nurse, who is  
15 External Affairs, ATT Mid-Atlantic region.

16 Did I say that correctly?

17 MR. NURSE: Yes, sir.

18 CHAIRMAN PRESTON: Thank you very  
19 much and for the -- ready? For the record,  
20 you'll start your testimony first by giving  
21 your name and your title.

22 MR. NURSE: Good morning. My name is  
23 Christopher Nurse. I'm the regional vice  
24 president of external affairs for ATT in the  
25 mid-Atlantic region.

1           Just a note, my brother lived in  
2           Duncannon but he thought it was too big so he  
3           had to move to a smaller town.

4           ATT would like to thank the committee  
5           for the opportunity to express our support for  
6           this important piece of legislation. ATT  
7           supports Senate Bill 1000 because the specter  
8           of state-level regulation would impede  
9           development of VoIP and that would hurt  
10          Pennsylvania's consumers and businesses.

11          I think the history is existing FCC  
12          oversight has stepped up several times and  
13          assured public safety and consumer protection  
14          concerns were properly addressed with VoIP.

15          The FCC has done that dynamically by  
16          adding additional levels of protection as that  
17          protection has been seen necessary.

18          As a number of witnesses testified,  
19          VoIP service today is providing Pennsylvanians  
20          with innovative, efficient, and an effective  
21          alternative for voice services.

22          As I heard a lot of the witnesses  
23          testify, and I'm a recovering regulator, I was  
24          with the New Hampshire commission for seven  
25          years.

1           When we were protecting consumers,  
2           they were captive consumers. They were  
3           monopoly consumers. So if they were not  
4           satisfied with really any aspect of their  
5           phone service, they really had no  
6           alternative. And that's why government  
7           compulsion was necessary, because these  
8           customers had no choice.

9           But in -- in fashion or any other  
10          service that we're buying, if we don't like  
11          what one store sells, we can go to another.

12          That's the -- that's the big dynamic  
13          that's happening with VoIP. Customers, who  
14          before were monopoly-captive customers, had to  
15          pay the price, had to take the service, the  
16          terms, the conditions, the features offered by  
17          the monopoly. Telephone customers rightly  
18          needed government protection.

19          If the customers don't like the  
20          billing date, the phone company puts the bill  
21          out on the first of the month and they would  
22          like it on the 15th of the month, that they  
23          get paid on the 15th of the month, they can  
24          shop around. Customers have that  
25          alternative.

1           And that's why the regulatory regime  
2           is dynamically shifting to recognize that  
3           difference. And as we move further along, we  
4           would -- we would change, almost as a -- a  
5           parent might, you know, treat a young child, a  
6           teenager, a young adult differently. As -- as  
7           it matures, as the industry matures,  
8           competition grows, the -- the regulatory  
9           arrangement should -- should follow that  
10          along.

11           VoIP services are a highly  
12          competitive market. There are many, many  
13          customers. Once you have the broadband  
14          connection, which is often available from  
15          either the telephone company or the cable  
16          company, or other providers, or -- or -- or  
17          often multiple, there are five or six or seven  
18          or eight or nine or ten VoIP providers that  
19          you can get to layer on top of that.

20           I would note when you look at the  
21          prices for the -- for the service, the PUC set  
22          a -- a target ceiling of about \$18, plus a  
23          mandatory 6.50 federal fee, of almost \$25, and  
24          it's very common for ATT service, Verizon  
25          service, Vonage service, to be priced for

1 local and unlimited nationwide long distance  
2 for \$25.

3 So these services are providing local  
4 and nationwide long distance for the same  
5 price as what was regulated basic service.

6 So the regulation has not necessarily  
7 provided a price as good as the competitive  
8 market has provided, so I think consumers  
9 have -- this is the reason consumers are  
10 leaving. It's a good price. It's a good  
11 value. That's why they're leaving the  
12 regulated service.

13 Carriers have a strong incentive in a  
14 market so competitive. I cannot imagine that  
15 in a market with so many competitors that you  
16 could simultaneously arrange for them all to  
17 raise price and degrade service. It's just  
18 unthinkable.

19 The first carrier who raised their  
20 price or degraded their service would lose the  
21 customers to the others. You'd -- you'd have  
22 to have an antitrust conspiracy to get ten  
23 VoIP providers to simultaneously raise the  
24 price and lower the qualities.

25 It would be illegal, and the justice

1 department would be all over it. It's just  
2 not possible in a competitive market.

3 Economic regulation where it's  
4 unnecessary hurts Pennsylvania consumers. You  
5 want to stimulate this investment. Stimulate  
6 the innovation. Regulation is a slow  
7 mechanism, whether it's 30 days or six months  
8 to get new services, new prices, new packages  
9 approved in a regulatory regime appropriate in  
10 a monopoly environment.

11 In a competitive environment, the  
12 company wants to have a new service tomorrow,  
13 they should be able to roll that out.  
14 Customers like it, they take it. They don't,  
15 they take it from someone else.

16 Economic regulation would have both  
17 direct and indirect harm to consumers.  
18 Obviously it reduces investment, reduces the  
19 tax base, reduces growth, drives  
20 investments to other more favorable states.

21 And then indirectly is the second  
22 order effect. You want to get broadband  
23 service rolled out. VoIP services benefit  
24 from that. Consumers and businesses get a  
25 benefit from that. It lowers customers'

1 costs. It gives consumers that are facing,  
2 say, high gas prices more money in their  
3 pocket. It lowers costs of businesses, lets  
4 them hire, all -- all good stuff.

5 Facilitating VoIP deployment is  
6 really an economic development issue. There  
7 just aren't consumer -- unreasonable consumer  
8 protections. The Attorney General is quite --  
9 quite capable of enforcing very stiff and  
10 vigorous investigations, levying fines, filing  
11 suits to compel companies to -- to compete  
12 fairly.

13 Not only are -- Maryland, Delaware,  
14 New Jersey, and Virginia already have VoIP  
15 bills. D.C. is considering the VoIP bill.  
16 Other large states, like Georgia and Florida,  
17 have likewise passed VoIP bills.

18 And that's an important trend. I  
19 think everyone -- I think all the states that  
20 are moving are generally moving in that  
21 direction.

22 And, lastly, Senate Bill 1000 is  
23 consistent with the federal rulings intended  
24 to protect health and safety. The FCC has  
25 addressed 911 fees, federal universal services

1 assess -- assessments, switched access, TRS,  
2 telephone relay service, the 711 dialing, the  
3 CALEA, you know, for the court ordered --

4 CHAIRMAN PRESTON: You want to  
5 explain --

6 MR. NURSE: Yes.

7 CHAIRMAN PRESTON: -- the 711.

8 MR. NURSE: 711 is the access for  
9 customers -- if you want to call someone who  
10 is hard of hearing, and this was the whole  
11 idea, to have someone who is deaf use the  
12 telephone.

13 So there was a translation service  
14 where they would have a terminal, you would  
15 call, and -- and an intermediary operator --  
16 the operator would listen to the call on one  
17 end and type it on the other.

18 So it solved a problem like how does  
19 a deaf person make a doctor's appointment. I  
20 mean it's crazy that -- that that situation  
21 existed for decades.

22 The -- the telephone relay service  
23 solved that -- that -- that human need. The  
24 FCC looked at VoIP service and said this is  
25 new, this is innovative, but we can't leave

1 these people behind.

2 So it took care of 911, it took care  
3 of telephone relay service, and compelled VoIP  
4 carriers to participate in the telephone  
5 service, to pay for it, and to have that  
6 abbreviated dialing.

7 They also required them to pick up  
8 the CALEA, the --the court-ordered or lawful  
9 wiretaps. For the obvious reasons, you didn't  
10 want bad people migrating to VoIP service if  
11 it was not subjected to that.

12 That was a very difficult, technical  
13 requirement. It took a lot of effort to  
14 comply with that.

15 But, again, there was a public need  
16 for that and the FCC stepped up on each of  
17 these ones and did a careful balancing of --  
18 of what's the burden on this innovative new  
19 service and what's the public need and I think  
20 they've done it five or six times and I think  
21 they've got a very good balance there.

22 In closing, ATT would like to thank  
23 the committee for the opportunity to express  
24 its support for this legislation and I'd be  
25 happy to take any of your questions.

1           CHAIRMAN PRESTON: Well, thank you  
2 very much for your testimony. It was  
3 enlightening and I'm glad we arranged that.  
4 Because all too often the government -- there  
5 are a lot of things out there and unless  
6 someone has had experience with some form of  
7 mental, physical or emotional challenge, we  
8 start talking in nomenclature that people  
9 don't realize and you explaining it may help  
10 reach out to relatives or friends to be able  
11 to tell people of the different things that  
12 are available.

13           We may try to, and the industry  
14 always tries to, but every little bit helps in  
15 you explaining that to us. Because a lot of  
16 people don't realize that the -- the companies  
17 themselves, whether or not they're capable of  
18 telecommunication, provide that service for --  
19 for an awful lot of people. Thank you.

20           Questions from members?

21           Representative Perry.

22           REPRESENTATIVE PERRY: Thank you,  
23 Mr. Chairman.

24           And thank you for your testimony,  
25 Chris.

1                   Two questions. And you can't  
2 speak -- I suppose you can only speak for  
3 ATT. But kind of maybe technical in nature  
4 and I suppose that maybe most of the others  
5 fall in the same category.

6                   But can anyone tell when a call comes  
7 into your network, across your switch, however  
8 you say it, if it's intrastate or interstate?

9                   MR. NURSE: Yes. Calling party  
10 number information is supposed to be sent  
11 along with each call, and that would identify  
12 who the calling party was and who the -- who  
13 the calling -- who the originating carrier was  
14 and, therefore, where the jurisdiction, where  
15 the call originated from.

16                   That information should be supplied  
17 on a hundred percent of the calls. None of  
18 the networks are perfect, but it should be  
19 near a hundred percent.

20                   Sometimes it falls out for a  
21 technical glitch, rarely, and then there  
22 are -- there are issues -- and we've suffered  
23 from it -- where some rogue carriers have not  
24 put on the information at all or have put the  
25 wrong information on.

1           And I think there was an earlier  
2 witness who testified that sort of the root of  
3 the problem is that a minute is a minute, that  
4 there's not really a difference in the -- in  
5 the cost to terminate a call in Harrisburg if  
6 it -- if it comes from Philly or if it comes  
7 from Florida.

8           And so if you have a -- a big  
9 difference in the price and no technological  
10 distinction, it creates the arbitrage  
11 opportunity and there are some arbitragers who  
12 have made a sleazy business of -- of  
13 misrepresenting the traffic or not putting on  
14 the information at all and then saying it's  
15 the cheaper priced service.

16           I mean obviously one -- you know, one  
17 sort of -- you know, no brainer solution is if  
18 you price the two things the same then there  
19 wouldn't be any arbitrage differential  
20 opportunity.

21           REPRESENTATIVE PERRY: And I guess in  
22 keeping with that also, does ATT or does  
23 anyone know the difference between a  
24 VoIP-generated call versus just a regular land  
25 line call from my house when it comes across

1 the switching? Again, assuming that some  
2 folks don't packet that information that  
3 comes -- you have to have that packet of  
4 information that comes with the call to  
5 determine all those things.

6 Is that correct?

7 MR. NURSE: Yes. And it's -- it's  
8 also with wireless calls. You know, because  
9 you're -- at home you can really receive calls  
10 from any of the three.

11 REPRESENTATIVE PERRY: Sure.

12 MR. NURSE: And that's -- that's --  
13 that's certainly an issue. Because,  
14 ironically, if a call came from, you know,  
15 Philly to State College on a wireless call,  
16 that would be rated as a -- under the FCC  
17 rules that would be rated as a local call,  
18 even though it's quite -- you know, quite a  
19 long distance.

20 And -- and so there's just another  
21 distinction of calls that start and originate  
22 in the -- inside the same house but based  
23 on -- on the different technology platforms,  
24 the traditional platform, a VoIP platform, or  
25 wireless, and they would be rated at different

1 prices.

2           So it's just very, very difficult to  
3 try to -- and over billions and billions of  
4 calls each one is only worth a few cents. And  
5 so how much money can you spend policing a  
6 two- or three-cent transaction?

7           But obviously it's -- it's a  
8 challenge that -- the network is there. The  
9 technology is -- is there.

10           But it's always a difficult issue to  
11 try to enforce that as in -- obviously if  
12 those rates were all the same, it would be  
13 much easier.

14           Then you would just be dealing with  
15 the issue of not just -- which rate to apply  
16 but making sure that you got the right charge  
17 to the right guy.

18           REPRESENTATIVE PERRY: I'm making the  
19 assumption that based on, you know, your  
20 knowledge and, of course, there can be some  
21 glitches or some problems that happen  
22 occasionally, but ATT is probably under the  
23 practice of providing all the information to  
24 the independent carriers when the call is  
25 terminated at their switch, regardless of how

1 it started.

2 MR. NURSE: Yes.

3 REPRESENTATIVE PERRY: Is that  
4 correct?

5 MR. NURSE: Yes.

6 REPRESENTATIVE PERRY: So, you know,  
7 I think it's probably safe to assume, but I  
8 want to just ask you. If ATT gets a bill from  
9 one of the independent carriers saying that  
10 the call terminated -- a VoIP call terminated  
11 on an interstate -- an intrastate VoIP call  
12 terminated on their switch that -- and they  
13 billed you for that, that ATT -- assuming that  
14 the information is correct that ATT sent the  
15 call, that they'll pay for -- they'll pay for  
16 that termination?

17 MR. NURSE: Yeah. ATT, yeah, I mean  
18 ATT pays its access bills. ATT is a local  
19 exchange carrier. We're one of the largest in  
20 the country. Charges people billions of  
21 dollars for access.

22 So we're in favor of people properly  
23 paying their access bills. And -- and -- and  
24 we pay ours.

25 Now, in the multi-billion dollar

1 access market there are always disputes  
2 between -- you know, in the normal course of  
3 business that go on about that.

4 But it's -- I don't think it's  
5 Verizon and ATT and, you know, Commonwealth  
6 Telephone. It's not ordinarily your -- your  
7 orthodox players. It's some of your rogue  
8 players who make a business model of --

9 REPRESENTATIVE PERRY: Phantom  
10 calling, so to speak?

11 MR. NURSE: Yeah. Phantom calling,  
12 call pumping, these ones where they're going  
13 to arbitrage these little regulatory  
14 distinctions. They're unsustainable in the  
15 long run. You know, it's sort of long run.  
16 We want to get to -- to cost base rates. I  
17 mean that's where competitive markets strive,  
18 is the cost base rates.

19 So all -- any economist will always  
20 say, in the long run, you want to get towards  
21 cost -- you know, cost base rates, you know,  
22 allowing for equity considerations.

23 REPRESENTATIVE PERRY: All right.

24 Thank you.

25 Thank you, Mr. Chairman.

1                   CHAIRMAN PRESTON: Thank you. Any  
2 other questions by members?

3                   Well, thank you very much.

4                   MR. NURSE: Thank you.

5                   CHAIRMAN PRESTON: We appreciate your  
6 testimony.

7                   Next we have Ms. Julia Johnson, who  
8 is chairman of Video Access Alliance. I'd  
9 like to welcome you. I think that you  
10 probably came further than anybody else did  
11 today.

12                   My understanding is you also probably  
13 took longer than anybody else to get here. So  
14 we're happy to have you here and thank you.

15                   And tell my good colleagues down in  
16 Florida that I welcomed you well. Just like I  
17 said about the upper chamber, I got to stay  
18 good all over the country, just to be sure.

19                   So you may begin by introducing  
20 yourself and starting your testimony when you  
21 so choose.

22                   MS. JOHNSON: Thank you  
23 Mr. Chairman. Chairman Preston, Chairman  
24 Godshall, members of the committee, staff, and  
25 visitors, as well as speakers.

1           I'm Julia Johnson, Chairwoman for the  
2           Video Access Alliance, a national  
3           not-for-profit organization made up of  
4           consumers, independent networks, emerging and  
5           minority networks, Internet content providers,  
6           and other businesses that support advanced  
7           communications policy that create greater  
8           consumer choice and business growth  
9           opportunity in this ever-changing world of  
10          telecommunications.

11           We believe that the continued  
12          deregulation of VoIP in the state of  
13          Pennsylvania will do just that.

14           Mr. Chairman, you -- you spoke of  
15          Florida, and I tell you, one of the things  
16          that we did as we opened our landscape to  
17          competition, our elected official, whom I  
18          respect immensely, did a lot of bragging about  
19          that.

20           What I've noticed here in  
21          Pennsylvania, and as a part of this dialogue,  
22          is that the members here are very methodical  
23          in their approach and very deliberate, but in  
24          some ways you haven't exercised your bragging  
25          rights.

1           I say that from the context of, in  
2 many ways this hearing is symbolic of the  
3 legislature's success. Over the past ten  
4 years, Pennsylvania has enacted laws designed  
5 to spur the deployment of advanced  
6 communications, to create new jobs and  
7 investment, and provide greater choice to  
8 consumers at lower prices.

9           And you've done just that. There's  
10 been a lot of articulation about Chapter 30  
11 and also the concerns of both urban and rural  
12 constituents.

13           And in answering that question, you  
14 reflect back on Chapter 30 and you see that in  
15 that broad legislation you mandated a hundred  
16 percent build-out to ensure that those people  
17 were protected. You had protected services.  
18 And to the extent -- and you capped quite a  
19 few of those rates.

20           But at the same time you created an  
21 environment that allowed for new technology  
22 and new services to prosper.

23           To the extent that there are issues,  
24 you have the wisdom and expertise of your  
25 consumer advocate who has suggested what else

1 might be put to the table just to ensure that  
2 there aren't any unwitted problems.

3 This legislation today is the next  
4 logical step to increasing economic  
5 opportunities in this state and providing  
6 consumers with even more advanced  
7 communication services.

8 I sit before you today as a former  
9 policy maker myself. I served on the Florida  
10 Public Service Commission from 1992 to 1999  
11 and for several of those years I served as  
12 chair.

13 Similar to the Pennsylvania PSC, we  
14 regulated Florida's \$16.8 billion regulated  
15 utility industries which included water, waste  
16 water, electric, gas and telecommunications.

17 I turn my focus to  
18 telecommunications. And before doing that,  
19 allow me to take pause and congratulate the  
20 leadership under Chairman Holland of the PSC.  
21 Because they have taken a hands-off approach  
22 to VoIP and as such, as this legislature  
23 intended, the industry has expanded and  
24 consumers have benefited.

25 Codification of this hands-off

1 approach will ensure the greatest investment  
2 in consumer choice.

3 Florida was one of the first states  
4 in the nation to exempt VoIP from state  
5 regulations.

6 And what has happened? Consumers  
7 have -- have applauded that effort. They now  
8 have choice. They can utilize the basic POT  
9 service, but they have a choice. A choice  
10 that provides them more opportunities than  
11 they had in the past.

12 They also understand through notice,  
13 through marketing, and through competition  
14 that to the extent that they don't like that  
15 VoIP service, they can turn it off and they  
16 have their reliable POT service to turn to.

17 The companies, in turn, again  
18 recognize the type investments and the  
19 environment in which they live and we all  
20 prosper.

21 I can say first-hand that the Florida  
22 deregulatory approach has worked. There's  
23 more competition, job creation, deployment of  
24 new technologies than in any other period.

25 Most importantly, what I learned

1 during my tenure at the Florida Public Service  
2 Commission, I'd like to share that principle  
3 with you. And that is, there's a time and a  
4 place for everything.

5 Today, government regulation of VoIP  
6 is counter-productive in that it will impede  
7 investments, slow down economic opportunities  
8 for states, and ultimately hurt consumers and  
9 entrepreneurs.

10 This is not just Julia Johnson/VAA's  
11 view. This is shared by the United States  
12 Congress, administrations of both parties, and  
13 the Federal Communications Commission.

14 In fact, the FCC has been asked  
15 several times to fully regulate VoIP and has  
16 wisely refrained from doing so.

17 VoIP providers, regardless of how  
18 they provide the service, should be guaranteed  
19 the same ability to compete and serve their  
20 customers.

21 It is precisely because VoIP has  
22 relied upon widespread deployment of  
23 high-speed broadband networks that  
24 Pennsylvania is poised to be a hot spot for  
25 VoIP investment.

1           Pennsylvania's current approach  
2           clears barriers to entry and drives down  
3           prices for consumers.

4           A continuation of this approach would  
5           be a continuation of Pennsylvania's welcoming  
6           posture for businessmen and women from every  
7           walk of life and its commitment to consumers.

8           We all know that the Internet has  
9           changed and gained popularity. It has moved  
10          from a tool of the technologically elite to a  
11          tool being used extensively by all segments of  
12          the population, and even by those who have  
13          been perceived as disenfranchised and people  
14          in rural areas that have been perceived as  
15          being disconnected.

16          The Video Access Alliance is  
17          particularly interested in the growth of  
18          minority entrepreneurship and broadband  
19          industries.

20          We believe that VoIP offers -- offers  
21          considerable opportunities for small  
22          businesses and minority-owned businesses. We  
23          all know minorities have extraordinary buying  
24          power. With 70 million people and 25 million  
25          households, as the trends continue, two of

1 every three dollars spent will be minority  
2 dollars.

3 When you couple that with people in  
4 rural areas and working class people, then we  
5 understand the power of those consumers and  
6 the commitment of this legislature in bringing  
7 them the tools that they need -- need to  
8 utilize these new services.

9 It is not coincidental that the  
10 National Conference of Black -- or the  
11 National Black Caucus of State Legislators and  
12 the National Hispanic Caucus of State  
13 Legislators recently passed VoIP resolutions.  
14 Both resolutions called for state legislatures  
15 to protect VoIP service -- services from  
16 economic regulations.

17 Both of these national organizations  
18 recognized that VoIP and its applications  
19 represent a way out and a way up for working  
20 class people. It's a win/win for all  
21 consumers.

22 In summary, the Video Access Alliance  
23 strongly supports the codification of a  
24 hands-off approach at a state level as  
25 reflected in Pennsylvania Senate Bill 1000.

1 The same approach that has been adopted by  
2 seven progressive states.

3 We ask that you pass this good  
4 legislation for the people in Pennsylvania and  
5 for the entrepreneurs around the state that  
6 are poised to serve this great state.

7 And with that, I'm prepared to answer  
8 any questions you might have. And, again,  
9 it's an honor to appear before you.

10 CHAIRMAN PRESTON: Well, thank you  
11 very much for your testimony.

12 Questions by members?

13 Mr. Mensch.

14 REPRESENTATIVE MENSCH: You say that  
15 hesitantly.

16 CHAIRMAN PRESTON: No. No. I waited  
17 and you didn't move and I waited again.

18 REPRESENTATIVE MENSCH: Well, I was  
19 waiting for someone else. But it's -- it's  
20 the curse of 35 years in the industry. I  
21 apologize.

22 But your testimony is -- is very  
23 welcome and thank you.

24 Your support of 1000, Senate Bill  
25 1000, one thing you didn't comment on are the

1 phantom calls that we've talked about here a  
2 little bit ago.

3 I'm not asking you to address that  
4 particularly so much as the same issue in  
5 Florida -- did you have the same issue in  
6 Florida with the rogue providers doing the  
7 phantom calls, cheating the -- the independent  
8 telephone companies essentially out of their  
9 right to bill for the -- the service?

10 MS. JOHNSON: I can say that from my  
11 vantage point in watching what happened in  
12 Florida, there was not a mass outcry with  
13 respect to those type issues.

14 But to the extent there were issues,  
15 the PSC was poised to address those issues.  
16 It wasn't about because VoIP was deregulated.  
17 It was because of an antiquated access regime  
18 that has the right platforms in place for a  
19 regulatory body to address those issues.

20 Here in Pennsylvania, your laws are  
21 pretty clear as to the fact that there is  
22 redress and there are opportunities to care  
23 for those issues.

24 I would ask that you not allow those  
25 issues to stop the benefits that could flow

1 directly to consumers with this legislation.

2 REPRESENTATIVE MENSCH: Thank you.

3 MS. JOHNSON: Thank you.

4 CHAIRMAN PRESTON: You come at a very  
5 appropriate time, and I'll ask the same  
6 questions I guess I'll ask some of the other  
7 individuals to come.

8 You've heard people from both sides  
9 of the aisle. Not both sides of the aisle.  
10 Both sides of interests relative to this bill  
11 versus particular interests in another bill,  
12 which we did have the same format, somewhat  
13 the same format for the hearing.

14 And in the interests about -- as you  
15 said, about growth but at the same time  
16 someone says, if this passes, it will possibly  
17 hurt the issue as far as job growth and things  
18 like that. How do you respond to those type  
19 of issues?

20 MS. JOHNSON: I would say that this  
21 legislation will indeed -- it's a codification  
22 of what you've already been doing and how does  
23 that help?

24 Well, it signals to the market, to  
25 Wall Street, that this state welcomes more

1 investment and that we're looking for  
2 additional opportunities.

3 I have my members, Broderick Byers,  
4 the CEO of the -- the Employment and Career  
5 Channel, who is poised to look at  
6 opportunities and ways to partner with  
7 Pennsylvania and Pennsylvania organizations.

8 Rey Ramsey of One Economy. Currently  
9 Pennsylvania has been very progressive in  
10 making sure that it's -- that it's housing  
11 agency, which provides housing, affordable  
12 housing, for working class people, have access  
13 to broadband.

14 Well, he's poised to give them the  
15 kind of content that they would need, whether  
16 it's a call that one can make to provide help  
17 with homework, whether it's a single working  
18 mom in a rural area who is also looking for  
19 new opportunities.

20 I would say that what this  
21 legislation does is it provides the kind of  
22 certainty that both consumers, as well as  
23 industry, need to create an environment that  
24 will have more economic development, more  
25 growth, and more opportunities for consumers.

1           So the action step here is taking  
2           that next logical step in adopting this --  
3           this legislation and providing that certainty.

4           CHAIRMAN PRESTON:   Okay.   Thank you.

5           Mr. Chairman?

6           REPRESENTATIVE GODSHALL:   And where  
7           was Representative Geller on this?   Who I've  
8           been with at a number of conferences from the  
9           insurance legislators.

10          MS. JOHNSON:   I absolutely adore  
11          Representative -- you're talking Steve  
12          Geller?

13          REPRESENTATIVE GODSHALL:   Yes.

14          MS. JOHNSON:   Oh, yes.   Yes.   Yes.  
15          He was actually very much supportive of this.  
16          Pushed it to the end to make sure they had all  
17          the consumer protections in place, but was  
18          also in the end looking at the totality of the  
19          consumer impact and thought that -- and in his  
20          wisdom he was right -- that would provide more  
21          choice and more opportunities.

22          REPRESENTATIVE GODSHALL:   Did he ever  
23          give anybody else a chance to speak?

24          MS. JOHNSON:   No comment.

25          REPRESENTATIVE GODSHALL:   Thank you.

1 MS. JOHNSON: Thank you.

2 CHAIRMAN PRESTON: Spoken like a true  
3 lobbyist.

4 Okay. Mr. Solobay, Representative  
5 Solobay.

6 REPRESENTATIVE SOLOBAY: And if I  
7 would add one thing, I hope you didn't tell  
8 him that he was right whenever he did this.

9 MS. JOHNSON: Of course I did,  
10 because he was.

11 CHAIRMAN PRESTON: Okay. I'd also  
12 like to comment that we have also been joined  
13 by Representative Reichley.

14 Well, thank you very much.

15 MS. JOHNSON: Thank you again.

16 CHAIRMAN PRESTON: We appreciate it.  
17 And when you leave, have a safe trip -- trip  
18 back.

19 MS. JOHNSON: Thank you.

20 CHAIRMAN PRESTON: Next we have  
21 Bartlett Leber, who is the senior vice  
22 president and general counsel of Atlantic  
23 Broadband, and Tim Himmelwright, director of  
24 Communications and Public Affairs Service  
25 Electric Cable TV and Communications.

1           Ms. Leber and Mr. Himmelwright, thank  
2           you very much for coming. When you are ready,  
3           make sure you bring the microphone a little  
4           bit closer.

5           For the audience, the members do get  
6           a copy of the testimony you've heard today and  
7           from those you've heard from on 1490.

8           And you are hearing me say I'm  
9           encouraging members to ask and have  
10          discussions today and afterwards. Whenever we  
11          decide to come together about having a vote on  
12          this, I would anticipate that we would be able  
13          to make effective decisions because everything  
14          will have been in writing and discussion would  
15          have been well in advance and open.

16          Thank you.

17          MS. LEBER: Thank you. I think I'm  
18          going to start on this panel. Good morning  
19          Chairman Preston, Chairman Godshall, and  
20          members of the Consumer Affairs Committee, and  
21          thank you for the opportunity to testify today  
22          with respect to Senate Bill 1000.

23          On behalf of Atlantic Broadband, I  
24          would like to offer our unqualified support  
25          for the measure because it protects the

1 pro-competitive environment the Commonwealth  
2 of Pennsylvania has created, and thus  
3 continues the benefits of competition in  
4 communications services that many Pennsylvania  
5 residents are already enjoying today. And I  
6 say that, they're enjoying that today finally  
7 after all of these years.

8 At the conclusion of my testimony, I  
9 urge you to remain true to the pro-competitive  
10 principles the Commonwealth has so effectively  
11 established and administered.

12 First, an introduction of Atlantic  
13 Broadband. We serve about 287,000 customers  
14 in the United States, but our largest  
15 concentration of customers is here in  
16 Pennsylvania where we serve about 130,000  
17 customers in 175 different communities.

18 And if you do the math, that's on  
19 average about 750 people per community but, of  
20 course, there's a great range.

21 The largest community that we serve  
22 is Altoona, Pennsylvania. Our regional  
23 headquarters serving Pennsylvania, as well as  
24 supporting operations in West Virginia and New  
25 York and some in Florida and South Carolina,

1 is in Johnstown, Pennsylvania.

2 We currently employed more than 450  
3 people in our Pennsylvania call centers, our  
4 technical service centers, and administrative  
5 offices. In the four years that we have been  
6 here in Pennsylvania, we've actually added a  
7 150,000 (sic) of those new positions and these  
8 are jobs in central and western Pennsylvania  
9 with an average wage of over \$40,000 a year.  
10 About a 180 of our employees or 40 percent of  
11 our Pennsylvania --

12 CHAIRMAN PRESTON: You forgot --  
13 excuse me. I just want to make one correction  
14 for the record. It's 150 people, 150,000.

15 MS. LEBER: Good point. I wish --  
16 thank you very much. A hundred and fifty new  
17 positions in central Pennsylvania. Thank  
18 you. With an average wage of over 40,000 a  
19 year. About 180 and not 180,000 of those  
20 employees are -- or 40 percent of our  
21 Pennsylvania workforce is represented either  
22 by the International Brotherhood of Electrical  
23 Workers, the IBEW, or the Communication  
24 Workers of America, or CWA.

25 As for my background, I serve as

1 Atlantic Broadband's general counsel. I've  
2 been with the company since we started up in  
3 March of 2004.

4 In the four years that -- that we've  
5 owned and operated the systems in  
6 Pennsylvania, we've invested our human and our  
7 financial capital in transforming traditional  
8 cable operations in Pennsylvania into  
9 broadband companies.

10 And in doing that, we have upgraded  
11 to digital cable television services, as well  
12 as offering broadband Internet communications  
13 virtually throughout our footprint in  
14 Pennsylvania.

15 And this includes counties such as  
16 Fayette, Cambria, Blair, Bedford, Warren,  
17 Clearfield, McKean. We are literally all over  
18 the state in very, very rural parts of the  
19 state.

20 We also offer phone service at  
21 Atlantic Broadband. For one flat fee  
22 consumers receive unlimited calling in the  
23 United States, Canada, and Puerto Rico. The  
24 service includes quite a number of popular  
25 features, you know, caller ID type features.

1 There's 16 of them. As well as voice mails.

2 So it's all bundled up into one flat price.

3 It's about \$30 if you happen to  
4 subscribe to another one of the other services  
5 that we offer, but you can buy it standalone  
6 for about \$45 a month.

7 As public policy makers, you should  
8 give yourselves some of the credit for  
9 establishing a pro-competitive, nonregulatory  
10 regime here in Pennsylvania that's essential  
11 to encourage companies like mine to invest in  
12 the state and to bring customers these kinds  
13 of competitive choices.

14 The phone service we offer is a VoIP  
15 or Voice Over Internet Protocol service, an  
16 arrangement that's quite common in the cable  
17 industry.

18 We work with two underlying  
19 telecommunication companies in Pennsylvania,  
20 IDT America and Level 3 Communications. Each  
21 of these companies is certified by the Public  
22 Utilities Commission as a competitive local  
23 exchange company.

24 Each of these companies has entered  
25 into interconnection agreements with the

1 various local incumbent exchange -- incumbent  
2 local exchange providers in the territories  
3 where we serve. Mostly. And more about that  
4 later.

5 In the provision of our service, we  
6 provide enhanced 911 services. We provide  
7 access to people with disabilities. We comply  
8 with law enforcement and other CALEA  
9 requirements. We protect our customers'  
10 information according to FCC rules.

11 We comply with quite a lot of the  
12 requirements that the federal government has  
13 imposed on VoIP providers.

14 VoIP is regulated at the federal  
15 level. In 2004 the FCC -- and I'm a lawyer so  
16 I apologize for going in the legalese -- and I  
17 can gloss over this quickly if you'd like.  
18 But the Federal Communications --

19 CHAIRMAN PRESTON: We won't hold that  
20 against you.

21 MS. LEBER: Thank you very much. I  
22 actually --

23 CHAIRMAN PRESTON: Because there's  
24 another attorney that's following you a little  
25 bit later.

1 MS. LEBER: I appreciate that.

2 The Federal Communications Commission  
3 didn't decide what VoIP service was, whether  
4 it was an information service or communication  
5 service, but they did decide that it was an  
6 interstate service. And because they made  
7 that decision, they have preempted all the  
8 other states who have attempted to regulate  
9 VoIP services.

10 And there was a ruling by the Court  
11 of Appeals for the 8th Circuit upholding that  
12 decision when it was challenged by a number  
13 of -- in a consolidated case that had --  
14 following challenge by a number of state  
15 Public Utility Commissions.

16 But marvelously in Pennsylvania, more  
17 than a year before the FCC handed down that  
18 VoIP order, the Vonage order, the Pennsylvania  
19 Public Utility Commission opened a docket on  
20 its own deciding whether or not it ought to  
21 regulate VoIP services and recognizing that  
22 VoIP -- and this is a quote from the -- the  
23 order itself -- presents a world of  
24 opportunities for Pennsylvania consumers, in  
25 April of 2004 the Pennsylvania Public Utility

1 Commission determined that regulation would be  
2 premature. And that's the word that they  
3 use.

4 And in the four years since they have  
5 handed down that order, the Public Utility  
6 Commission has not elected to even reexamine  
7 whether and to what extent it ought to  
8 regulate VoIP services.

9 Following that decision, in 2004, we  
10 began the process of selecting all of our  
11 providers and making the arrangements to offer  
12 telecommunications or phone service in  
13 Pennsylvania.

14 And in 2005 we started our -- our --  
15 we offered our first commercial launch, and we  
16 launched VoIP services in Altoona as our first  
17 market in January of 2006.

18 And this is not only the city of  
19 Altoona but there are 26 -- or 27 -- I'm  
20 sorry -- surrounding communities that we  
21 serve.

22 We followed that up with a launch in  
23 May of 2006 in Johnstown, as well as quite a  
24 number of surrounding communities in Cambria  
25 County.

1           And then I have in my testimony sort  
2           of a snapshot of where we are in Pennsylvania  
3           today. In February of 2007 we are able to  
4           offer the service in our Uniontown system but  
5           only a portion of it and it was the portion of  
6           Uniontown where the underlying ILEC was  
7           Verizon and the reason for that is because we  
8           were able to obtain interconnection with  
9           Verizon.

10           Following that we've launched in  
11           Clearfield, in Clearfield County, in Bradford  
12           and surrounding communities in McKean County,  
13           the city of Warren and surrounding communities  
14           in Warren County, Warrior's mark and  
15           Huntingdon County, New Enterprise in Bedford  
16           County.

17           And then a few days ago we've  
18           launched another section of our Uniontown  
19           system and that is the section of Uniontown  
20           that is -- where the underlying LEC is  
21           Windstream and, again, that was -- the timing  
22           of the differential and the timing was driven  
23           by interconnection.

24           Even now, though, with the Windstream  
25           arrangements made, we're still not able to

1 offer phone service to all of our customers in  
2 our Uniontown system, and that's because we  
3 will not be able to or we have been not able  
4 to obtain interconnection with the third  
5 underlying LEC in that area which is the  
6 Bentleyville Phone Company.

7 Bentleyville is a small company  
8 that's owned by FairPoint Communications and  
9 in FairPoint's most recent disclosure of its  
10 earnings and size, it claims to serve about  
11 300,000 access lines, grossing more than \$280  
12 million in 2007. That's pretty much the exact  
13 same size and shape as -- as my company.

14 At that -- at some point, however,  
15 where there are a relatively small number of  
16 customers in an area and the cost to overcome  
17 opposition to interconnection is high, the  
18 customer loses.

19 So we'll have this sort of gap or  
20 hole in the -- in the kinds of services we  
21 provide. And, you know, the irony of this is  
22 the Bentleyville Telephone Company also has a  
23 cable service and competes with us on cable  
24 service and it also offers cable modem  
25 Internet service and competes with us on

1 Internet.

2 So it's something to kind of consider  
3 in the varying interests that get piled onto a  
4 bill like this.

5 We are concerned, and we hope that  
6 you are, too, that some of the strongest  
7 opposition to this bill, you know, comes from  
8 the very entities who, you know, are able  
9 effectively to use the process to slow down or  
10 delay competition.

11 So, in summary, Pennsylvania stands  
12 out as a company (sic) that has embraced a  
13 pro-competitive, pro-consumer regime for the  
14 delivery of competitive phone services.

15 The prudent decision of the PUC in  
16 2004 not to regulate VoIP encouraged my  
17 company to make significant investments in  
18 Pennsylvania, both in terms of capital  
19 spending and the creation of new jobs.

20 We offered Pennsylvania customers  
21 real competitive choice, all-in-one phone  
22 service for a very competitive flat price. We  
23 hope that you will make this pro-consumer  
24 choice a permanent one by approving the Voice  
25 Over Internet Protocol Freedom Act of 2007.

1 Thank you.

2 MR. HIMMELWRIGHT: Chairman Preston,  
3 Chairman Godshall, members of the committee.  
4 Good morning. My name is Tim Himmelwright.  
5 I'm now the director of Communications and  
6 Public Affairs for Service Electric Cable TV  
7 and Communications, which is located in  
8 Bethlehem, Pennsylvania.

9 Before I give a summary of -- of my  
10 testimony, I want to speak directly to several  
11 things that were raised by an earlier  
12 testifier.

13 From our family company, family-owned  
14 company in Pennsylvania, that will be 60 years  
15 old in June, I take exception to -- because  
16 they're just not true. Earlier you were told  
17 that capital investment decisions don't --  
18 this bill won't make a difference there. It  
19 absolutely does.

20 In November, since we can't go to the  
21 regular investment market and float preferred  
22 capital and get extra money in order to help  
23 our company, we have to go to banks now and  
24 rely on them lending us the money.

25 They look at the whole competitive

1 market and where they believe that regulation  
2 says we can go and compete and work well.

3 We've got systems that serve  
4 Phillipsburg, New Jersey and a portion of  
5 Jersey over there. Most of our services are  
6 in Pennsylvania.

7 In November, the bankers flat out  
8 said to my bosses, look, we'll give you money  
9 to upgrade New Jersey but all those  
10 Pennsylvania plans you had for -- for the  
11 second half of 2008 and beyond, we're not  
12 going to give you money for those because  
13 you've regulatory certainty in New Jersey.  
14 Those Pennsylvania projects are going to have  
15 to wait. That's what they flat out said.

16 The projects we had already approved  
17 earlier in 2007 are moving forward in 2008,  
18 but unfortunately there are communities in  
19 Pennsylvania that will not be -- have  
20 competitive voice service from us through VoIP  
21 this year because the bankers said New Jersey  
22 has regulatory certainty but Pennsylvania  
23 doesn't. We'll give you the money for  
24 Jersey.

25 Also the supposition that this bill

1 has no bearing on the expansion of high-speed  
2 Internet access in the state is absolutely  
3 false. The tens of millions of dollars that  
4 it takes to rebuild individual small  
5 communities provides -- we're providing not  
6 only telephone service but high-speed  
7 Internet, two-way access service. Up till now  
8 those communities only had one-way slower  
9 service that they have to use a dial-up line  
10 to get back on. They're begging us. I can --  
11 you know, I can quote a -- a November  
12 newspaper article written in the Doylestown  
13 News Intelligencer Buck for our northern Bucks  
14 County properties. The rural part of Bucks  
15 County where you got a farm and a house and a  
16 house and a farm and a farm and a house.

17 It takes money to get out to them.  
18 We plan to build them out. They're begging  
19 for the services, all three. They want the  
20 competitive choice in telephone.

21 How do you say to them, you know, and  
22 other rural communities, that you're going to  
23 have to wait because New Jersey has regulatory  
24 certainty but you can't have high-speed  
25 Internet, you can't have a competitive

1 telephone, because we have to do Jersey  
2 first.

3 You know, that's where we get our  
4 capital from. We have to borrow from the  
5 banks. And, you know, they -- they control.  
6 They -- they have veto power over where we  
7 build.

8 Pricing, this bill will help us as we  
9 deploy -- to deploy competitive services that  
10 bring down the price. It doesn't matter  
11 whether you're on welfare assistance in the  
12 Commonwealth or whether you're a rural farmer  
13 or whether you're a banker or a lawyer or with  
14 an income over a hundred thousand dollars a  
15 year, you pay the same price for competitive  
16 phone service from Service Electric  
17 Telephone.

18 Now, who does that really help the  
19 most? It helps the people on the lower end of  
20 the income spectrum the most. The person on  
21 Public Assistance, the -- the rural family  
22 farmer who is trying to make ends meet. It  
23 helps them the most.

24 Our prices are consistently lower  
25 than any independent telephone provider that

1 we go up against in any one of those small or  
2 larger markets.

3 And when we build out a market, we  
4 build 100 percent of the market. We don't go  
5 in and choose the -- the higher income  
6 portions of the community. We build --  
7 already build it out.

8 When I meet locally with the local --  
9 local township managers and local township  
10 supervisors and borough managers, they're the  
11 ones who say, locally, we want this for our  
12 community. If you want the franchise, you do  
13 this. And we do. It's consumer driven. So  
14 that's who it really hurts.

15 That's the real story from the  
16 viewpoint of a family-owned company in  
17 Pennsylvania about what really happens in the  
18 marketplace.

19 I'm just going to set a couple pages  
20 out here if you don't mind.

21 In this testimony I'll discuss why  
22 this forward-thinking legislation is not only  
23 good policy for the Commonwealth but how it  
24 will create jobs in Pennsylvania and increase  
25 competition in the telecommunications

1 business, which, in turn, reduces those  
2 telephone prices in rural, suburban, and --  
3 and urban areas of the Commonwealth.

4 Twelve years ago Service Electric  
5 Cable Television partnered with Ironton  
6 Telephone Company, a Pennsylvania Telephone  
7 Association member, to build to competitive  
8 local exchange business to provide high  
9 quality telephone service at lower costs to  
10 the residents of not only Lehigh Valley but  
11 northern Bucks County and eventually New  
12 Jersey.

13 Last April we expanded in the  
14 Nazareth and Easton areas with another cutting  
15 edge technology, Voice Over Internet  
16 Protocol. This year we'll expand that service  
17 because it was preapproved earlier in 2007 to  
18 rural townships in northern Bucks County,  
19 Milford, Durham, Tinicum, Nockamixon, and  
20 Bridgeton.

21 As I said, areas where they're --  
22 where they're reading newspaper articles about  
23 people wanting these services.

24 They want what Philadelphia can get.  
25 They want what Allentown can get. They want

1 what the New York City area can get. They  
2 want cable modem telephone service bundled  
3 together at prices that save them money. And  
4 we're going to deliver it.

5 Does it cost more to get out to those  
6 areas? Yes. But we haven't asked for any  
7 public assistance to do it.

8 Our consumers have said this is what  
9 we want. This is what we demand, or we'll go  
10 elsewhere.

11 Now, when you talk about quality of  
12 service, we monitor our system 24 hours a day,  
13 seven days a week, 366 days of the year, since  
14 this is a leap year.

15 We know if there's a telephone hit  
16 and a pole down or a line down before anybody  
17 picks up the telephone or their cell phone to  
18 call us and say service is --

19 CHAIRMAN PRESTON: I've got to get  
20 you to move to my area.

21 MR. HIMMELWRIGHT: No more? I'm  
22 sorry.

23 CHAIRMAN PRESTON: No. No. You're  
24 fine.

25 MR. HIMMELWRIGHT: Yes.

1                   CHAIRMAN PRESTON: But the statement  
2                   that you just made, can you repeat that again?  
3                   You know what?

4                   MR. HIMMELWRIGHT: We monitor our  
5                   system 24 hours a day, seven days a week, 366  
6                   days a year, since it's leap year. And we  
7                   know before a customer can pick up the phone  
8                   and tell us if a telephone pole has been hit,  
9                   if an electric line has come down, if our  
10                  service has been knocked out because of some  
11                  power outage or something.

12                  We know because we monitor our system  
13                  where that outage is. We're deploying people  
14                  already to determine the extent of that outage  
15                  and to get that service back up as quickly as  
16                  possible.

17                  We also maintain battery back-up  
18                  above the required limit of eight hours. We  
19                  have 12 hours to 16 hours of battery back-up  
20                  out there to keep our system going so that  
21                  there's enough power out there to keep the  
22                  phones on for the people while -- while  
23                  electric is being restored.

24                  CHAIRMAN PRESTON: I have said,  
25                  Mr. Wojnaroski, we have to make sure that we

1 have his number because we're going to get  
2 together with you so that maybe we can compare  
3 operational books and capital -- capital plans  
4 from some of the other utilities to find out  
5 why you can find a number before that pole  
6 falls and we're the ones that get the phone  
7 calls in some of the other areas.

8 With all due respect to the other  
9 industry that's here, we're going to have to  
10 really see this. Because this is -- this is  
11 something that I think, Representative  
12 Solobay, that we are -- sorry Mr. Petrarca is  
13 not here because he'd want -- he probably put  
14 the downpayment for you to buy the house and  
15 take the company over in the area where he  
16 lives.

17 MR. HIMMELWRIGHT: Well, you see,  
18 Mr. Chairman, Service Electric Telephone from  
19 its -- from its inception 12 years ago has  
20 desired to be the best local-run, family-owned  
21 telecommunications business in the  
22 Commonwealth.

23 Our partnership with Ironton  
24 Telephone and their 100 years' experience and  
25 our 60 years' experience in -- in the video

1 business have brought together family  
2 companies that live locally.

3 When you call the customer service  
4 rep from our company, you're getting one of  
5 your neighbors. You're getting one of your  
6 friends on the phone. You're not getting  
7 someone from somewhere else.

8 We're local, we're here, we care and  
9 we respond. It's been -- it's been a marriage  
10 of two companies that have worked very hard to  
11 keep their local people happy because we're  
12 local.

13 This bill -- the bill will generate  
14 jobs in the Commonwealth. It's already  
15 generated jobs for us. We've added at least  
16 eight percent to our -- our employment rolls  
17 in the last three years.

18 We've hired technicians to build and  
19 maintain the system, installers to install  
20 the -- the increased amount of services that  
21 the people are requesting from us. These are  
22 IBEW members that get paid good wages and they  
23 do a good job.

24 We have had to expand our customer  
25 service call center twice in the last 12

1 months. Because we keep filling these seats,  
2 we have to cut back how long it takes to get  
3 somebody the service, but it's real hard when  
4 you have piles of people calling you and you  
5 have a certain number of people that -- that  
6 can answer our calls. So our response is  
7 we'll hire more local Pennsylvanians.

8 I was in a conference call two weeks  
9 ago in which we made that call. Okay. We got  
10 to take another area, build it out, hire it  
11 some more people, get in some more people to  
12 serve the local people with our competitive  
13 services.

14 It's happening because they  
15 understand that we're providing them a high  
16 quality service. We're spending the tens of  
17 millions of dollars to build out each  
18 individual community and offer them high  
19 quality service at a fair price.

20 The deployment of this VoIP  
21 technology that we're all interested in today  
22 costs us less than traditional telephone  
23 service. We turn around and pass those cost  
24 savings on to our consumers, giving them fair  
25 priced, high quality service.

1           Service Electric, this family-owned  
2           company that I represent, needs this  
3           legislation, ladies and gentlemen. We need  
4           the regulatory certainty so that, when we talk  
5           with our bankers, Pennsylvania is on the same  
6           level playing field as New Jersey.

7           We don't want them to say, go build  
8           another piece of New Jersey before you build  
9           another piece of Pennsylvania. We need this  
10          legislation, this regulatory certainty, to  
11          continue to create jobs in this Commonwealth.

12          We need this legislation and it's  
13          regulatory certainty to meet the needs and the  
14          requests of the consumers in our area.  
15          Whether they be the rural farm areas in our  
16          system or whether they be the low income, you  
17          know, urban areas in our system. It doesn't  
18          matter to us. We will build it all, and we  
19          will serve them all with the same low price,  
20          high quality service, making no distinctions  
21          among anyone.

22                   CHAIRMAN PRESTON: Thank you very  
23                   much.

24                   Representative Brennan.

25                   REPRESENTATIVE BRENNAN: Thank you,

1 Mr. Chairman.

2 Thank you for your testimony, and I  
3 apologize. I missed the first few minutes of  
4 it. I had another -- another meeting in the  
5 Capitol.

6 I just wanted to mention the Lehigh  
7 Valley, Mr. Chairman, we've always been -- at  
8 least as long as I can remember, we've always  
9 had a competitive situation with the cable  
10 and, more recently, obviously with phone and  
11 whatnot.

12 And I can assure that Service  
13 Electric's reputation is second to none on  
14 both of those fronts. And we're -- we're  
15 fortunate to have them and I can only hope  
16 that some day you're in the same luxury that  
17 we are in the Lehigh Valley of phone companies  
18 like Service Electric who provide these  
19 services.

20 CHAIRMAN PRESTON: Thank you. I can  
21 remember about a year, year and a half ago,  
22 when we had the hearing, and I think a lot of  
23 members were surprised when we found out there  
24 were two cable companies over the same  
25 footprint, and they're really here, with the

1 competition going, and you actually shook  
2 hands and smiled with each other.

3 It was very interesting to me. Even  
4 though we knew you were very competitive as  
5 well as far as businesses and that's what this  
6 is about, creating certain levels of  
7 competition and -- and you're right. We  
8 really enjoyed ourselves.

9 Chairman Godshall.

10 REPRESENTATIVE GODSHALL: Ms. Leber,  
11 I have, being a new member on the committee,  
12 and I just -- your testimony on Page 2,  
13 finally 12 years after the failed promise of  
14 the Telecommunications Act of '96 rural  
15 Pennsylvania has robust competition for phone  
16 service.

17 What was -- I mean what's your point  
18 there? I'm not familiar with the  
19 Telecommunications Act of '96.

20 MS. LEBER: This is a big subject  
21 that we could talk about for days, but in my  
22 condensed view the Telecom Act of 1996, in  
23 essence, there was an exchange of promises  
24 where the incumbent and local exchange  
25 companies promised to take apart their

1 networks and sell bits and pieces of them to  
2 other entities, to other phone companies, who  
3 could then recombine them and resell them to  
4 their own customers.

5           It didn't encourage very much  
6 building of second or third or fourth  
7 networks, and, as a result, really what you  
8 had was a very, very long regulatory process  
9 with people fighting about what all the  
10 disassociated parts ought to cost and how they  
11 could be put back together again for somebody  
12 else in essence to resell them and try and  
13 make a profit off of it.

14           And the model of breaking up someone  
15 else's network for either resale or bits and  
16 pieces resale really never produced, as far as  
17 I can tell, robust competition for phone  
18 services to residential customers and that  
19 really ten years after the Telecom Act passed,  
20 say, in 2006, before, I think, the offering of  
21 VoIP over broadband started getting more  
22 robust, you really wouldn't find very large  
23 numbers of competitive services for local  
24 exchange telecommunications offered anywhere,  
25 much less in Pennsylvania.

1           REPRESENTATIVE GODSHALL: Thank you.

2 Thank you.

3           CHAIRMAN PRESTON: Representative  
4 Reichley.

5           REPRESENTATIVE REICHLEY: Thank you,  
6 Mr. Chairman.

7           Attorney Leber, let me ask you some  
8 of these questions and then I will apologize  
9 if these are inartfully worded, just perhaps  
10 not understanding all the technical aspects of  
11 the question.

12           I noticed, with some interest, a lot  
13 of areas you seem to serve in Pennsylvania are  
14 what might be classified as more rural areas  
15 than suburban or urban.

16           Is that fair to say?

17           MS. LEBER: Yes. That's very fair to  
18 say. I think I did the math in the beginning  
19 of my testimony, and most of our -- our  
20 communities are very small and very rural,  
21 with really Altoona and Johnstown being the  
22 two very large communities that we serve.

23           REPRESENTATIVE REICHLEY: Okay. Now,  
24 in the one area you mentioned where you have  
25 two agreements with the ILECs or the local

1 providers but not with the third, I guess in  
2 the Uniontown area, for instance.

3 MS. LEBER: Yes.

4 REPRESENTATIVE REICHLLEY: What  
5 happens if I'm making a phone call into the  
6 Uniontown area or -- over VoIP and into that  
7 area that you're not serving? What happens to  
8 that call?

9 MS. LEBER: Your local exchange  
10 provider would connect it because we're not  
11 serving it.

12 REPRESENTATIVE REICHLLEY: Okay. And  
13 do access charges enter into your negotiations  
14 situation with the local exchange providers?

15 MS. LEBER: I understand. I  
16 understand. I'm sorry.

17 There's a couple different levels of  
18 the way companies exchange traffic, and it  
19 depends on jurisdiction as well as local  
20 versus nonlocal.

21 So the very, very local traffic is  
22 governed by an interchange agreement that  
23 would deal with the very, very local part of  
24 the traffic.

25 There are in-state access tariffs

1 that apply to nonlocal traffic exchanged  
2 within the state. And then there are federal  
3 access tariffs that would apply to the  
4 exchange of traffic that is interstate in  
5 nature.

6 REPRESENTATIVE REICHLEY: Okay. And  
7 if -- based upon your predictions and the  
8 industry's perceptions of where the technical  
9 aspect of this market is building towards,  
10 doesn't it inevitably place those smaller  
11 companies at a competitive disadvantage if  
12 they don't have some kind of interconnection  
13 agreement with you and the larger companies?

14 MS. LEBER: I would think a smaller  
15 company would do very well to interconnect and  
16 to exchange traffic. I -- I really can't say  
17 why they won't.

18 REPRESENTATIVE REICHLEY: Only fair  
19 to them, they say that they're not getting  
20 paid certain things. And I understand there's  
21 -- from reading --

22 MS. LEBER: Yes.

23 REPRESENTATIVE REICHLEY: -- other  
24 testimonies, there's a feeling that some  
25 federal decisions are -- are pending that may

1 address that.

2 MS. LEBER: One thing I would, if I  
3 had the opportunity to sit in your place  
4 and -- and I was trying to balance, you know,  
5 the relative issues that -- that parties have  
6 raised about interconnection particularly, you  
7 had the testimony of two public utility  
8 chairpeople today and if you wanted to find an  
9 entity, you know, somebody who really doesn't  
10 have a dog in the fight, if you want to put it  
11 that way, they have very expert and fair views  
12 of that.

13 And I've heard both of them say today  
14 that there are remedies that exist and that  
15 their -- their agencies offer, as well as the  
16 Federal Communications on the federal level,  
17 that -- precisely to address concerns or  
18 inequities in -- in access arrangements or  
19 allegations that somehow someone has cheated.

20 That's why those agencies -- or it's  
21 part of the function that those agencies  
22 provide as they provide economic regulation of  
23 local basic exchange telephone companies.

24 REPRESENTATIVE REICHLLEY: This will  
25 be my last question. And, again, I apologize

1 if it's not showing much understanding of this  
2 whole technical aspect.

3 But if you are saying to customers,  
4 we don't have an interconnection agreement  
5 with XYZ --

6 MS. LEBER: Uh-huh.

7 REPRESENTATIVE REICHLEY: -- small  
8 company out there, and you can't --

9 MS. LEBER: We can't serve them.

10 REPRESENTATIVE REICHLEY: You can't  
11 regulate the call, does that set in place a  
12 model where at some point you, as a larger  
13 company say, well, you know what? We can't  
14 negotiate with this company so now we're  
15 either going to bypass that customer base  
16 entirely or we're going to buy it and,  
17 therefore, we have the capital in order to be  
18 able to build out our network sufficiently as  
19 all the larger other companies do and so the  
20 XYZ and the ABC company will in the future  
21 disappear because they cannot enter into these  
22 agreements?

23 MS. LEBER: Well, I think we can take  
24 the example of the Bentleyville company as a  
25 perfect example.

1           We don't serve anyone with VoIP  
2           service who resides in a community that's  
3           served by Bentleyville.

4           If there is traffic, in other words,  
5           an ABB customer calls someone who lives in  
6           Bentleyville, through the series of access  
7           tariff arrangements, that traffic, with call  
8           identifying information, comes into that  
9           company and there is an exchange between the  
10          underlying CLEC and Bentleyville of value for  
11          the value that the Bentleyville people are  
12          able to get from being able to call our  
13          customers, as well as the value that our  
14          customers get for being able to call the  
15          Bentleyville customers. That's thing one.

16          Thing two, Bentleyville is part of  
17          FairPoint Communications and that was a  
18          transaction, at least from what I understand  
19          from my research for my testimony here today,  
20          that occurred within the last three or four  
21          years, I believe.

22          I could be corrected on that, but  
23          it's a very recent transaction where  
24          Bentleyville already has sold itself up into a  
25          larger telecommunications entity.

1           And that entity is in the process of  
2 actually substantially increasing its size  
3 because it has just purchased the Verizon  
4 assets serving Maine, New Hampshire, and  
5 Vermont, I believe. Again, I'm not positive  
6 of all, but I know it's Vermont and I believe  
7 it's New Hampshire, and Maine as well.

8           So --so that's already occurring.  
9 And yet, even with grossing itself up and  
10 becoming part of a larger entity, it is still  
11 a very small local exchange company that under  
12 our -- our laws and rules of -- of how we  
13 economically regulate phone service is  
14 supported by -- by my company as well as all  
15 the other companies who pay into the universal  
16 service fund.

17           So, you know, there's -- once you  
18 crack open this egg, there's a -- there's a  
19 lot that spills out.

20           CHAIRMAN PRESTON: Well, thank you  
21 very much for your testimony. You've helped  
22 us -- helped us an awful lot fill in some of  
23 the gaps.

24           MS. LEBER: Thank you for the  
25 opportunity to be here. I appreciate it.

1 MR. HIMMELWRIGHT: Thank you very  
2 much.

3 CHAIRMAN PRESTON: Next we have  
4 Norman Kennard from Kennard -- Kennard --  
5 Kennard Law Offices; Jim Kail, President and  
6 CEO of Laurel Highland Telephone Company;  
7 Michael Hayden, Division vice president from  
8 Windstream Communications; and Linda Gardner,  
9 vice president, State Regulatory Affairs for  
10 Embarq Corporation.

11 Ladies and gentlemen.

12 MR. KENNARD: Ms. Gardner will start.

13 CHAIRMAN PRESTON: Give our  
14 stenographer a chance to get her -- her things  
15 together.

16 If we can start from my left or your  
17 right, just to identify yourself one time.  
18 And from my right to your left, for one time  
19 down there, and then we'll start in the order  
20 that you've come together.

21 MR. KENNARD: My name is Norman  
22 Kennard. I'm a principle at the law  
23 offices -- Kennard Law Offices and we're  
24 counsel of the Pennsylvania Telephone  
25 Association.

1 MR. KAIL: My name is Jim Kail.  
2 President and CEO of Laurel Highland Telephone  
3 Company.

4 MS. GARDNER: Linda Gardner, vice  
5 president, regulatory analysis with the Embarq  
6 Corporation.

7 MR. HAYDEN: Michael Hayden. I'm  
8 vice president of operations for Windstream.

9 CHAIRMAN PRESTON: Thank you again.

10 MS. GARDNER: Thank you.

11 CHAIRMAN PRESTON: Move that just a  
12 little bit closer to you. Okay.

13 MS. GARDNER: Good morning. Again,  
14 my name is Linda Gardner with Embarq  
15 Corporation.

16 And Embarq Corporation is the largest  
17 independent local exchange carrier in the  
18 United States, and we serve some of the most  
19 rural areas in the country, and we're the  
20 second largest independent local exchange  
21 carrier in Pennsylvania.

22 I have prepared and submitted some  
23 remarks, and it's not my intention to read  
24 those to you, but --

25 CHAIRMAN PRESTON: Thank you.

1 MS. GARDNER: But to join my  
2 colleagues on this panel and express our  
3 opposition to Senate Bill 1000.

4 Quite simply, Embarq is opposed to  
5 this bill because we believe it strips the  
6 Pennsylvania Public Utility Commission of  
7 their authority to regulate and to enforce the  
8 payment of intrastate access charges relative  
9 to VoIP providers.

10 The result is bad for consumers and  
11 threatens the support system needed to  
12 maintain and to upgrade the network on which  
13 the vast majority of the nation's customers  
14 and traffic relies, the Public Switched  
15 Telephone Network, or PSTN.

16 Universal service has long been a  
17 basic policy tenet of this country and this  
18 Commonwealth. Universal service ensures that  
19 all consumers, regardless of where you may  
20 live, have access to basic local service at  
21 affordable rates.

22 But because costs to provide service,  
23 particularly in the more rural areas, are much  
24 higher than the local rates we are allowed to  
25 charge, a system of financial support has been

1 cobbled together to bridge the gap between the  
2 lower rate that you can charge and the higher  
3 cost of providing the service.

4 Intrastate access charges have helped  
5 bridge this gap and are a crucial component of  
6 that support.

7 Without the support and without the  
8 appropriate support of intrastate access  
9 charges on all providers that terminate calls  
10 over our facilities, continued investment in  
11 the Public Switched Telephone Network will be  
12 threatened, especially in rural, high cost  
13 areas that most need infrastructure and  
14 broadband investment.

15 Furthermore, the prices consumers pay  
16 for basic local services would have to go up.

17 Now, you heard a little bit about  
18 access charges. Access charges are what  
19 companies pay carriers, such as Embarq and  
20 Laurel and Windstream, to use our network  
21 facilities to complete calls.

22 Intrastate access charges apply if  
23 it's a nonlocal call that originates and  
24 terminates in one state, and that rate is  
25 regulated by the PUC.

1           In most states intrastate access  
2 rates are higher than interstate access rates  
3 in order to contribute to the cost of  
4 supporting the public policy goal of  
5 universally available service at affordable  
6 rates.

7           There is simply no reason to allow  
8 VoIP providers to avoid this charge and every  
9 reason not to.

10           Artificial distinctions based on  
11 technology should be avoided. Mr. Kennard  
12 will explain that there is no regulatory or  
13 legal decision that allows carriers to avoid  
14 paying intrastate access for VoIP calls  
15 terminated on our networks.

16           Mr. Hayden will tell you that there's  
17 nothing technologically unique about IP to  
18 PSTN calls. The traffic uses the exact same  
19 terminating facilities to complete the calls  
20 as traditional calls use.

21           Yet carriers are increasingly  
22 disputing or unilaterally refusing to pay  
23 access charges on VoIP originated calls. As  
24 VoIP originated traffic has grown, access  
25 disputes or outright refusal to pay anything

1 have become more prevalent, not just for  
2 Embarq, but other carriers as you will hear  
3 from Mr. Kail.

4 And it represents a growing risk for  
5 LECs and our customers as the underlying  
6 support for the PSTN is eroded.

7 I -- I wish I could have quite the  
8 same confidence that Mr. Nurse has that this  
9 is an isolated rogue occurrence, but we are  
10 beginning to see it with more and more  
11 frequency with the larger carriers.

12 In fact, we currently have a billing  
13 dispute with Verizon over the payment of  
14 interstate access on our networks. They've  
15 unilaterally decided that they're just going  
16 to pay interstate and not intrastate access.

17 Plus, if it's as clear as some of the  
18 carriers claim it is, then there should be no  
19 issue with making it crystal clear in this  
20 legislation that intrastate access applies.

21 Because of the significant impact on  
22 access charges and the potential negative  
23 impact on rural Pennsylvania consumers  
24 inherent in the bill as written, we cannot  
25 support the bill.

1           Instead, the bill should be amended  
2           to ensure that there is an enforceable, clear  
3           obligation on VoIP providers to pay all  
4           applicable access charges.

5           Doing so is not regulation of the  
6           Internet. It's not going to stymie customer  
7           choice or innovation, but it will affirm the  
8           General Assembly's commitment to the basic  
9           public policy objective of universal service.

10           It will ensure that the existing  
11           support mechanisms necessary to achieve this  
12           goal remain intact and are adequately funded.

13           Thank you.

14           MR. HAYDEN: Okay. This is Michael  
15           Hayden with Windstream.

16           As not part of my written testimony,  
17           I'll open with three key components. First of  
18           all, VoIP-originated calls terminated to the  
19           Plain Old Telephone Network are no different  
20           than traditional calls. The calls use the  
21           same switches, trunks, and local loop at the  
22           terminating end of the call.

23           Two, legislative action is  
24           premature. FCC intercarrier compensation  
25           proceeding will address multiple issues, both

1 billing and compensation, for use of the  
2 network.

3 And, three, however, if the bill  
4 proceeds to law, this should be explicit to  
5 ensure billing and payment for terminating  
6 access on the Plain Old Telephone Network.

7 On to my written testimony and I'll  
8 try to skim some of it for lack of time.

9 First of all, Windstream Corporation  
10 provides service to approximately 3.2 million  
11 access lines in 16 states, including the  
12 Commonwealth of Pennsylvania.

13 Windstream Corporation has  
14 approximately 7,500 total employees across its  
15 operations.

16 Windstream serves over 200,000  
17 customers in the Commonwealth, primarily in  
18 western Pennsylvania.

19 Windstream serves customers in 24  
20 Pennsylvania counties. With annual payroll of  
21 14-and-a-half million, we employ over 200  
22 Pennsylvanians.

23 Windstream currently provides over 85  
24 percent of its customers with access to  
25 broadband, which is accelerated beyond the

1 obligation of Windstream's Chapter 183  
2 requirement of which was mandated that 80  
3 percent would be covered by December 31st,  
4 2010.

5           Again, as currently drafted, we  
6 believe the Senate Bill 1000 is a bad deal for  
7 rural Pennsylvania's telecom customers and  
8 their providers.

9           Windstream has generally been in  
10 support of deregulation efforts in the  
11 telecommunication sector and has advocated  
12 comprehensive intercarrier compensation --  
13 compensation reform at the federal level, in  
14 Congress and at the FCC.

15           However, Senate Bill 1000 does not  
16 seek comprehensive reform and, instead, should  
17 allow companies to further engage in  
18 regulatory arbitrage when it comes to  
19 VoIP-originated traffic.

20           If the bill were to become law as  
21 currently written, providers could improperly  
22 use the bill to support their efforts to  
23 refuse to pay for the use of Windstream's  
24 facilities, even though these providers would  
25 continue to depend on Windstream's

1 facilities to complete their customers' calls  
2 as we've heard from other people in  
3 testimony.

4 Telephone carriers like Windstream  
5 already face many challenges collecting local  
6 charges from voice carriers we attempt to  
7 game -- who attempt to game the system under  
8 today's intercarrier compensation mechanisms.

9 These carriers often withhold payment  
10 from Windstream for terminating access despite  
11 the fact that those same carriers continue to  
12 rely on Windstream's network to complete their  
13 calls.

14 Access revenues are particularly  
15 important for rural high cost carriers in  
16 order to keep local phone rates in those high  
17 cost areas affordable and provide customers  
18 with quality voice and broadband services.

19 The bill in its current form may be  
20 used to undermine the ability of Windstream  
21 and other local exchange carriers to recover  
22 the costs associated with the continued use of  
23 the network.

24 Specifically, the bill could pave way  
25 for companies to continue using the networks

1 of rural telephone companies while at the same  
2 time gaming the system to deprive those same  
3 carriers compensation for use of the network.

4 I'm going to give you a brief example  
5 to illustrate the point.

6 Let's say a customer in Verizon's  
7 exchange in Pittsburgh, for example, calls a  
8 Windstream company -- customer -- I'm sorry --  
9 in Leechburg, which is in Armstrong County,  
10 Pennsylvania.

11 Windstream's network, which includes  
12 switches, trunks, as well as local loop  
13 components is used to deliver the call to the  
14 customer in Leechburg in order to connect that  
15 customer with the Verizon customer in  
16 Pittsburgh.

17 Windstream charges the service  
18 providers who carry that call between  
19 Pittsburgh and Leechburg a lawfully-approved  
20 tariff-terminating access rate for that call.

21 Assume now that the Pittsburgh  
22 customer uses Verizon FiOS Voice Over IP  
23 technology to originate that call. That same  
24 call would continue to use Windstream's  
25 network to terminate the call in Leechburg.

1           To put it another way, Windstream's  
2           role in connecting these customers doesn't  
3           change between the two scenarios.

4           In either scenario Windstream's  
5           network is used and Windstream should be  
6           compensated for the use of the network.

7           As already mentioned, some service  
8           providers, however, continue to incorrectly  
9           assert that voice over IP originated calls are  
10          not subject to terminating access charges  
11          denying carriers, like Windstream and others,  
12          compensation for the continued use of their  
13          network.

14          The senate bill as currently written  
15          could exacerbate that problem.

16          Conclusion: The language of Senate  
17          Bill 1000 as currently drafted could be used  
18          to actually legitimize nonpayment for the use  
19          of the telephone companies' networks.

20          The ambiguities inherent in the bill  
21          would ensure that the bill would spark a  
22          protracted bill. Further, it's dubious  
23          whether the subjects addressed in Senate Bill  
24          1000 are ripe for state legislation given the  
25          current activity at the federal level for

1 comprehensive intercarrier compensation  
2 reform.

3 Windstream believes the comprehensive  
4 federal reform is the most prudent avenue to  
5 deal with these complicated issues.

6 The current draft of Senate Bill 1000  
7 does not seek to expand choices to rural --  
8 rural consumers and instead provides a vehicle  
9 through which Voice Over IP providers may  
10 continue to attempt to game the system.

11 In its current form, Senate Bill 1000  
12 could be viewed as sanctioning regulatory  
13 arbitrage for the benefit of a particular  
14 group of providers that deliver traffic  
15 between IP networks and the Public Switched  
16 Telephone Network to the detriment of the  
17 telecommunication industry.

18 This bill would not promote  
19 competition but rather it would artificially  
20 reduce the costs for one group of carriers  
21 while imposing costs on rural ILECs, like  
22 Windstream, whose networks remain necessary  
23 for that group of carriers to provide that  
24 service to their customers.

25 IP providers impose the same burden

1 on Windstream's network as those carriers that  
2 pay terminating access charges to use  
3 Windstream's network.

4 Senate Bill 1000, as currently  
5 written, would inhibit companies, such as  
6 Windstream, from collecting lawful charges for  
7 the use of their network, simply because a  
8 provider used an IP format to originate their  
9 end-users' calls.

10 Thank you.

11 CHAIRMAN PRESTON: Pull the -- just  
12 pull the microphone closer. Hold on till she  
13 gets that. Ready?

14 MR. KAIL: Thank you. Good  
15 afternoon. Thank you, Chairman Preston,  
16 Chairman Godshall, members of the committee  
17 and staff. I appreciate this opportunity to  
18 come before you on behalf of the small rural  
19 companies that don't often -- their voice  
20 isn't often heard because of their size.

21 The day-to-day responsibilities  
22 we're -- we're serving customers and taking --  
23 just doing our best with the limited resources  
24 obviously so we don't have that much time and  
25 -- to participate in these type of

1 proceedings.

2 But, again, I appreciate this  
3 opportunity.

4 again, my name is Jim Kail. I'm  
5 president and CEO of Laurel Highland Telephone  
6 Company. We're a small company. Serve about  
7 5500 telephone access lines over about 400  
8 square miles, which, I think, would qualify  
9 as -- probably as one of the more rural  
10 companies in Pennsylvania.

11 Laurel Highland, like many of the  
12 other companies in Pennsylvania, is under the  
13 commitment, under Chapter 30, to build and  
14 provide broadband speed to all of our  
15 customers, and we take that commitment very  
16 seriously.

17 And in our case it's a -- it's a huge  
18 commitment, again 400 square miles, 5500  
19 customers. It means everybody within that  
20 area, whether it's economically feasible or  
21 not, we have to meet that commitment. And  
22 we're doing our -- our very best and we're  
23 confident we're going to meet that, and we're  
24 investing money into the rural areas and  
25 providing state-of-the-art services to these

1 customers.

2 I think the message I have, first of  
3 all, this is a complicated business, but the  
4 message I have is a -- is a simple message.

5 I don't think there's anybody in this  
6 room that would oppose the business case that  
7 if you provide an investment that you are  
8 entitled to a rate of return as an incentive.

9 I don't think anybody would -- would  
10 be expected or expect any business to put  
11 money into a network and not reap any  
12 benefits. There has to be an incentive.

13 I mean this is the American way.  
14 We're not living in Russia or some other --  
15 some communist country.

16 We invest money because, again, we  
17 expect a rate of return. And if it's  
18 feasible, we talked about competition, if  
19 other companies can come into the rural areas  
20 and provide that service, then they're welcome  
21 to over-build the rural areas.

22 But you won't find that because it's  
23 not economically feasible for these  
24 companies to come in -- into these areas where  
25 you only have five or six customers per mile

1 and -- and -- and provide the high  
2 state-of-the-art services like we are.

3 I think, you know, the big -- the  
4 main issue obviously for us is access  
5 charges. Okay. We have a network. We're not  
6 opposed to someone else building a network in  
7 our area. We -- we welcome competition.  
8 We're not anticompetitive.

9 But if you use our -- if you use our  
10 network, if you need to use our network to  
11 reach customers, then we expect compensation  
12 in accordance with the tariff.

13 It doesn't matter what technology you  
14 use, whether it's telephone or VoIP, whatever  
15 it might be, there's access charges that still  
16 apply.

17 It's a very simple business case.  
18 Again, I want to keep the message simple.

19 And if there's anybody in this room,  
20 again, who would want to provide services and  
21 not be compensated, again, I don't -- again,  
22 I don't think -- looking at this thing  
23 realistically, I don't think you're going to  
24 find that to be the case.

25 Again, it's about providing

1 investment. There's -- that there needs to be  
2 an incentive to provide that investment,  
3 and -- and that's -- I think that's what it's  
4 all about.

5 The problem we have, obviously, with  
6 Senate Bill 1000 is, again, it doesn't mandate  
7 that access charges apply.

8 Now, this is a real problem because  
9 not everybody plays by the rules. If you --  
10 if you leave confusion out there or you're not  
11 clear on what the rules are, you're going to  
12 have companies taking advantage of it.

13 We're run -- already running into a  
14 situation, and I've been before the FCC  
15 stating this case, and been working with NECA  
16 on it, and what we have is a situation where a  
17 customer -- where a company says their traffic  
18 touches the Internet and now it's the -- all  
19 of a sudden it's free. The network is free.

20 The bottom line is that it's  
21 companies like Laurel Highland Telephone  
22 Company throughout this state and throughout  
23 this country that are building and maintaining  
24 the network.

25 Now, when we talk about investing in

1 the network, again, it's companies like us  
2 that are out there building it and we're  
3 maintaining it, making sure that it's run so  
4 that when people make their calls that those  
5 calls are going to go through.

6 Now, again, we're not opposed to  
7 somebody, if they want to come into our area  
8 and over-build, use their own facilities, then  
9 obviously they don't owe us access.

10 But if you're going to use our  
11 facilities, it's only fair that we are  
12 compensated. I think that is -- that's  
13 obviously the main issue we're concerned  
14 about.

15 The other issue is that if -- if  
16 there is a problem and companies don't want to  
17 pay access then because of this bill, the PUC  
18 has no authority, then we have no recourse.  
19 Where do we go?

20 That's all these companies need,  
21 again, is just something to grab onto,  
22 justification not to pay access and they're  
23 going to jump all over it because it makes  
24 great business sense. You have a free  
25 network.

1           I mean -- I mean, really, if you  
2           could provide services for free, obviously you  
3           can undercut costs and the bottom line is over  
4           the long haul the customer is going to pay.  
5           Okay?

6           In the short haul the customer may  
7           benefit, because there will be services that  
8           are cheaper because there's no cost to those  
9           services. But when they have -- when it goes  
10          back to the companies that really -- that are  
11          building the serve -- the areas, like the  
12          small rural areas companies, if there is no  
13          incentive to build and maintain that network,  
14          then it's not going to happen and what's going  
15          to happen is the customers -- that the rural  
16          networks are going to deteriorate.

17          In another way, some may say, well,  
18          you can raise the rates for the rural  
19          companies -- the rural customers to pay for  
20          that network, but that's against the universal  
21          service concept where we want to keep rates  
22          affordable regardless of where you live in  
23          this state or country.

24          That's -- you know, again, that's a  
25          basic message I want to get across, and I do

1 appreciate the opportunity to present that  
2 case.

3 And I'll address any questions you  
4 may have. Thank you for your time.

5 MR. KENNARD: Good afternoon.  
6 Chairman Preston, Chairman Godshall,  
7 distinguished members, hard-working  
8 long-suffering staff of the committee.

9 CHAIRMAN PRESTON: Oh, you're really  
10 trying there.

11 MR. KENNARD: Everybody -- everybody  
12 is trying.

13 PTA does not oppose Senate Bill  
14 1000. You've heard a number of the witnesses'  
15 laud the objectives of lesser regulation of  
16 capital investment, and certainly the  
17 Pennsylvania Telephone Association stands for  
18 all that.

19 We worked very hard in front of this  
20 committee with the cooperation of a lot of the  
21 members to pass a bill that helped deregulate  
22 us. We don't blame somebody for attempting  
23 full deregulation.

24 And certainly we don't hold it  
25 against somebody's capital deployment and

1 certainly we understand the value of that  
2 capital deployment.

3 So we don't oppose Senate Bill 1000  
4 for what it does. We do oppose Senate Bill  
5 1000 for its unintended consequences.

6 IP is a digitized protocol. That's  
7 all it is.

8 Over the last century we've gone from  
9 human beings plugging cords into boards to  
10 electromechanical switches to analog to  
11 digital, and now we're going to Internet  
12 protocols and packet switching.

13 It's a big deal, but let's not  
14 overemphasize it. It is a transition, another  
15 transition in a long series of innovations in  
16 this industry. It's not the invention of  
17 electricity. It's not the invention of the  
18 Internet. It's just another packet -- it's  
19 just another form of switch.

20 Be careful how you use the term  
21 VoIP. There's really two basic types. One is  
22 nomadic. It's basically a plug and play that  
23 you put into your commuter and you can take  
24 with your laptop wherever you go, hook into a  
25 broadband connection, and access it through

1 the Internet.

2 The FCC's longstanding policy is to  
3 not to regulate the Internet, has decided not  
4 to regulate this either, and has told the  
5 states they have preemptive constitutional  
6 authority to tell the states that they can't  
7 do that either.

8 That's not what this -- what this  
9 bill is -- is about.

10 The other form that the sponsors of  
11 this legislation, industry supporters, and  
12 every one of the witnesses that are in the  
13 industry that have appeared so far, are fixed  
14 VoIP.

15 They are wire line carriers. They  
16 are providing the wires going into the homes  
17 just like the telephone companies do, and  
18 they're offering a service that has been a  
19 long time rolling out but has got tremendous  
20 traction and tremendous dynamic going on right  
21 now.

22 So mostly what you're talking about  
23 here is not the Internet. We're not talking  
24 about regulating the Internet or taxing the  
25 Internet or anything to do with the Internet.

1           The only commonality and the source  
2 of confusion is it's an Internet protocol. So  
3 it uses the same protocols as are used on the  
4 Internet but it does not use the -- use the  
5 Internet.

6           And let's also be clear about what  
7 we're addressing. We're not addressing  
8 services here. We're addressing the  
9 technology. That's what this bill does.

10           It says if you use this new  
11 technology, these are the benefits of using --  
12 of using that technology. We're not talking  
13 about a service.

14           So when you hear Mr. Popowsky, for  
15 example, talk about the unintended  
16 consequences, I think he's being a little  
17 polite to you all.

18           I think that that is direct --  
19 exactly what's happening, that the -- you'll  
20 hear testimony about we're not going to  
21 deregulate traditional phone service. This  
22 has nothing to do with service.

23           If you provide traditional service  
24 using IP protocols, you are deregulated no  
25 matter -- no matter what the service is.

1           And I -- so far fixed VoIP is  
2 jurisdictional to both feds and the states.  
3 You all know when you pick up a phone call,  
4 it's either local or it's long distance. You  
5 understand interstate and intrastate.

6           Traditionally, the state regulates a  
7 call within the Commonwealth. PA PUC  
8 regulates, and always has, calls within the  
9 Commonwealth. And I don't think that's going  
10 to be challenged.

11           The FCC has twice now come out and  
12 said that a call is jurisdictionally  
13 separatable. We can identify one versus the  
14 other. Unlike the laptop that you stick under  
15 your arm and you take to San Francisco that's  
16 not traceable.

17           Okay. This is a fixed site and it's  
18 going to have interstate and intrastate, so  
19 there's no reason for us to wait for the FCC.  
20 This is not so complicated that we can't deal  
21 with it.

22           Nor is the FCC going to answer our  
23 questions. They may answer their questions  
24 and maybe in the process maybe they preempt  
25 us. I doubt that.

1           I think the chances of that are slim  
2           to none. But if they do, they do. And I --  
3           and I think the language the PTA supports  
4           recognizes that's a possibility. But the vast  
5           majority of the chance is on the side that  
6           they won't deregulate, that they won't usurp  
7           the states.

8           They've already done eight or nine  
9           orders that some of the prior witnesses have  
10          talked to you about that recognizes how  
11          important this is, much like -- it is like the  
12          traditional telephone -- telephone service.

13          Our concern here today is shared, as  
14          you've heard on previous panels, by the other  
15          capital builders, by the other  
16          facilities-based wire line carriers and that's  
17          cheating, that's lack of an agreement that's  
18          putting numbers through, phantom traffic  
19          through the system.

20          You heard Comcast's Mr. Laub state  
21          that it's a problem for them. You heard  
22          Mr. Nurse state it, on behalf of ATT, that  
23          it's a problem for them.

24          The PTA companies here are the  
25          default providers, and they have ubiquitous

1 broadband commitment. They're the only ones  
2 in the rooms, the ILEC industry, that have  
3 that commitment. There's no commitment by the  
4 VoIP providers to be ubiquitous either in  
5 voice or -- or in broadband services.

6 And as these witnesses -- the PTA  
7 witnesses have identified, one of the ways  
8 that they achieve that universality is  
9 through -- through access charges.

10 PTA supports three basic premises,  
11 three basic sentences in the statutory  
12 amendment.

13 The first, it would mandatorily  
14 require interconnection agreements. They have  
15 a right -- they have now essentially the right  
16 to come to us and demand contracts. We don't  
17 have the right to go to them and ask for  
18 contracts.

19 Number two is a clear statement by  
20 this body that access charges do apply.

21 And -- and, thirdly, the provision of  
22 call detail information sufficient so we  
23 can -- so we're able to rate a call.

24 Requiring contracts between VoIP  
25 providers and traditional telephony providers

1 is appropriate. The VoIP providers already  
2 have the right that they've exercised  
3 themselves or through one of their CLEC  
4 affiliates under the Telecom Act.

5 Right now RCN has used that, one  
6 cable company and VoIP provider, to obtain  
7 contracts with Commonwealth, Ironton and  
8 Palmerton.

9 Blue Ridge Digital Phone Company has  
10 agreements with Windstream, Commonwealth and  
11 Palmerton.

12 Service Electric has agreements with  
13 a bunch of the PTA companies.

14 Armstrong has agreements with a bunch  
15 of the PTA companies.

16 Comcast came in just at the end of  
17 the year -- of this January and has -- and has  
18 filed a request for interconnection agreements  
19 with Windstream, Commonwealth, Commonwealth  
20 (sic) Pennsylvania, and North Pittsburgh.

21 They have the right to come ask --  
22 demand contracts -- I'm sorry. I'm fading in  
23 and out of this mike.

24 They have the right to come ask us --  
25 to demand contracts of us. Why isn't that a

1 reciprocal right? We're over level 3. We  
2 just found out American Broadband has an  
3 agreement with -- has substantial contracts  
4 with a number of the PTA member companies as  
5 well.

6 And I don't understand the --  
7 parenthetically, the Bentleyville reference.  
8 It seems to me -- I know nothing about it, and  
9 I do represent Bentleyville on a number of  
10 occasions.

11 And it looks to me from reviewing the  
12 testimony that American Broadband has made an  
13 assumption that Bentleyville doesn't have to  
14 contract with them. I think they need to  
15 explore that. I promise --

16 CHAIRMAN PRESTON: I'll stop the  
17 attorney one way or another. Let's just keep  
18 that between you guys, that.

19 MR. KENNARD: Okay. I just wanted to  
20 provide that clarification.

21 CHAIRMAN PRESTON: If there's another  
22 way. If you want us to come down there and  
23 look at why, what -- we can come down as a  
24 committee and ask and, you know, do that with  
25 the residents.

1           Maybe we will, Mr. Chairman.

2           REPRESENTATIVE GODSHALL: Yes.

3           MR. KENNARD: Fair -- fair enough.

4           The access charges are the means by  
5 which these carriers provide universal service  
6 and ubiquitous broadband.

7           The Pennsylvania Commission has not  
8 ruled that access charges do or do not apply.  
9 There's been reference to legislative language  
10 from Chapter 30 that is ambiguous but not  
11 necessarily on -- it may help the situation,  
12 but it doesn't clearly help the situation.

13           What we're asking for from this  
14 committee is that clarity. If we can define  
15 in Section 4 in very clear language about no  
16 regulation of VoIP, directly or indirectly,  
17 that regulates or has the effect of  
18 regulating, why can't we design -- if  
19 everybody -- if all these witnesses have  
20 agreed so far that access charges apply and  
21 interconnection agreements are to be entered  
22 into, why can't we craft a language that is as  
23 specific as to that topic as it is to the  
24 topic the industry sponsors would like to see  
25 addressed primarily in the legislation?

1 Thank you.

2 CHAIRMAN PRESTON: Thank you. I do  
3 want to be able to say, first, that I am a  
4 country kid. I'm originally from the  
5 Vandergrift, East Vandergrift, Apollo,  
6 Kiskiminetas, out there, Leechburg area. So I  
7 do understand.

8 I remember my relatives having cable  
9 in 1956. Basically so that they could get the  
10 Johnstown station at the time, because it was  
11 clear that you couldn't get KDKA because of  
12 the mountains.

13 I agree with you and understand. And  
14 I thought about your comments because I had a  
15 grandmother who told me a long time ago, she  
16 showed me a Coke bottle and at that time, in  
17 the old days, it said no deposit, no return.  
18 So I do understand what you're saying and I  
19 want to think about a P&L person.

20 The other thing that I will say to  
21 you is that if you're mentioning what you  
22 would like to see, and I understand  
23 potentially it is in writing, or a draft, if  
24 it is in draft, I would suggest that you  
25 submit that and then talk to members.

1           And I think everybody here that's  
2       been a witness, I've encouraged everybody to  
3       talk to members about their stand on the  
4       issues and -- and to be able to answer what  
5       you could live with or not live with and try  
6       to work it out.

7           The other thing I encourage you,  
8       because I have had the conversations with the  
9       senator on some of the issues that you've  
10      raised -- that you've raised here in dealing  
11      with the inter and intra, and I encourage  
12      you. He's made some different thoughts of  
13      what he's talked to you about and see what we  
14      can try to be able to do on that issue.

15           But I encourage you to sit down and  
16      talk to the sponsor of the bill as well.

17           MR. KENNARD: Mr. Chairman, things  
18      have changed since the late '50s. Now people  
19      get cable to watch PCN.

20           CHAIRMAN PRESTON: Amen. We won't --  
21      we won't get into that because the -- the next  
22      presenter I was going to ask the question, are  
23      they going to do it here? So we'll see.

24           REPRESENTATIVE BRENNAN: Just one  
25      question. Thank you, Mr. Chairman.

1                   And thank you for your testimony.

2                   Ms. Gardner, what is the percentage  
3                   of VoIP calls that Embarq is unable to track  
4                   the call origination of where that call  
5                   originated and of that percentage what  
6                   percentage comes of interconnected VoIP  
7                   providers?

8                   MS. GARDNER: You know, I don't have  
9                   a specific percentage.

10                  REPRESENTATIVE BRENNAN: Ball park?

11                  MS. GARDNER: I couldn't even give  
12                  you a ball park at this point. I would say  
13                  that more and more of it is from  
14                  interconnected fixed-VoIP providers as opposed  
15                  to nomadic VoIP providers like Vonage.

16                  REPRESENTATIVE BRENNAN: Thank you,  
17                  Mr. Chairman.

18                  Thank you.

19                  CHAIRMAN PRESTON: Thank you.

20                  Chairman Godshall.

21                  REPRESENTATIVE GODSHALL:  
22                  Mr. Kennard, just this. Atlantic Broadband  
23                  testified, you know, going back on  
24                  Bentleyville, which I'm not going to get in  
25                  that fight, but there was a part here that I

1 will. Because it claims a rural exemption,  
2 what is a rural exemption?

3 MR. KENNARD: Yes, sir. Thank you  
4 for that. Thank you for that question.

5 There was a mention by Attorney Leber  
6 as well about the Telecom Act and some of the  
7 failed promises and I agree with her on that.

8 What the telephone companies were  
9 supposed to do was break up their network into  
10 little piece -- parts that then you could  
11 go -- then another carrier could come in and  
12 say, well, I need this, I need this, and I  
13 need this, and then make it into their own  
14 service.

15 It wasn't really truly what we're  
16 talking about today and the promise of  
17 facilities-based competition which is the  
18 carrier comes in, as -- as Mr. Kail talked  
19 about and overlays you and builds their own  
20 network.

21 And that was basically a deal, as she  
22 said. The federal legislative basis was  
23 between -- it was between Verizon and AT --  
24 AT&T at that point, or different entities than  
25 they are today, but nevertheless one wanted to

1 get in the long distance market, the other  
2 wanted to get into the local market. So they  
3 came to these terms.

4 Now, it was never really intended for  
5 the small companies. So, for example, a  
6 company like Mr. Kail's or a company like  
7 Bentleyville doesn't have to say, well, you  
8 can buy my loop or you can buy a part of my --  
9 of my network.

10 It doesn't mean that American  
11 Broadband can't go in there. Has nothing to  
12 do with American Broadband going in there and  
13 overlaying -- overlaying that system and  
14 providing facilities-based competition.

15 So that's why I said before I think  
16 there may be a misinterpretation of the act  
17 and its applicability on the assumption made  
18 by American Broadband that there is no  
19 interconnection obligation, because there --  
20 there is.

21 Does that answer your question?

22 REPRESENTATIVE GODSHALL: Yes. You  
23 know, in that rural exemption, so you were  
24 saying, in essence, it really doesn't exist?

25 MR. KENNARD: It doesn't apply to

1 this situation. Facilities -- facilities on  
2 facilities-based carriers, it doesn't -- it  
3 doesn't really apply.

4 REPRESENTATIVE GODSHALL: Thank you.

5 CHAIRMAN PRESTON: Representative  
6 Reichley -- Representative Reichley.

7 REPRESENTATIVE REICHLEY: Thank you,  
8 Mr. Chairman, and because I know there are  
9 three more panels still to go -- excuse me --  
10 I'm going to ask -- this panel if you can  
11 respond to three questions in writing. Just  
12 give it -- your response to the chairman, and  
13 I'm sure they'll distribute it to the rest of  
14 the members.

15 And, again, I apologize if I have an  
16 inarticulate understanding of the technical  
17 aspects.

18 Based upon the objections you have  
19 regarding an alleged failure to pay the access  
20 charges, are you able to identify calls and  
21 refuse to connect them?

22 If you have a history of a -- of a  
23 provider not paying you the access charges,  
24 can you say, okay, we're not going to connect  
25 those calls anymore until you remedy us in

1 this situation?

2 Number two, and I guess this is sort  
3 of directed to Attorney Kennard and Attorney  
4 Gardner.

5 Certainly Mr. D -- I'm going to  
6 mispronounce it -- D'Innocenzo's testimony,  
7 and others, they made reference to the fact  
8 that you have adequate remedy right now under  
9 state and federal law.

10 And I'd like to understand if, in  
11 fact, from your perspective that's true, are  
12 you able to pursue actions at those levels to  
13 cover lost compensation?

14 Number three, this is not rhetorical,  
15 for Mr. Kail and Mr. Hayden on it. Aren't you  
16 in sort of a no win situation here?

17 Because if we pursue legislation to  
18 force access charges, either you get a  
19 situation where the companies say, well, we're  
20 not going to connect calls to you, or  
21 that they eventually just say, well, we're  
22 going to either overlay, over-build the system  
23 over you, or we're going to buy you?

24 So either you force through this  
25 legislation to mandate the payment of certain

1 charges and then you lose in the long run or  
2 you don't get some sort of requirement to pay  
3 access charges now, and the same thing.

4 You're still going to be in a financial bind  
5 down the road.

6 So, as I said, I know we're under a  
7 very strict time frame. We've got a session  
8 starting maybe in a half hour and three other  
9 panels.

10 But if you can submit those answers  
11 in writing. Thank you.

12 CHAIRMAN PRESTON: Representative  
13 Mensch.

14 REPRESENTATIVE MENSCH: Thank you.  
15 Thank you. I'm trying to figure out where I  
16 want to begin quickly.

17 First of all, nomadic and fixed  
18 calls, they follow the DNS identity of a  
19 laptop, if you're doing your calling from the  
20 laptop, do they not?

21 So that when you're traveling, the  
22 billing header would still carry if -- if  
23 that -- well, it should be within the PC. So  
24 I'm trying to understand how big a problem  
25 nomadic is.

1 MR. HAYDEN: I'm sorry. I can't  
2 answer the question.

3 REPRESENTATIVE MENSCH: Okay. Maybe  
4 could we -- could we add that to the list  
5 of -- of response, written responses?

6 Ms. Gardner, when you talked about  
7 Verizon and the -- the issue you're having  
8 with them right now over interstate versus  
9 intrastate?

10 MS. GARDNER: Yes.

11 REPRESENTATIVE MENSCH: Is that a  
12 function of the FCC saying the go-up traffic  
13 is intrastate?

14 MS. GARDNER: No. I think it's a  
15 function -- it is not involving nomadic VoIP.  
16 It's a matter involving fixed VoIP.

17 REPRESENTATIVE MENSCH: Then fixed  
18 VoIP.

19 MS. GARDNER: No, I don't think it's  
20 a matter of the FCC deciding this at all. I  
21 think it's a unilateral decision on Verizon's  
22 part where they believe intrastate access  
23 should not apply, but interstate access  
24 should.

25 REPRESENTATIVE MENSCH: Well, then

1 wouldn't that -- well, I could understand how  
2 they might construe that given that it's --  
3 it's been deemed by the FCC that it's  
4 interstate.

5 MS. GARDNER: No, the -- the Vonage  
6 decision was really based on nomadic VoIP. It  
7 has not -- the FCC has not decided whether  
8 fixed VoIP is interstate or intrastate, or  
9 jurisdictionally mixed as Mr. Kennard said.

10 REPRESENTATIVE MENSCH: Okay. Thank  
11 you.

12 Clarity on the -- on the settlement  
13 agreements as well, the interconnection  
14 agreements. They apply as a call terminates,  
15 not as the call originates. Is that correct?

16 In other words, if I live in -- in  
17 Laurel Highland Phone Company and I originate  
18 the Laurel call, if I have that capability, I  
19 wouldn't -- I don't pay Laurel Highland until  
20 the call terminates and then I pay it at the  
21 terminating end?

22 MS. GARDNER: That would be correct.  
23 It would be terminating the access.

24 REPRESENTATIVE MENSCH: Okay.  
25 Because there's been a lot of discussion about

1 the technology being in place or not being in  
2 place and it determines the settlement  
3 agreement and the settlement agreement really  
4 works independent of some of the technology  
5 that's in place. I can terminate a VoIP call  
6 regardless.

7 MR. KENNARD: I think that's right.  
8 You got the lawyer now answer -- answering the  
9 technical question.

10 REPRESENTATIVE MENSCH: Yeah. That's  
11 okay.

12 MR. KENNARD: But there needs to be  
13 some translation. We talk in TDM. The IP  
14 talks in another language. There's -- there's  
15 a translator in between.

16 But so long as that transaction  
17 occurs, absolutely, the Comcast customer is  
18 calling the Laurel Highland customer. So it  
19 is a conversation issue. It's not a technical  
20 inability to connect issue.

21 MR. KAIL: I think part of the  
22 problem here is we have to rely on the VoIP  
23 provider to tell us what is VoIP.

24 REPRESENTATIVE MENSCH: I understand  
25 that.

1 MR. KAIL: Because it's coming across  
2 our traditional trunks.

3 REPRESENTATIVE MENSCH: Yeah. Is  
4 there any way that you have in the network, in  
5 the header, in the -- in the IP, to know  
6 whether or not it's a good billing number or  
7 not? Can you -- can you block that call? Can  
8 you deny that call? What we used to call the  
9 4As worked on routing tables and they could  
10 block it, an inappropriate call.

11 MR. KAIL: I can answer that  
12 question. I mean we -- we believe we have the  
13 ability to block calls from a -- if we know  
14 who the carrier is, we can identify where the  
15 number is originating and we can block that.

16 However, we've been, as I mentioned,  
17 I was before the FCC and they -- they told me,  
18 don't block the calls. Give -- basically give  
19 them time to work the issues out. This has  
20 been -- I met with them back in October, and  
21 they don't want us to block the calls and  
22 every attorney I deal with also says don't  
23 block. You know, you can become a  
24 poster-child-type company if you do that.

25 So we've been holding off on that

1 action and we've been turning to the  
2 regulators for assistance and kind of, albeit,  
3 unfortunately nothing has been done at the FCC  
4 level.

5 REPRESENTATIVE MENSCH: Completely  
6 separate question. Chapter 30 of Act 23 on  
7 your company, you're -- you're attempting  
8 to -- given the miles that you've got to  
9 cover, you probably had to do it with fiber or  
10 with coax.

11 MR. KAIL: That's correct. We are  
12 going with fiber to the home, that's right.

13 REPRESENTATIVE MENSCH: Yeah. Very  
14 expensive.

15 MR. KAIL: Very expensive.

16 REPRESENTATIVE MENSCH: I feel  
17 your -- I feel pain.

18 All right. Thank you.

19 CHAIRMAN PRESTON: Well, thank you  
20 very much.

21 MR. KENNARD: Thank you.

22 CHAIRMAN PRESTON: We really  
23 appreciate it. And just leaving us one  
24 example, gave me some time and we'll have to  
25 look at this issue, a call from, let's say,

1 St. Louis to Greensburg and I can call from  
2 Pittsburgh to Greensburg and it would be  
3 cheaper for me to call from St. Louis to  
4 Greensburg in some instances.

5 So these are different things that I  
6 guess one way or another we are eventually  
7 going to have to look at in the future. Not  
8 here. But anything that you're suggesting I  
9 would suggest, as I told you before, directly  
10 submit in writing your suggestions so we have  
11 a memory of them.

12 That being said, thank you very  
13 much.

14 MR. KAIL: Thank you.

15 CHAIRMAN PRESTON: Next we're going  
16 to have Frank Buzydlowski, Director of State  
17 Government Relations of Verizon; Leigh Hyer,  
18 Esquire, vice president and general counsel,  
19 Mid-Atlantic North Region of Verizon.

20 Welcome. While you get set up, I'm  
21 waiting for a response to see if the Speaker  
22 is going to be going up on the floor a little  
23 later. Hopefully he will.

24 With that being said,  
25 Mr. Buzydlowski, you may begin.

1           MR. BUZYDLOWSKI: That being said,  
2           Mr. Chairman, I will skim my testimony and  
3           paraphrase as best as I can in the interest of  
4           time.

5           Good afternoon, Chairman Preston and  
6           Chairman Godshall and members of the committee  
7           and staff.

8           I'm Frank Buzydlowski, director of  
9           Pennsylvania State Government Relations for  
10          Verizon, and beside me is Verizon's general  
11          counsel, Leigh Hyer.

12          Thank you for the opportunity to  
13          testify today in support of Senate Bill 1000.  
14          You've heard a lot of testimony about what  
15          Senate Bill 1000 does and what it does not  
16          do.

17          Well, let me say right up front,  
18          Senate Bill 1000 does not deregulate  
19          traditional basic telephone service, and it  
20          does not deprive rural telephone companies, or  
21          any other incumbent local exchange carriers,  
22          of access revenues or force them in any way to  
23          raise their customer's rates.

24          Yet you just heard from Embarq  
25          claiming that they would have to raise their

1 rates.

2 Well, ask yourselves how. Act 183,  
3 Chapter 30, which you know so well, has rate  
4 caps for Verizon as well as for rural  
5 companies.

6 And even, more importantly,  
7 competition keeps rates down. Competition  
8 from Atlantic Broadband, Service Electric,  
9 Comcast, Vonage, Skype, or whomever.

10 But let me be clear. Verizon  
11 supports Senate Bill 1000 because of what it  
12 does do, which is to safeguard the robust  
13 Voice Over Internet Protocol and IP-enabled  
14 services.

15 These are highly competitive services  
16 which are generally not regulated by the  
17 states, including Pennsylvania, today.

18 As a result, the market penetration  
19 rate of Voice Over Internet services in the  
20 Commonwealth's voice market is expanding at  
21 record pace and is -- and is a proven, viable  
22 alternative to both traditional telephone and  
23 wireless service.

24 Maintaining this no-regulation status  
25 quo is vitally important to Verizon, as well

1 as our cable competitors and our competitor,  
2 AT&T, and other high tech companies, because  
3 it will provide marketplace certainty that  
4 will promote investment and innovation, not  
5 only by our company but by all competing VoIP  
6 providers.

7 This investment and innovation will,  
8 in turn, directly benefit Pennsylvania  
9 consumers.

10 Voice Over Internet travels in  
11 packets over a data network, like the Internet  
12 or a private data network. It is not  
13 traditional circuit switched phone service.

14 Historically, telephone service was  
15 provided by companies like Verizon that ran  
16 copper wire from every customer location to a  
17 local central office switch, which is like a  
18 router, connected to thousands of other  
19 switches through a spider web of pipes known  
20 as trunks. But the wire line circuit switched  
21 network has certain inefficiencies.

22 For example, when I pick up the phone  
23 and call my wife in Philly from here in  
24 Harrisburg, dedicated connection is set up  
25 between us for the duration of that call.

1 That means that all the network facilities  
2 that support our call, such as the pathway  
3 from my phone to the telephone company's  
4 offices and the ports on the switches, are  
5 fully dedicated to our use for however long  
6 our conversation lasts and cannot be used by  
7 anyone else, even when we are not talking.

8           It's like a private line just for the  
9 duration of that particular phone call.

10           On a VoIP call, by contrast, no  
11 dedicated connection is set up. When I speak  
12 with my wife in Philly, the sound of my voice  
13 is broken up into digital data packets and  
14 those packets are addressed using Internet  
15 Protocol and sent over a data network to reach  
16 her, whether she's at home or at school or on  
17 her cell phone.

18           Once the packets reach her, they are  
19 reassembled and converted back to sound. If  
20 neither of -- one of us is speaking, which  
21 would be rare, no packets are sent -- no  
22 packets are sent and so the network is  
23 available to support the delivery of other  
24 packets of information, whether it's voice,  
25 email, video, or whatever.

1           These and other efficiencies make  
2           VoIP calls less costly to provide and, as a  
3           result, less expensive for callers, or your  
4           constituents.

5           As I mentioned, Comcast is our  
6           competitor and they have become our biggest  
7           competitor in Pennsylvania using VoIP. You've  
8           all seen the advertisements of Comcast digital  
9           voice.

10           Yet Verizon and Comcast agree on one  
11           thing. Consumers benefit from VoIP, and they  
12           benefit in many, many ways. They benefit from  
13           lower service costs and many new innovative  
14           services such as integrated email and  
15           voicemail messaging, and a find me, follow  
16           me -- follow me feature that forwards  
17           unanswered calls to all of the user's  
18           communications devices.

19           And, by the way, you can turn that  
20           off if you don't want it to follow you  
21           wherever you are.

22           And these innovative features will  
23           certainly expand as the use and adoption of  
24           VoIP services increase.

25           CHAIRMAN PRESTON: Sure, you can.

1           MR. BUZYDLOWSKI:  And providers  
2           compete in the marketplace to differentiate  
3           their service offerings to both attract and  
4           retain customers.

5           In addition to these service  
6           features, VoIP-enabled computer software for  
7           the sight and hearing impaired has improved  
8           the communications options available to those  
9           communities, yet another example of the  
10          technological advantages of VoIP.

11          Now, I'd like to turn this over to  
12          our vice president and general counsel, Leigh  
13          Hyer, to talk about legal and jurisdictional  
14          issues.

15          MS. HYER:  Good morning or good  
16          afternoon, whichever it is.  I'd like to say  
17          that -- that jurisdictionally VoIP lies within  
18          the exclusive jurisdiction of the FCC because  
19          it's an integrated, multifaceted service that,  
20          for example, offers customers any distance  
21          calling without, you know, reference to a --  
22          calling areas and the like for one flat  
23          charge.  It integrates those services into  
24          other features of the product.  For instance,  
25          for email and other types of capabilities that

1 go along with it.

2 Therefore, for that reason, it cannot  
3 practically or rationally be split into  
4 interstate and intrastate pieces.

5 Now, the FCC has had a longstanding  
6 policy of keeping the Internet and broadband  
7 services free from burdensome economic  
8 regulation.

9 And that's what S.B. 1000 is about.  
10 It's about economic regulation over retail  
11 prices for services.

12 Nevertheless, a few states have  
13 attempted to regulate those retail terms and  
14 conditions of VoIP services. The -- the prime  
15 example being Minnesota, which was found to  
16 have been unlawful by the FCC.

17 Now, the efforts at the state level  
18 to try to regulate -- to impose economic  
19 regulation on VoIP service and IP-enabled  
20 services conflict with federal laws and  
21 policies that promote broadband deployment and  
22 the development of advanced technologies and  
23 innovative new services like VoIP and other  
24 types of IP-enabled services.

25 Now, I want to be clear and I think

1 Frank mentioned it before, and I'll say it  
2 again. Senate Bill 1000 does not authorize  
3 anything that's not already happening now.

4 As you heard, the -- PUC Chairman  
5 Holland say earlier that the -- that the PUC  
6 has taken a hands-off regulatory approach on  
7 VoIP and IP-enabled services to this date.

8 So it's not authorizing anything  
9 new. Today, providers of highly competitive  
10 VoIP services and IP-enabled services are  
11 unencumbered by unnecessary and burdensome  
12 regulations that would delay investment and  
13 innovation to the detriment of Pennsylvania  
14 consumers.

15 But without Senate Bill 1000, which  
16 would codify that open market and permit it to  
17 continue, we here in Pennsylvania are  
18 not (sic) going to have the uncertainty. We  
19 need to have certainty of whether investment  
20 and innovation are welcomed here in  
21 Pennsylvania.

22 Other states have already recognized  
23 the need to eliminate this uncertainty and  
24 those states are, as you already heard,  
25 Maryland, Delaware, Virginia, New Jersey.

1 Those are ones that border Pennsylvania. D.C.  
2 is considering one as we speak. There is  
3 Alabama, Florida, Georgia, Indiana, Kentucky,  
4 Ohio. Those are -- those states have already  
5 recognized the need to give this certainty to  
6 VoIP service.

7 And, as I said, because four of these  
8 are our neighbors and they compete with  
9 Pennsylvania for investment dollars, it's that  
10 much more important for Pennsylvania to send  
11 the right signals and not allow those  
12 investment dollars to be going to the  
13 neighboring states rather than to  
14 Pennsylvania.

15 So Pennsylvania should follow the  
16 lead of these states and enact Senate Bill  
17 1000 and encourage investment in these  
18 technologies and networks.

19 Now, finally, as Frank highlighted in  
20 discussing the technological differences  
21 between the services earlier in our -- in the  
22 testimony, VoIP is not traditional telephone  
23 service.

24 Therefore, Senate Bill 1000 is not  
25 intended to, nor does it, change the PUC's

1 authority over traditional telephone service.

2 That service will continue to be  
3 subject to tariffing obligations and will  
4 continue to be subject to the commission's  
5 oversighting as set forth in Title 66.

6 Nor will this legislation have any  
7 impact whatsoever on access charges that rural  
8 exchange carriers are otherwise entitled to  
9 receive from VoIP providers for originating or  
10 terminating VoIP calls on the carriers' local  
11 networks.

12 Senate Bill 1000 is about the  
13 economic regulation of the terms and  
14 conditions of the service that is provided to  
15 end-user customers.

16 It does not speak to the intercarrier  
17 relationships. It actually says that it's not  
18 going to affect access charges and how they  
19 apply.

20 So they are two completely separate  
21 issues. They are not -- they should not be  
22 mushed together.

23 In summary, VoIP and other new and  
24 emerging IP-based services benefit  
25 Pennsylvania consumers by offering them a

1 greater variety of choices and exciting new  
2 communications offerings.

3 Pennsylvania doesn't regulate these  
4 today. It's important that the status quo of  
5 no regulation be maintained to encourage and  
6 ensure that all providers can complete openly  
7 and fairly.

8 Just as market-based forces, free  
9 from unnecessary constraints, have allowed the  
10 wireless industry to grow and innovate to the  
11 benefit of consumers, the market for new and  
12 emerging IP-based services, like VoIP, will  
13 flourish as well.

14 I thank you very much for the  
15 opportunity to appear before you, and both  
16 Frank and I will be available for any  
17 questions.

18 CHAIRMAN PRESTON: Representative  
19 Mensch.

20 REPRESENTATIVE MENSCH: Not a  
21 question so much as a comment. Seeing  
22 Mr. Buzydlowski reminded me of this, but March  
23 10th, 1876 was the anniversary of the  
24 invention of the telephone. And here we are  
25 on March 10th.

1                   And there's been an awful lot of  
2                   change in the industry since that time. I  
3                   think this speaks to the continuing change.  
4                   And I remember when touchtone was optional. I  
5                   remember when you could only get a black  
6                   telephone.

7                   So we really had an awful lot of  
8                   change in this 100-plus years, and I think  
9                   it's appropriate that we are considering today  
10                  talking about the furtherance of that change.

11                  MR. BUZYDLOWSKI: I used to be the  
12                  kid at Bell of Pennsylvania and now you're --  
13                  I'm reminding you of March 10th, 1876. That  
14                  was Don Ameche in that movie, right?

15                  CHAIRMAN PRESTON: I have to comment  
16                  that I can remember when there wasn't an  
17                  option for push button or not. If anything,  
18                  you picked up the phone when you were in  
19                  Vandergrift and you gave the lady five numbers  
20                  and it was local, and there was no such thing  
21                  as a private line at that particular time.

22                  So I guess I'm really going to try to  
23                  date a lot of different things, but you didn't  
24                  have that level of privacy that you have now.

25                  I think, Mr. Chairman, you had a

1 question?

2 REPRESENTATIVE GODSHALL: Yeah. I  
3 believe, Ms. Hyer, you said that you are  
4 paying access charges.

5 MS. HYER: I don't think I actually  
6 said that but, in fact, we are, yes. We do  
7 pay access charges.

8 REPRESENTATIVE GODSHALL: Okay.  
9 Well, it was testified earlier that, you know,  
10 you weren't and I think this is the problem  
11 that a lot of us face, you know, on the  
12 committee and, you know, is it a problem?  
13 Some people say you're not and you say you  
14 are.

15 You know, were you? You know, who is  
16 right and who is wrong?

17 MS. HYER: Well, I'll let Frank speak  
18 to it and then I'll follow up on the  
19 question.

20 MR. BUZYDLOWSKI: So, Mr. Chairman, I  
21 think what you're referring to is the dispute  
22 as to whether we should be paying interstate  
23 or intrastate access charges.

24 REPRESENTATIVE GODSHALL: Access  
25 charges and access charges.

1           MR. BUZYDLOWSKI: Well, there are two  
2 different kinds and two different levels of  
3 payment and I'll have counsel talk to the  
4 details.

5           But if there's ever an issue that  
6 should be resolved by the FCC, it would be  
7 whether those would be interstate or  
8 intrastate in nature.

9           But Leigh would be the expert on the  
10 technical -- technicalities.

11          REPRESENTATIVE GODSHALL: So which  
12 are you paying at this point?

13          MS. HYER: Well, I -- I don't know  
14 much about what the specifics of the -- the  
15 representative from Embarq, that particular  
16 dispute. It's my understanding that what she  
17 said was that Verizon is paying interstate  
18 access charges. Embarq apparently is seeking  
19 intrastate charges for that traffic. That  
20 appears to be what the dispute is about.

21          But as you heard other people testify  
22 previously, that within the gambit of access  
23 charges, there are different levels that apply  
24 to different types of traffic and not  
25 everybody agrees on particular -- you know, on

1 how particular traffic should be applied.

2 But there are already -- there  
3 already are remedies for Embarq, and any other  
4 company that believes that they are not paying  
5 what they should be paying, there are  
6 provisions to go before the FCC, if they  
7 believe that they're not being paid interstate  
8 access charges. They can go to the PUC if  
9 they believe that intrastate access charges  
10 are owed but not being paid. They have all of  
11 that before them.

12 So this is really a red herring here  
13 that -- that what this bill does is provide  
14 relief from regulation for the economic terms  
15 of the retail service that's applied to end  
16 users.

17 To give you an example, that would be  
18 like saying we shouldn't, for instance,  
19 provide freedom from regulatory -- regulation  
20 of the retail terms and conditions of, for  
21 instance, a new car that uses, you know,  
22 electric or hybrid technology merely because  
23 you can't figure or there's a dispute about  
24 how much of a toll that a customer should pay  
25 when they drive down the freeway.

1           It's that kind of disparity. The two  
2 are really unrelated.

3           REPRESENTATIVE GODSHALL: Okay.  
4 Thank you. I know we're running late. Maybe  
5 we can discuss it further later on.

6           CHAIRMAN PRESTON: Unofficially, I  
7 guess we're okay. We're only going to go to  
8 recess if we go into session. If you have a  
9 question, you can ask it.

10          REPRESENTATIVE GODSHALL: No. I'll  
11 wait.

12          CHAIRMAN PRESTON: Okay. Well, I  
13 thank you. I wish, you know, in the future,  
14 obviously, there's going to be a lot more  
15 discussion on this issue and, I don't know,  
16 maybe we ought to put one -- put everybody in  
17 a room, you know, and say whatever you guys  
18 come out with, but that might be a little bit  
19 too violent. I don't know.

20          REPRESENTATIVE GODSHALL: And lock  
21 the door.

22          CHAIRMAN PRESTON: But I want to  
23 thank you really for coming and, chief  
24 counsel, the attorney, we really appreciate  
25 you coming.

1 MS. HYER: Thank you.

2 CHAIRMAN PRESTON: Next we have  
3 Braden Cox, policy counsel, for NetChoice.

4 How are you today?

5 MR. COX: I'm good. Thank you,  
6 Mr. Chairman.

7 CHAIRMAN PRESTON: Allow her to set  
8 up here first, and if you would, please  
9 introduce yourself and who you represent and  
10 then you can begin with the appropriate  
11 testimony.

12 MR. COX: Okay. Thank you,  
13 Mr. Chairman, and the members of the  
14 committee. I'm Braden Cox. I'm policy  
15 counsel with the NetChoice Coalition which is  
16 trade associations and e-commerce companies  
17 who share the goal of promoting convenience,  
18 commerce and choice on the Internet.

19 These companies include AOL, eBay,  
20 NewsCorp, VeriSign, Yahoo, the Association for  
21 Competitive Technology of which Microsoft is a  
22 member.

23 And I'm joined by Staci Pies who's  
24 the vice president for the State of Affairs  
25 for the Voice Over the Net Coalition. She's

1 an expert on the impact of compensation of --  
2 of VoIP providers and she'll be happy to  
3 answer any questions and she'll provide a very  
4 short statement on that.

5 NetChoice welcomes this opportunity  
6 to support S.B. 1000 and, as an Internet guy  
7 who comes into the telecom world, I can say  
8 that it's easy to kind of get overwhelmed with  
9 the technicalities of definitions and -- and  
10 telecom minutia.

11 But let's not lose sight of what's  
12 important with this bill. This is a  
13 forward-thinking bill that is trying to not  
14 regulate VoIP so that we can stimulate growth  
15 in this area and -- and create an environment  
16 that will allow VoIP to provide new services  
17 and -- and features to consumers in a way  
18 that's even cheaper than what they might  
19 already be paying, but certainly provide new  
20 features for them.

21 And these are ways that we're not  
22 even, you know, cognizant of how it might even  
23 be applied in the future, which is the point  
24 of a nonregulatory bill.

25 The Internet and voice is being

1 integrated in lots of different ways that you  
2 may or may not be familiar with, but in  
3 websites, in social networking communities,  
4 through instant messaging, in mapping  
5 programs, even in video games.

6           Apparently Oprah has instituted a  
7 book club where people can call in with VoIP  
8 and communicate with the author and Oprah and  
9 the others with the computer over the phone  
10 in -- in interesting ways and they're doing  
11 this over VoIP.

12           It could even be that 911 -- we heard  
13 this mentioned earlier -- could even -- VoIP  
14 could even enhance our emergency responses in  
15 that VoIP could provide even more information  
16 that would be sent to 911 and could even  
17 provide video of -- of the people that live  
18 there so -- so that the first emergency  
19 responders would know what to look for in  
20 getting there.

21           The point is that VoIP offers lots of  
22 promise in ways that we haven't even figured  
23 out, and a bill like this will provide this  
24 kind of technology in a way that will make it  
25 move forward in a way that would be encumbered

1 if it were to be saddled with a lot of  
2 regulation that traditional telecom is based.

3 And, you know, it is important to --  
4 to keep in mind that there's significant  
5 consumer savings involved. One study that was  
6 produced by the MiCRA organization said that  
7 \$4.8 billion over the next five years  
8 consumers in Pennsylvania could save.

9 And it's not just consumers in big  
10 cities. It's people in rural Pennsylvania  
11 that will have the opportunity to benefit.  
12 When VoIP is out there, it provides the  
13 incentive for more build-out which -- which  
14 provides higher speed broadband and other  
15 kinds of access to people even in -- in small  
16 towns.

17 Now, you know, it's important to keep  
18 in mind, too, that nothing in this bill  
19 prevents terminating carriers from collecting  
20 access charges.

21 In fact, we think even the -- that  
22 S.B. 1000 is a great bill. It could be made  
23 even better in the sense that we would like to  
24 see the possibility for access charges imposed  
25 on IP-enabled services.

1           Remember, this bill talks about VoIP  
2           and IP-enabled services, those two  
3           definitions. It could be made even stronger  
4           so that there's more predictability and  
5           certainty so that IP-enabled services, that  
6           computer phone call to Oprah's book club would  
7           not have this kind of traditional regulation  
8           that -- access charges and others that other  
9           VoIP might.

10           However, that being said, we think  
11           that this bill -- this bill doesn't diminish  
12           the importance -- or there's nothing in here  
13           that would diminish the importance of this  
14           bill moving forward in a way that we think  
15           actively promotes and is very consumer  
16           friendly.

17           With that, I think that there's a  
18           quick statement that Staci would like to  
19           make.

20           MS. PIES: Thank you. I appreciate  
21           your time today. You've heard a lot this  
22           morning about access charges, and I think  
23           Ms. Hyer was on the point where she said it's  
24           a red herring.

25           What the most important thing for you

1 all to know, if you don't have a complete  
2 understanding of access charge regime, is that  
3 it's incredibly complicated and it's not just  
4 intrastate and interstate access charges.  
5 It's also reciprocal compensation payments.

6 There's also a system of payments set  
7 up between the Internet providers who don't  
8 touch the Public switched Network.

9 There's so many different type of  
10 payments and compensation schemes that exist  
11 that I'd think you'd be hard pressed to find  
12 any company that's involved in the industry  
13 that would say it's working.

14 And that is really what you've heard  
15 today. You've heard that it's not working.  
16 It has nothing to do with your legislation.

17 CHAIRMAN PRESTON: I hate to  
18 interrupt you.

19 MS. PIES: Yes.

20 CHAIRMAN PRESTON: Can we take just a  
21 small break for about five minutes? And then  
22 we will continue and everybody will --  
23 everyone will be able to do that. I got  
24 another phone call, I just had an e-mail  
25 requesting me to do that. Okay? So that I

1 can stay constitutional.

2 So everybody take a break. Grab a  
3 quick cigarette. Whatever.

4 (Recess was taken from 1:05 p.m. to  
5 1:22 p.m.)

6 CHAIRMAN PRESTON: We can begin. You  
7 were saying?

8 MS. PIES: I was saying that the  
9 intercarrier compensation issues, the access  
10 charge issues, are -- I apologize.

11 The access charge issues are a red  
12 herring, and you could hold hearings. Well,  
13 the FCC has been looking at this issue for  
14 years. You could hold hearings that would go  
15 all day and night before you had enough  
16 information to actually reach a conclusion.

17 What's important here is that this  
18 piece of information, S.B. 1000 does not  
19 prevent anyone from collecting the charges  
20 that they are due.

21 It doesn't prevent anyone from  
22 collecting the charges that they are due, and  
23 what it does do is it allows the tremendous  
24 innovation to move forward that will benefit  
25 everybody, including the owner of the network,

1 because customers are going to want to use  
2 those services more and more because they'll  
3 have access to the innovation that's occurring  
4 all over the network.

5 Thank you very much. And, therefore,  
6 I would just suggest that you don't get lost  
7 in the access charge debate. Thank you.

8 CHAIRMAN PRESTON: When you say don't  
9 get lost in the access charge debate, how do  
10 you separate the two when you've heard --

11 MS. PIES: I think there's been  
12 several false accusations that were made  
13 today.

14 The first being that there is  
15 cheating going on. The second being that  
16 carriers are not getting paid.

17 What the terminating carriers are  
18 concerned about is getting paid what they want  
19 to get paid. The problem is that the FCC has  
20 been clear about what it is they should get  
21 paid.

22 Your legislation does not prevent the  
23 FCC from deciding what the terminating carrier  
24 should get paid.

25 A call cannot terminate on a network

1 unless someone has a connection to that  
2 network and, therefore, the carrier will get  
3 paid. The question is how much?

4 And that is not an issue that is  
5 either prevented or decided by your  
6 legislation.

7 CHAIRMAN PRESTON: Thank you. We  
8 really would like your address, your card.

9 MS. PIES: I'd be happy to answer any  
10 more questions.

11 CHAIRMAN PRESTON: Because I try to  
12 learn this from my own personal --

13 MS. PIES: I can also tell you all  
14 the cool things that VoIP does, too.

15 CHAIRMAN PRESTON: Chairman Godshall.

16 REPRESENTATIVE GODSHALL: So you were  
17 saying even if there would be something in the  
18 legislation that says access charges will  
19 be -- are legal and will continue, it's still  
20 a dispute over what -- you know, it's not that  
21 access charges would be eliminated or could be  
22 somehow used as a sign to figure out a way to  
23 do away with it, what we're really talking  
24 about is the amount of the access charge?

25 MS. PIES: You're talking about the

1 amount of the fee that should be paid,  
2 correct.

3           And I think it's important to  
4 recognize that, in addition to intrastate and  
5 interstate access, there are also reciprocal  
6 compensation payments, and all of those types  
7 of payments depend on who is originating the  
8 traffic, who is terminating the traffic, and  
9 where it's originated, and where it's  
10 terminated.

11           And most important here is the  
12 recognition that one thing that VoIP does is  
13 it disrupts this old system that used to be  
14 somewhat logical, although most would agree  
15 does not reflect the economic cost of  
16 providing the service, it used to be more  
17 logical when there were monopoly providers.

18           Now, we have services. I could have  
19 a call with a Maryland phone number that  
20 resides on a computer drive that I take with  
21 me to Iraq serving in the Armed Forces and I  
22 could call my family and talk to them and  
23 communicate with them using that service and  
24 my Maryland phone number, and it would appear  
25 to the terminating caller -- or terminating

1 carrier as a Maryland phone number.

2 But VoIP enables these tremendous  
3 services and completely changes the way people  
4 communicate, which is the intent of your bill,  
5 to -- to enable those types of services to be  
6 developed and for consumers to have access to  
7 them.

8 And so for the terminating carrier to  
9 argue that somehow that's detrimental, because  
10 they don't know what type of charge to impose,  
11 misses the point of what you're trying to  
12 accomplish.

13 CHAIRMAN PRESTON: Did you get all  
14 your answers?

15 REPRESENTATIVE GODSHALL: Yeah. That  
16 makes everything partially clear. So really  
17 what you're saying is we're dealing with two  
18 different issues here? We're dealing with the  
19 voice issue and we're dealing with the access  
20 charges? The access charges are really FCC  
21 rather than our doing here?

22 MS. PIES: I don't think it's  
23 entirely the FCC. I think the comments that  
24 were made earlier by some of the witnesses  
25 addressing the fact that state PUCs have the

1 ability to provide redress where there is a  
2 dispute, that there are interconnection  
3 negotiations that take place that enable the  
4 carriers to be able to seek the type of  
5 compensation they believe they deserve.

6           There -- and then there's the FCC on  
7 the federal issues, that the -- the issue of  
8 compensation goes well beyond whether or not  
9 the terminating carrier believes rightly or  
10 wrongly that they are due a particular level  
11 of payment.

12           What this legislation does is it says  
13 innovation is so important to us, it's so  
14 important that we bring these services to the  
15 constituents and the residents of the state of  
16 Pennsylvania that we are going to allow that  
17 innovation to flourish, recognizing that there  
18 is a -- an incredibly complicated archaic  
19 compensation regime that exists and does  
20 nothing to affect that compensation regime one  
21 way or another.

22           Most importantly, I don't think you  
23 would want to step into that mess and affect  
24 just the consumers of Pennsylvania.

25           There was also a comment made about

1       how requiring compensation at the intrastate  
2       access rates, which Embarq says in their  
3       testimony is five times higher than the  
4       interstate rate, wouldn't affect consumers  
5       and, in fact, it would. It would raise their  
6       rates five times that much.

7                Because right now VoIP providers  
8       purchase access to the Public Switched Network  
9       at rates that more reflect cost as opposed to  
10      the implicit subsidies that exist in the  
11      access charge regime.

12               So, again, it's very accurate to say  
13      it's a red herring. There's nothing in the  
14      legislation that prevents companies from  
15      continuing to negotiate and, in fact,  
16      continuing to pursue petitions that they have  
17      filed at the FCC that seek to address these  
18      issues specifically, that your -- your  
19      legislation, S.B. 1000, does not prevent  
20      companies from continuing to seek that reform  
21      and redress.

22               REPRESENTATIVE GODSHALL: Well, if  
23      this is basically an interstate, the various  
24      PUCs, or their equivalent, you know from  
25      various other states, you could have a

1 mishmash of all kinds of tariffs, couldn't  
2 you?

3 MS. PIES: We do.

4 REPRESENTATIVE GODSHALL: Oh, we do?

5 MS. PIES: We do. It is -- it is  
6 such a mess. We could talk about it all day  
7 and you'd only cover about this much of it.

8 REPRESENTATIVE GODSHALL: Okay.  
9 Thank you.

10 CHAIRMAN PRESTON: Where are you  
11 located at?

12 MS. PIES: Washington, D.C.

13 CHAIRMAN PRESTON: Oh, okay.

14 MS. PIES: It's close.

15 CHAIRMAN PRESTON: Yes. 116 miles  
16 exactly. Thank you. Because I remember the  
17 situation I had when DOS was just going into  
18 Windows and that was very traumatic and I  
19 guess I called upon what you might call a geek  
20 up here, and said, what do I do? Because I  
21 didn't know anything about computers. My wife  
22 was a programmer, and I remember her staying  
23 up all night, a long time, to debug things or  
24 whatever.

25 And he told me to go get a pack of

1       quarters and go down where the best video game  
2       place was and sit down with the kids and put  
3       the quarters in so they'll let you play and  
4       put the quarters in for them to play and they  
5       will teach you.

6               And ever since then, it wasn't until  
7       a couple years, I guess, there was some people  
8       here we wouldn't let touch our computers up  
9       here because they didn't know anything and,  
10      you know, the difference between Windows and  
11      Windows 3.1 and 3.1.1 and to 3. And Windows  
12      was very quick. They didn't know, you know,  
13      and, well, how do you know? I told them to  
14      get out. I actually had somebody from outside  
15      to come in and I paid them out of my pocket.

16              This is what's important, and it's  
17      important that members of the committee, as  
18      well as those here today, to not to fight  
19      off. It's like, remember, when we tried to  
20      get our mothers or grandmothers to try to use  
21      the Mac machine at the bank?

22              The time has come that these things  
23      are going to happen, and I think we have to  
24      adjust to some forms of technology to -- to  
25      make things better, whether we're dealing with

1 energy or smart things.

2 I'll be in touch with you. So  
3 make -- make sure we have your name and  
4 address.

5 MS. PIES: Thank you. I'd be happy.

6 CHAIRMAN PRESTON: Okay. Thank you  
7 very much.

8 MR. COX: Thank you.

9 CHAIRMAN PRESTON: Dr. Charles  
10 Greenawalt, senior fellow, Susquehanna Valley  
11 Center for Public Policy and Maura Donley,  
12 director of development of Susquehanna Valley  
13 Center for Public Policy.

14 Are you here, by any chance? You're  
15 not.

16 UNIDENTIFIED MAN: He was here. I  
17 know who he is. I don't see him.

18 UNIDENTIFIED MAN: They're not here.  
19 They're not in the room.

20 CHAIRMAN PRESTON: That being the  
21 case, we will be in touch, and thank you very  
22 much and we are adjourned.

23 THE FOLLOWING TESTIMONY WAS SUBMITTED  
24 IN WRITING FOR THE RECORD:

25 (The following is the written

1 submission by Mr. Glen Thomas, Pennsylvania  
2 Public Utility Commissioner, 2001-2005.)

3 Chairman Preston, in advance of  
4 Monday's hearing on Senate Bill 1000, I would  
5 like to offer my perspective as a former  
6 public utility commissioner who spent  
7 countless hours trying to advance  
8 consumer-benefiting telecommunications  
9 competition in Pennsylvania.

10 In my opinion, Senate Bill represents  
11 a timely opportunity to codify the  
12 Commonwealth's current regulatory treatment of  
13 Voice Of Internet Protocol, VoIP, and, in  
14 doing so, sends a message to the country that  
15 Pennsylvania will embrace technology, promote  
16 competition and allow its consumers to reap  
17 the rewards. I urge the committee to approve  
18 Senate Bill 1000 and applaud the work of its  
19 sponsor, Senator Wonderling.

20 While serving on the Pennsylvania  
21 Public Utility Commission in 2004, I proudly  
22 wrote the motion that defined the Commission's  
23 hands-off regulatory treatment of VoIP  
24 (Investigation into Voice Over Internet  
25 Protocol as a Jurisdictional Service Docket

1 No. M-00031707).

2 At the time, the promise of VoIP was  
3 beginning to materialize and I did not want to  
4 stifle this cutting-edge innovation with a  
5 burdensome regulatory regime. It was the  
6 right decision at the time and now, four years  
7 later, it has served Pennsylvania well and  
8 deserves to be memorialized in statute.

9 In 2004, I wrote that VoIP technology  
10 will allow for different options and  
11 applications that will ultimately give  
12 consumers more control. VoIP also changes the  
13 competitive complexion of the marketplace in a  
14 way that might bring more choices for  
15 consumers.

16 In the final order, the commission  
17 said VoIP presents a world of opportunities  
18 for Pennsylvania's consumers. Since that  
19 time, consumers have flocked to VoIP service  
20 driven by choice and the opportunity to save  
21 money.

22 Competition is fierce among VoIP  
23 providers and consumers are the ultimate  
24 winners in this competition.

25 Layering traditional regulatory

1 requirements on VoIP providers is  
2 counterintuitive and would actually hurt the  
3 consumers it purports to help.

4 While strict regulations may have  
5 been necessary at one time to ensure that  
6 regulated monopolies provided quality service,  
7 consumers with the ability to change providers  
8 as a result of competition are in the best  
9 position to evaluate quality of service.

10 Consumers motivated by better  
11 offerings will make decisions to change  
12 providers and companies motivated to retain  
13 consumers will continue to raise the bar on  
14 customer service.

15 The current PUC deserves an enormous  
16 amount of credit for not attempting to change  
17 the policy that was put in place in 2004.  
18 Hundreds of thousands of Pennsylvania homes  
19 and businesses have saved money and seen their  
20 services improve as a result of this hands-off  
21 approach.

22 Telecommunications competition is  
23 working to the benefit of consumers thanks to  
24 the Commission's approach and it is time for  
25 the General Assembly to leave its mark.

1           Senate Bill 1000 represents the next  
2           logical step for Pennsylvania  
3           telecommunications policy. Making regulatory  
4           restraint the law of the land in the  
5           Commonwealth will allow this success story to  
6           continue and will likely further unleash a  
7           torrent of competition and choice for  
8           Pennsylvania voice consumers.

9           The Commissions has done the right  
10          thing for Pennsylvania's consumers, now it is  
11          the General Assembly's turn.

12                   Respectfully submitted,

13                   Glen Thomas, Pennsylvania Public  
14          Utility Commissioner, 2001-2005.

15                   (The following is the testimony  
16          submitted by Dr. Charles E. Greenawalt, II,  
17          Ph.D., Senior Fellow, Susquehanna Valley  
18          Center for Public Policy, Hershey,  
19          Pennsylvania.)

20                   Good afternoon, Mr. Chairman and  
21          committee members. I am Charles Greenawalt,  
22          Senior fellow for The Susquehanna Valley  
23          Center for Public Policy.

24                   The Susquehanna Valley Center for  
25          Public Policy thanks this committee and the

1 committee chairman for the opportunity to  
2 appear here today.

3 We are grateful for this committee  
4 conducting this hearing so that the  
5 legislature and the general public have an  
6 opportunity to learn more about emerging  
7 technologies that are revolutioning our  
8 society.

9 The speed at which these changes are  
10 developing is frequently so rapid that we are  
11 challenged to understand fully the nature of  
12 this new technology.

13 The Susquehanna Valley Center for  
14 Public Policy is a registered 501 c(3) public  
15 policy research organization that is based in  
16 Hershey, PA and has been in operation for the  
17 last decade. The Center produces the  
18 statewide television show, Behind the  
19 Headlines, as well as operating an Internet  
20 radio station, The Voice of PA.

21 Through these outlets, in addition to  
22 our two websites and regular email  
23 communications, we attempt to provide new and  
24 useful information to Pennsylvania public  
25 policymakers, the members of the Pennsylvania

1 press corps, and the general public.

2 Our mission is to help make the  
3 Commonwealth's government and its programs as  
4 efficient, effective, and innovative as  
5 possible while keeping it accountable and as  
6 small as possible.

7 As a 501 c(3) organization, we cannot  
8 and do not support or oppose specific pieces  
9 of legislation at any level of government in  
10 our federal system. Nonetheless, the Center  
11 is permitted to support or oppose concepts  
12 that may appear in government policies and  
13 programs.

14 For example, within the last year,  
15 the Center has shared useful and important  
16 information with the General Assembly on ideas  
17 involved with realty transfer taxes, autism,  
18 alternative energy, and transportation  
19 infrastructure.

20 Today, the Center wishes to  
21 contribute to the discussion of Voice Over  
22 Internet Protocol, VoIP. The Center is  
23 completing a new study on this technology and  
24 its application in Pennsylvania and this study  
25 will be completed this week.

1           I am here to request respectfully  
2           that this study be included in your record of  
3           these proceedings. It would be unfair to this  
4           report to try to spell out its entire contents  
5           in the ten minutes I have to share with you  
6           today.

7           Therefore, the Center will be  
8           distributing this report through its normal  
9           distribution procedures, and I am certain that  
10          all of your offices will receive a copy of it.

11          The topic of Voice Over Internet  
12          Protocol emerged from the Center's studies of  
13          societal infrastructure. Just as roads,  
14          bridges, and waterlines are part of a nation's  
15          infrastructure, so are telephone lines, cable  
16          television lines, and wireless communication  
17          radio towers.

18          One of the new technologies affecting  
19          this communication infrastructure is Voice  
20          Over Internet Protocol. This form of  
21          communication can be traced all the way back  
22          to Alexander Graham Bell and the invention of  
23          the telephone.

24          Indeed, in 1876, Mr. Bell was able to  
25          talk to someone far away using a technological

1 device, a telephone. On 25 January 1915, the  
2 first transcontinental telephone call was  
3 placed across North America.

4 Today, one person can talk to another  
5 over a long distance using a new technological  
6 device, the Internet.

7 This VoIP technology creates a  
8 process in which one computer talks to another  
9 one. VoIP uses real-time audio on an  
10 instantaneous or slightly-delayed basis to be  
11 transmitted and received in a digital format.

12 In 1972, VoIP Protocols were used to  
13 carry voice signals over the IP network, a  
14 commercial offshoot from the experimental  
15 Network Voice Protocol invented for the  
16 ARPANET.

17 In 1995, the first Internet phone  
18 software company appeared, Vocaltec. This  
19 firm developed and sold software that was  
20 appropriately named, Internet Phone.

21 This technology was designed so that  
22 it could operate on a home personal computer,  
23 PC. It enabled users to send voice data  
24 packets over the Internet instead of  
25 communicating through standard telephone

1 service. A data packet is the fundamental  
2 unit of information transmitted over a digital  
3 network or over a digital communication link.

4 A major drawback in 1995 was the lack  
5 of broadband availability, and the software  
6 that was utilized with modems produced poor  
7 voice quality.

8 Presently, VoIP has become one of the  
9 most technologically advanced communications  
10 platforms in the world. VoIP has become an  
11 impetus to the world of communications to  
12 innovate and to lower costs.

13 Some current communication providers  
14 wish to see VoIP and the Internet regulated.  
15 The Susquehanna Valley Center believes this  
16 regulation should only be engaged in when  
17 there is a clear and compelling purpose for  
18 it.

19 Does such a need to regulate VoIP  
20 exist in the Commonwealth today?

21 After a review of the present  
22 situation in Pennsylvania, the Susquehanna  
23 Center does not think that regulation on VoIP  
24 would serve the public interest.

25 VoIP provides consumers with more

1 communication choices, and the current  
2 regulatory framework has attracted  
3 communication infrastructure investments of  
4 over \$7 billion in our state for new fiber  
5 optic broadband systems.

6 As this technology has spread, new  
7 employment opportunities have also been  
8 created.

9 Further, a quick glance around this,  
10 the mid-Atlantic area, reveals that many of  
11 our neighboring states, our economic  
12 competitors, have refrained from regulation of  
13 the Internet and VoIP.

14 This has been regarded in many  
15 quarters as a clear affirmation that these  
16 states support and nurture innovation. These  
17 states include Delaware, Maryland, New Jersey,  
18 and Virginia.

19 The issue of state regulation of the  
20 Internet and VoIP is not new in the  
21 Commonwealth. The Pennsylvania Public Utility  
22 Commission, PUC, conducted a public hearing  
23 about this subject as recently as 15 April  
24 2004.

25 The motion of Commissioner Glen R.

1 Thomas still seems to hold water. In this 5  
2 May 2004 ruling, Commissioner Thomas  
3 highlighted a number of issues that should be  
4 answered before any regulations are adopted  
5 for the Internet and VoIP.

6 First, he notes that state  
7 authorities have not defined VoIP clearly  
8 enough to understand what it is and to  
9 regulate it.

10 Among a number of other objections,  
11 Commissioner Thomas also questions the  
12 jurisdiction of the PUC to regulate VoIP as  
13 well as what the regulation of the FCC is in  
14 that regard.

15 Is this a federal or state issue?

16 While there is an attempt to resolve  
17 this question, it is still not fully resolved.  
18 Thus far, the FCC has ruled that state  
19 regulation of VoIP, digital voice, is  
20 preempted. In Vonage Holdings Corp. (2004)  
21 and in Minnesota Public Utilities versus FCC  
22 (2007) this opinion is upheld.

23 Certainly, Commissioner Thomas  
24 manifests common sense in his motion when he  
25 cited the Nascent Service Doctrine. This

1 doctrine affirms that regulators should  
2 exercise restraint when faced with new  
3 technologies and services. If regulation is  
4 too oppressive in the infancy of a technology,  
5 it could delay the introduction of that  
6 technology or stunt its development. The key  
7 is simply that regulatory restraint is advised  
8 until a technology is well understood and  
9 viable.

10 Since my time here is short, I am  
11 simply requesting that this committee and its  
12 members consider the reasoning of Commissioner  
13 Thomas in 2004. Many believe that his  
14 observations still stand today.

15 Thank you for this opportunity to  
16 testify today.

17 (The following is the written  
18 submission by David E. Schwencke, President  
19 and CEO of Full Service Network.)

20 Chairman Preston, Chairman Godshall,  
21 members of the committee:

22 My name is David Schwencke and I am  
23 President and CEO of Full Service Network, a  
24 competitive local-exchange carrier, CLEC, and  
25 Internet service provider, ISP, serving

1 residential and business customers in the  
2 Pittsburgh region for almost two decades.

3 I appreciate the opportunity to share  
4 with the House Consumer Affairs Committee  
5 support and perspectives on Senate Bill 1000,  
6 which rightly prohibits state regulation of  
7 VoIP, or Voice Over Internet Protocol.

8 The truth is, Senate Bill 1000 will  
9 provide certainty for companies like mine,  
10 offering or seeking to offer VoIP to consumers  
11 and businesses. It is extremely important for  
12 broadband and VoIP companies to know the  
13 regulatory environment is stable ground before  
14 investing full-force in this competitive  
15 technology; by making it clear that  
16 Pennsylvania supports such competitive VoIP  
17 services, Senate Bill 1000 will benefit that  
18 investment.

19 In my testimony I will be discussing  
20 three main themes:

21 The effect of Senate Bill 1000 on  
22 investment in Pennsylvania.

23 The benefits to consumers and  
24 businesses resulting from passage of Senate  
25 Bill 1000.

1           The importance of promoting economic  
2           development in Pennsylvania.

3           The importance of promoting economic  
4           development in Pennsylvania:

5           Passage of Senate Bill 1000 would  
6           make it clear that Pennsylvania is interested  
7           in attracting investment in VoIP, and that the  
8           state recognizes the federal regulatory  
9           climate.

10           Senator Rob Wonderling, Senator  
11           Connie Williams, and the bill's 18 co-sponsors  
12           have shown that they recognize the benefits of  
13           avoiding onerous VoIP regulations at the state  
14           level, which would make Pennsylvania a less  
15           attractive market for the service.

16           This is especially important, as  
17           legislation similar to Senate Bill 1000 has  
18           been passed throughout the Mid-Atlantic  
19           region, including in Maryland, Delaware,  
20           Virginia and New Jersey.

21           Thus, the bill will also ensure  
22           Pennsylvania remains consistent with Federal  
23           Communications Commission regulations, which  
24           have logically ruled that VoIP is an  
25           interstate service.

1                   Thinking more broadly, passage of  
2                   Senate Bill 1000 demonstrates that  
3                   Pennsylvania wants to support competitive  
4                   communications markets and the benefits they  
5                   can bring to your constituents and businesses,  
6                   while enhancing the state's economic status in  
7                   the region.

8                   Senate Bill 1000 would show that  
9                   Pennsylvania wants to enhance its  
10                  communications network, promote investment in  
11                  new technologies, and bring the savings of  
12                  competition to consumers.

13                  Passage of the bill allows  
14                  Pennsylvania to broadcast to the region and  
15                  the nation: We want your business.

16                  The effect of Senate Bill 1000 on  
17                  investment in Pennsylvania.

18                  VoIP is a fast-growing market segment  
19                  in communications, and it brings a host of  
20                  companies into the marketplace to compete for  
21                  voice customers.

22                  Companies such as Vonage, Packet 8,  
23                  Sunrocket and others operate over broadband  
24                  networks, while broadband providers, such as  
25                  telecom and cable, also offer VoIP service

1 themselves. All of these companies are  
2 aggressively seeking residential and  
3 commercial business.

4           It's already a very competitive  
5 market nationwide, and if all VoIP providers  
6 are comfortable with Pennsylvania's regulatory  
7 stance with regard to this exciting  
8 technology, it would only enhance the number  
9 and quality of offers available to residents  
10 and businesses in the state.

11           Moreover, Senate Bill 1000 would not  
12 only enhance investment by companies seeking  
13 to offer VoIP service, it would improve the  
14 economic investment in our state by existing  
15 businesses.

16           Consumers both large and small would  
17 have new opportunities to save money on needed  
18 services, affecting their bottom lines and  
19 leading to new investment in their own  
20 businesses.

21           The benefits to consumers and  
22 businesses resulting from passage of Senate  
23 Bill 1000.

24           A pro-competitive VoIP policy will  
25 help our state's businesses grow and lead to

1 more money in consumers' pockets, as consumers  
2 see voice-service prices pushed downward by  
3 competitive pressures.

4 Full Service Network is particularly  
5 excited about the bill, as we have a long  
6 history of providing the latest, most  
7 cutting-edge services to our customers.

8 I started the company in the late  
9 1980s to help pay for tuition at the  
10 University of Pittsburgh, and it has grown  
11 from a small venture in Pittsburgh with a few  
12 commercial customers to a market leader  
13 serving thousands of businesses and  
14 residential customers across Pennsylvania.

15 As the products have become  
16 competitive, we've added 800 service, calling  
17 cards, local dial tone, and Internet access.

18 A clear regulatory policy on VoIP  
19 will allow us to enhance our product  
20 offerings, helping us retain our existing  
21 customers and attract new customers. And we  
22 know we are one of many companies interested  
23 in Senate Bill 1000's benefits for VoIP  
24 service.

25 By clearly showing VoIP should be

1 regulated as an interstate service -- not a  
2 state service -- Senate Bill 1000 can enhance  
3 the creativity with which companies can offer  
4 the service.

5 Both telecom and cable companies  
6 nationwide have offered bundled services to  
7 consumers, helping customers take greater  
8 control over their voice, broadband, and video  
9 services bills and making life simpler.

10 VoIP companies can offer IP-based  
11 auxiliary services, such as the ability to  
12 check voicemail online or use voice service  
13 through your computer, to businesses that  
14 require more integrated communications.

15 The price and service offerings  
16 continue to grow. Meanwhile, companies  
17 seeking to offer VoIP will enjoy the ability  
18 to roll out services in a consistent fashion  
19 throughout the region, as Senate Bill 1000  
20 makes it clear VoIP should be regulated at the  
21 federal level.

22 In conclusion, I hope Senate Bill  
23 1000 meets the approval of this committee and  
24 the full Pennsylvania legislature.

25 Thank you for your attention, and

1 I'll be happy to answer any questions.

2 (THIS CONCLUDES THE SUBMITTED WRITTEN  
3 TESTIMONY.)

4 (The proceedings were adjourned at  
5 1:34 p.m.)

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I hereby certify that the proceedings  
and evidence are contained fully and  
accurately in the notes taken by me on the  
within proceedings and that this is a correct  
transcript of the same.

\_\_\_\_\_  
Brenda S. Hamilton, RPR  
Reporter - Notary Public