

COMMONWEALTH OF PENNSYLVANIA

PUBLIC UTILITY COMMISSION

ORIGINAL

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Kevin Povich versus Comcast Phone: Docket No. C-20031022  
of Pennsylvania. Service dispute.: Docket No. C-20030938  
Initial telephonic hearing. : Docket No. C-20030986  
Karen Gauden versus Comcast Phone: Docket No. C-20030986  
of Pennsylvania. Service dispute:  
Initial telephonic hearing. :  
Donald A. Barnot versus Comcast :  
Phone of Pennsylvania. Service :  
dispute. Initial telephonic :  
hearing. :  
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DOCKETED  
JUN 18 2004

Pages 1 through 57

Hearing Room #1  
Pittsburgh State Office Bldg.  
300 Liberty Avenue  
Pittsburgh, Pennsylvania

Thursday, April 22, 2004

Met, pursuant to notice, at 1:00 p.m.

BEFORE:

James D. Porterfield, Administrative Law Judge

APPEARANCES:

Alan Kohler, Esq.  
Wolf, Bloch, Shorr & Solis-Cohen  
S. 300, 212 Locust Street  
Harrisburg, Pennsylvania 17101  
(For Comcast Phone of Pennsylvania)

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ALSO PRESENT:

Shaun Sparks, Esq.  
555 Walnut St. Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(For OCA)

Commonwealth Reporting Company, Inc.

700 Lisburn Road  
Camp Hill, Pennsylvania 17011

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## E X H I B I T S

NUMBER FOR IDENTIFICATION IN EVIDENCE

Comcast Phone of Pa.

1, letters to complainants 38 52

- - -

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## 1 PROCEEDINGS

2 ADMINISTRATIVE LAW JUDGE JAMES

3 PORTERFIELD: Good afternoon. I am administrative law  
4 judge James D. Porterfield, the presiding officer  
5 assigned by the Office of Administrative Law Judge  
6 from the Pennsylvania Public Utility Commission to  
7 hear the matter now captioned after consolidation,  
8 Karen Gauden, Donald A. Barnot, and Kevin Povich  
9 versus Comcast Phone of Pennsylvania, LLC, at Docket  
10 C-20030938, C-20030986, and Docket C-20031022.

11 It being now April 22, 2004, now shortly  
12 after one p.m., it is the date and time set pursuant  
13 to the Notice to the parties most recently dated  
14 February 17, 2004, for the initial telephone  
15 evidentiary hearing in the foregoing captioned matter.

16 The subject complaints, Gauden and Barnot  
17 complaints were filed on August -- strike that. The  
18 Gauden Complaint was filed August 6th, 2003 and the  
19 Barnot and Povich Complaints were filed on August 8th,  
20 2003 against Comcast Phone of Pennsylvania. Each  
21 complainant asks to remain a subscriber or to again  
22 become a subscriber to Comcast Services rather than  
23 having service furnished to them by Bentleyville  
24 Phone Company. Comcast filed a timely Response and  
25 Answer to the complaint. I am not going to repeat

1 Comcast's Answer, but basically I think if I can  
2 paraphrase it, Comcast's successor to AT & T  
3 inadvertently included or provided service, solicited  
4 and provided service for some period of time to the  
5 complainants and discovered that it was not authorized  
6 by the Public Utility Commission to continue to offer  
7 service, and made certain offers of accommodation to  
8 return the complainants to the Bentleyville Telephone  
9 Company's service. After a motion by Comcast's  
10 counsel on December 10th, 2003 to consolidate the  
11 three Complaints for a hearing in the decision, an  
12 Interim Order was issued on December 26th, 2003  
13 consolidating the individual Complaints for hearing  
14 and decision. And I would note this morning or this  
15 afternoon -- I have hearings so rarely in the  
16 afternoon, it is always morning -- that Karen Gauden  
17 has entered her appearance in her own behalf, and  
18 Donald A. Barnot, his appearance in his own behalf --  
19 strike that -- Linda Barnot, his spouse apparently has  
20 entered an appearance on Donald A. Barnot's behalf  
21 and Kevin Povich, an appearance on his own behalf, and  
22 Alan Kohler, Esq. has entered his appearance on behalf  
23 of Comcast Phone of Pennsylvania. Shaun Sparks,  
24 Esquire is monitoring the proceeding on behalf of the  
25 Office of Consumer Advocate apparently at the request

1 of Kevin Povich and without objection from Mr. Kohler.

2 The other remaining housekeeping is that  
3 Comcast did file a prehearing memorandum on April  
4 19th, 2004.

5 Okay. At this time I would like to  
6 administer the oath or affirmation to the complainants  
7 that wish to testify and also Mr. Kohler has a  
8 prospective witness, Michael Gross. If we could  
9 administer the oath or affirmation in mass at this  
10 time, I would appreciate it. Please raise your right  
11 hand. (Witnesses were sworn in.)

12 JUDGE PORTERFIELD: If maybe Miss Gauden  
13 or Mr. Barnot, or Mr. Povich, if you can kind of  
14 select a lead; is there somebody that would like to go  
15 forward to describe the complaints because they are  
16 virtually identical?

17 MR. POVICH: If Linda or Karen don't mind,  
18 I would like to.

19 JUDGE PORTERFIELD: Go ahead, Mr. Povich.

20 MR. POVICH: Judge, I think the best way  
21 to address this is if I could start at the beginning.

22 JUDGE PORTERFIELD: Sure. That's a good  
23 place to start.

24 KEVIN POVICH

25 having been duly sworn, testified under oath as

1 follows:

2 DIRECT TESTIMONY

3 MR. POVICH: Well, the residents here at  
4 this particular portion of Charleroi, Fallowfield  
5 Township, has always been subjected to the phone  
6 service of the Bentleyville Phone Company, the small  
7 portion that overlaps that is available to Fallowfield  
8 Township. And for you to get a perspective of what is  
9 going on here, we are all residents of the Charleroi  
10 area community. We are tax payers in that community  
11 and our children go to school in that community.  
12 Unfortunately, for to us make any what would be local  
13 calls for anybody else in the community, it is long  
14 distance for us. It is very disturing for people such  
15 as us to have to make long distance phone calls to  
16 local people in the same community, especially if you  
17 are raising children and you have to reprimand them to  
18 get off the phone, and they can't talk to the kids  
19 they go to school with on the phone.

20 So, in the past, they tried to approach it in  
21 different ways. Bell Telephone was the service  
22 provider out here. Bell Telephone was the influence.  
23 They tried to keep Bell Telephone out here. The  
24 problem was, the argument was that they couldn't go  
25 over their phone lines. That was the argument back

1 then. Now things have changed. Before you know it,  
2 A T & T was out here. At one time I was going to  
3 upgrade my cable service to my T V, and when doing so,  
4 there was the argument that we can get the phone  
5 service now. By the way, this will contradict the  
6 statements made by Mr. Kohler here in his response to  
7 the PUC. At that time, when the A T & T service was  
8 provided to us, naturally we jumped on it because we  
9 got tired of paying the long distance phone calls, but  
10 in doing so, I challenged A T & T. I talked to a Mr.  
11 Bell, whose name I can't forget because of Bell  
12 Telephone. I thought that was kind of funny. But  
13 anyhow, I approached him about that, are you sure you  
14 can provide service to us. If you go on the A T & T  
15 web page and punch in 56 Florence Drive, which is my  
16 address, it says the phone service is not available to  
17 me. But if you type in 55 Florence Drive, which is  
18 Linda and Donald Barnot's address, it says the phone  
19 service is available, and so something is wrong.  
20 But I brought it to their attention at that time that  
21 there could be a problem here. Mr. Bell said he would  
22 investigate this. In doing this, that delayed my  
23 hookup. I brought it to their attention so as far as  
24 them erroneously and inadvertently accepting us, that  
25 is not true, because they did check into the matter. A

1 few days later Mr. Bell called me back and told me it  
2 was cleared through the PUC that they can come here  
3 and hook us up, the reason being, they are not going  
4 over the Bentleyville phone line, they are going  
5 through cable. That was the statement that the man  
6 made to me. I said fine. Then we have been hooked up  
7 and we joined the service then like the rest of the  
8 people in the Mon Valley making the local calls like  
9 it should be.

10 Now, unfortunately, on July 22, 2003, we get a  
11 letter from Comcast along with Karen Gauden and  
12 Barnots that we had to be disconnected and the reason  
13 being that we weren't supposed to be in the  
14 Bentleyville territory. Now all of a sudden, it  
15 didn't become the phone line, it became the geographic  
16 territory. Now, what really disturbed me is when I am  
17 in my home making a cell phone call, I am in their  
18 territory. But nobody has anything to say about that.  
19 But yet, if I receive a call through my cable, there  
20 is a problem. That is another issue that I think needs  
21 to be looked at.

22 So any how, with that being said, that is  
23 what we went through with the informal complaint  
24 procedure with the PUC. And now it has brought us up  
25 to this date. The only other thing that we have a

1 problem with is that we didn't do anything wrong here.  
2 We did not falsify any information. We did what we  
3 were supposed to do according to Comcast, according to  
4 A T & T, and they made the mistake. We didn't make  
5 the mistake. As far as I am concerned in this point  
6 in time, this hearing shouldn't be between us three  
7 and Comcast, it should be between Comcast and  
8 Bentleyville Telephone Company. They made the  
9 mistake. If there is restitution to be paid, we  
10 shouldn't be penalized for the mistake they made. I  
11 can't go back to the service that I had before. I  
12 think I can speak on the other parties' behalf. We  
13 live paycheck to paycheck. This is a step backwards.  
14 I can't go back calling people in my locality long  
15 distance. My budget, of course what I am paying now,  
16 now they want to pull the rug out from under us and go  
17 back to high paying bills. I can't do that. That is  
18 out of the question. So as far as me going back to  
19 Bentleyville, that doesn't even exist. So at this  
20 point here, I just kind of think, and it is kind of  
21 obvious too, that the letters that we got in the past  
22 from Comcast stating we needed to go back to  
23 Bentleyville and they were going to offer three months  
24 -- they were going to pay a lot of things up front and  
25 help us in this transition. I think that was

1 Comcast's way of sweeping us under the rug, hoping  
2 that we would have bought into this and switch over to  
3 Bentleyville, because they know they are responsible  
4 for the mistakes that they made to Bentleyville Phone  
5 Company. If there is some kind of thing here or act  
6 that is in violation, they violated it, we didn't, and  
7 I don't feel we should be penalized for that.

8 I spoke to other people pertaining to this matter  
9 and I think it is pretty obvious that this is totally  
10 absurd that we have to go through this, especially in  
11 this day and age when you can pick your gas supplier  
12 and electric supplier, but for some reason we can't  
13 pick our phone. All we wanted was to get what the  
14 people in Charleroi had and that is to call our  
15 neighbors at a local rate. It struck me funny to see  
16 how people at the 483 exchange in Charleroi were able  
17 to call local but yet have chosen to go to Comcast,  
18 565. For whatever reason, it made sense, and I am  
19 thinking, I wonder why. All I wanted is what they  
20 had. Now here we are, I am being told I have to give  
21 up this service and go back to Bentleyville, and yet  
22 there is people that gave up what I want and they are  
23 still retaining that service. As far as I am  
24 concerned, our rights are violated.

25 That is about all I have. I have

1 contacted Mr. Dave Collins representing Pete Dailey's  
2 office at the House of Representatives. The reason I  
3 chose to call him is because Mr. Dailey has a  
4 mother-in-law that lives out here also in the township  
5 and he knows exactly where we are coming from. He  
6 thinks that this is absurd that we should be subjected  
7 to this. He knows first hand what it's like to call  
8 his mother-in-law and pay a long distance rate. He  
9 said he will be contacting me today too to find out  
10 what the final outcome is of this hearing. I  
11 basically think I got the same type of response, too,  
12 from the people in the Consumer Advocate's Office.  
13 And that is about all I have to say.

14 JUDGE PORTERFIELD: Mr. Povich, do you  
15 have -- whose telephone service do you have today?

16 MR. POVICH: Comcast.

17 JUDGE PORTERFIELD: So the service was  
18 never switched over to Bentleyville?

19 MR. POVICH: No. It has never been  
20 switched because we filed the Informal Complaint and  
21 the Formal Complaint, and a hearing was scheduled, but  
22 there is a rescheduling of that so it has been  
23 postponed and we are up to today's date.

24 JUDGE PORTERFIELD: The telephone service  
25 that you have, do I understand correctly from your

1 testimony is by use of your cable that you use for  
2 television and/or the Internet?

3 MR. POVICH: Yes. It is all through  
4 cable. I might add, too, I know on my particular  
5 situation -- I can't speak for the Barnots -- but my  
6 particular situation, it is not as cut and dry as they  
7 make it sound, that they are going to come and bring  
8 in wiring and then I have service. Since then I have  
9 ripped out all of the Bentleyville wiring in my house.  
10 I have ripped out the box on the side of my house.

11 JUDGE PORTERFIELD: Mr. Povich, would you  
12 keep your voice up. We are having trouble hearing  
13 you.

14 MR. POVICH: Oh, I am sorry. I said it is  
15 not as easy as they say. Since then, I have taken down  
16 all the Bentleyville wiring on the side of my house.  
17 The phone tap on the side of my house, I have removed.  
18 I have gone to the top of my house and already cut the  
19 line to the pole to my house. In fact, the day  
20 before, I was going to call Bentleyville to tell them  
21 to remove the extra line from across my yard because I  
22 didn't want it hanging there anymore. And also too,  
23 it is not easy switching over. What happens now is  
24 with all the hard work that Comcast has installed in  
25 my house, they have drilled in my foundation, they

1 have gone through my foundation going to my home. Who  
2 is going to take care of that repair work?

3 JUDGE PORTERFIELD: Do you have the T V  
4 cable service from Comcast?

5 MR. POVICH: Yes.

6 JUDGE PORTERFIELD: Do you have Internet  
7 cable service from Comcast?

8 MR. POVICH: Yes. But the phone service  
9 has its own separate box and phone lines that go into  
10 the home. It is separate from this box.

11 JUDGE PORTERFIELD: I think what we will  
12 do is after Mr. Kohler has an opportunity to ask  
13 questions of Mr. Povich, if he so desires, then we can  
14 have Linda Barnot and Karen Gauden make additional  
15 comments that they wish to make.

16 Go ahead, Mr. Kohler, if you have any questions  
17 for Mr. Povich.

18 MR. KOHLER: I have a couple of questions,  
19 Judge.

20 CROSS EXAMINATION

21 BY MR. KOHLER:

22 Q Mr. Povich, I think you indicated, and I  
23 want to make sure it is the case, that your primary  
24 objection with Bentleyville service for switching back  
25 to Bentleyville is that you would be forced to make

1 toll calls for calls that you are not being assessed  
2 toll calls for today; is that correct?

3 A Yes. That is one of the reasons. For  
4 example, I live in Charleroi. Any Charleroi resident  
5 can make a call to a Charleroi resident. That is a  
6 local call. Unfortunately, that wouldn't be the case  
7 with me being long distance. I could get a package  
8 from Bentleville that would provide that local  
9 calling, but I don't feel I should have to spend the  
10 extra \$15 for a package that is going to limit me to  
11 minutes to make local phone calls.

12 Q I think you indicated previously that your  
13 children's friends are outside the local calling area;  
14 is that right?

15 A Yes. Exactly.

16 Q How about schools, and hospitals, and  
17 things like that?

18 A Exactly. That is another good point that  
19 I wanted to bring up. I have a 19 year old daughter  
20 that is in college now. That poor girl, I had to  
21 reprimand her all through her senior year. All she  
22 wanted to do is talk to her friends that she was going  
23 to school with. I told her to get off the phone  
24 because it is a long distance toll that we are paying.

25 Q I take it you are not the only person in

1 the situation, the other complainants and the other  
2 people in your area, and I think you indicated the  
3 local rep's mother-in-law, have the exact same  
4 situation as you; is that your testimony?

5 A Yes. They have the same situation and I  
6 think, to be totally honest with you, I think that  
7 Comcast, A T & T at that time, would have been flooded  
8 with people in this area, in the geographic  
9 Bentleyville phone area, if they were aware that the  
10 service was available. Why is it that there is only  
11 three of us here today? Because we are the only ones  
12 aware of it. We were upgrading our cable service and  
13 the technician brought it to our attention. If you  
14 had other people, my goodness, that has been an issue  
15 out here for 20 years or better. That has been an  
16 issue since Bell Telephone has been out here. For  
17 example, on my street alone, there is a dozen homes on  
18 my street that will fall under this Bentleyville  
19 service. Ninety-five percent of them are the elderly.  
20 They are not going to change. They are barely on the  
21 phone anyhow. But you got people like I have children  
22 in the household and Barnots have a lot of friends and  
23 relatives in the valley where they would have to be  
24 subjected to make the long distance phone calls. It  
25 is not right that we don't have that choice to be able

1 to make local phone calls like our neighbors do. I  
2 hate to refuse -- I am not going back to where I have  
3 to reprimand my second daughter coming up to tell her  
4 she has to get off the phone because it is a long  
5 distance phone call. Plus the financial end of it.  
6 My phone bill, I am so glad we went over to A T & T.  
7 My bills are cut literally in half. As everybody  
8 knows in this day and age, the cost of living is going  
9 up a lot faster than people's salaries are increasing.  
10 I can't go back to Bentleyville. I can't afford it.  
11 There is no way I can do it. And it is a shame  
12 because when worse comes to worse, Bentleyville is  
13 the loser. Comcast is the loser. Verizon Wireless  
14 will come out the winner on this, even though it might  
15 cost me more but it wouldn't be as bad as going back  
16 to Bentleyville.

17 Q I want to go back to the problem that if  
18 you went back to Bentleyville of having to pay toll  
19 calls where you otherwise wouldn't have to. You have  
20 talked to your local representative and the Office of  
21 Consumer Advocate about this problem; is that right?

22 A That's correct.

23 Q Has anybody mentioned to you a term called  
24 extended area service?

25 A Yes.

1           Q       What is your understanding of what that  
2    is?

3           A       I have heard of it but that is about all I  
4    know of it.

5           Q       Were you aware in any way that you could  
6    get what you want if the useage is what you say it is  
7    through the extended area of service?

8           A       Are you saying through Bentleyville Phone  
9    Company?

10          Q       Yes.

11          A       Yes, but this is after we were with the  
12   package.

13          Q       I don't mean a local calling package, but  
14   if they were to actually cancel the local area to  
15   include the areas where you call; is that part of your  
16   local phone service?

17          A       Right. That is a \$15 fee and I have  
18   limited minutes.

19          Q       Okay. You are talking about a local  
20   calling package?

21          A       That is the only option that I know of  
22   that they have.

23          Q       If Bentleyville were to or be required to  
24   extend their local calling areas to serve the areas  
25   where, to include the areas that you have called,

1 would that at least take care of some of your  
2 concerns?

3 A If there is no additional cost and no  
4 limits on minutes?

5 Q Right.

6 A Yes, because they would probably give me  
7 the same thing I am able to enjoy now with Comcast.  
8 This is the Mon Valley. This just isn't a Charleroi  
9 issue. There is Monessen which is a 684 exchange.  
10 There is Callifornia, which is a 938. There is Belle  
11 Vernon, which is 929, and you got your Charleroi which  
12 is 483. Anybody in any of these communities can call  
13 one another in a local call. And here, unfortunately,  
14 we couldn't do that. Any one of these communities, it  
15 was a pay call for us. The most disturbing thing is  
16 my own community that I live in is a pay call. That  
17 is terrible. That is the big issue. But the thing is  
18 too, after this is all said and done, and the judge  
19 rules that we have to go back to Bentleyville, what I  
20 think is really unjust here is that where you have  
21 this hearing today between us three parties and  
22 yourself, I think that this is an issue that should  
23 have been between Bentleyville Phone Company and  
24 Comcast, because Comcast, formerly A T & T, made the  
25 mistake. It should have been the two of you, and

1 restitution should be done that way. If restitution  
2 were to be paid to Bentleyville in some form of them  
3 offering us local service calls to the area, that is  
4 fine with me.

5 Q I just have a couple more questions for  
6 you.

7 A Yes, sir.

8 Q I think you indicated that you talked to  
9 Mr. Bell?

10 A Yes.

11 Q Do you remember the timeframe that took  
12 place when this conversation occurred?

13 A Yes. Let me check my notes. It was the  
14 last week of September, around September 25th,  
15 September 26th of 2002. His name was Mr. Bell and I  
16 have his number where I reached him. Whether that is  
17 still available, I don't know. I spoke to a Stephanie  
18 and Ed out of the same office.

19 Q Would you accept that the Comcast merger  
20 took place in Pennsylvania in November of 2002?

21 A I didn't understand the question.

22 Q Let me ask the question a different way.  
23 Mr. Bell, that you talked to, he was an A T & T  
24 Broadband employee; is that correct?

25 A Let me see here. He was an A T & T

1 digital phone service representative.

2 Q And he was not a Comcast employee; is that  
3 right?

4 A No. At that time, Comcast wasn't even in  
5 the picture.

6 Q That happened a little later; is that your  
7 recollection?

8 A Exactly. He was specifically the man who  
9 I challenged as far as me getting service here. That  
10 is why I have a little hard time with the letter that  
11 was sent to the customers. That is not true, because  
12 me personally, I pointed that out to him that on the  
13 Web page, 56 Florence Drive was unserviceable. And by  
14 doing so that delayed my hookup by two weeks, and in  
15 that two week period is when he called me back and  
16 told me that they got approval from the PUC because  
17 they were going through the cable. That was his exact  
18 words. Unfortunately, with Mr. Bell, I can have him  
19 as a witness, but I didn't pursue that matter.

20 Q I understand.

21 MR. KOHLER: I have nothing further,  
22 Judge.

23 JUDGE PORTERFIELD: Mrs. Barnot, do you  
24 have anything additional that you would like to add to  
25 Mr. Povich's comments?

1

LINDA BARNOT

2

having been duly sworn, testified under oath as

3

follows:

4

DIRECT TESTIMONY

5

MRS. BARNOT: I agree with everything that

6

Mr. Povich had to say. The only thing that I might

7

mention is that when I did speak to Bentleyville

8

Telephone Company about two months ago, they did tell

9

me that there would be some sort of a plan that they

10

may offer us, but to me, it doesn't really matter

11

what plan they might offer us, we would still have a

12

Bentleyville phone number, so that perhaps we would

13

have a benefit calling out to other areas but people

14

could not call us without making a toll call. It

15

would not be free for them to call us. I have lived

16

here for 30 years and I cannot tell you how many

17

numerous problems that I have had with that telephone

18

company in the way of service, in the way of very,

19

very high telephone bills. And I just feel as though

20

this service was offered to us and it was offered

21

through a cable system, not through their telephone

22

lines. And I don't feel as though there is really any

23

question here. I think we should be allowed to keep

24

our line, and if you choose not to offer it to anyone

25

else, that is fine, let us keep it.

1 JUDGE PORTERFIELD: Do you have any  
2 questions for Miss Barnot?

3 MR. KOHLER: None, Your Honor.

4 JUDGE PORTERFIELD: Karen Gauden, do you  
5 have anything you would like to add?

6 KAREN GAUDEN  
7 having been duly sworn, testified under oath as  
8 follows:

9 DIRECT TESTIMONY

10 MRS. GAUDEN: Yes, I do agree with Mr.  
11 Povich and Mrs. Barnot. I have had the service. Now  
12 it will be from 6/23/01 when A T & T offered it to me,  
13 and in two months it will be three years that I have  
14 had this service. Now they want to take it off of me,  
15 which I think is very, very wrong. And number one,  
16 digital phone uses technology called Voice Over the  
17 Internet Protocol which breaks conversation into the  
18 digital package and transports it over the network by  
19 the most efficient route. Now, digital phone  
20 transmits conversation over the cable system rather  
21 than the traditional phone network and provides phone  
22 service through the cable lines, which is what we  
23 have. I have seen nothing where we are using the  
24 Bentleyville phone system. We are not going through  
25 their lines. We are going through digital, through

1 the digital cable, through the digital phone. Now,  
2 Bentleyville, you are not allowed to take their cable  
3 service. It is not offered in our area. So, I mean,  
4 I can't see where the point, what the point is here.  
5 I mean they don't allow us to have their cable but we  
6 have to have their phone. I just can't see. Like I  
7 said, I have the service for three years through  
8 Comcast and I am happy with it. I cannot afford  
9 Bentleyville Phone Company. I have children.

10 When I had Bentleyville, my phone bill  
11 would be \$150 a month. The Comcast service that I  
12 have is \$39, if that. I mean, that is a big  
13 difference. All of my relatives live in Belle Vernon  
14 and Charleroi, so I am calling them when I had the  
15 Bentleyville and it cost. I just can't afford  
16 Bentleyville Phone.

17 JUDGE PORTERFIELD: Does Bentleyville  
18 provide T V cable service also?

19 MRS. GAUDEN: Yes. They provide the cable  
20 service which they said is not in our area. We are  
21 not allowed to have it.

22 JUDGE PORTERFIELD: Mr. Kohler, do you  
23 have any questions for Miss Gauden?

24 MR. KOHLER: One.

25 CROSS EXAMINATION

1 BY MR. KOHLER:

2 Q Do I understand your testimony correctly  
3 that you believe your service today is provided  
4 through Voice Over Internet technology or were you  
5 just describing that technology for the court?

6 A I am describing it. That is what I have  
7 through my digital phone, my digital cable.

8 Q And you believe that is the same as Voice  
9 Over Internet technology? I want to clarify your  
10 testimony.

11 A Digital phone uses technology called Voice  
12 Over Internet Protocol.

13 Q That is your understanding?

14 A Yes.

15 JUDGE PORTERFIELD: My understanding is  
16 different than that and I could be wrong.

17 MR. KOHLER: I can clarify it with my  
18 witness, Your Honor.

19 JUDGE PORTERFIELD: Okay. Mr. Sparks,  
20 even though you are monitoring, I don't think Mr.  
21 Kohler would have any problem with you asking  
22 questions, if anything arises that you would like to  
23 inquire either of Mr. Kohler's witness or of the  
24 complainants.

25 MR. SPARKS: Thank you, Your Honor. The

1 OCA would have no questions for the witnesses. Thank  
2 you.

3 JUDGE PORTERFIELD: Okay. Mr. Kohler, if  
4 you would like to go forward with Mr. Gross'  
5 testimony.

6 MR. KOHLER: Thank you, Your Honor.

7 MICHAEL GROSS  
8 having been duly sworn, testified under oath as  
9 follows:

10 DIRECT EXAMINATION

11 BY MR. KOHLER:

12 Q Mr. Gross, can you please state your name  
13 and business address for the record.

14 A Michael Gross. I work for Comcast  
15 Communications at 15 Center Park Drive in Pittsburgh,  
16 Pennsylvania, 15275.

17 Q You say you are employed by Comcast; is  
18 that right?

19 A That is correct.

20 Q And can you briefly describe your job  
21 responsibilities?

22 A My job title is advance service project  
23 manager which my main responsibility is the digital  
24 telephone system. I am involved with most of the  
25 day-to-day operations of our digital phone service in

1 the Pittsburgh and east Ohio area.

2 Q You have been in this business for a  
3 while; haven't you?

4 A I started in July of 1999 when we were  
5 just becoming A T & T Broadband.

6 Q Can you give us a little background of  
7 your professional career which might be relevant to  
8 this proceeding today?

9 A I actually started with the phone company,  
10 with A T & T, when we were called A T & T Corporation  
11 back in 1988 and moved over from A T & T Corporation  
12 over to A T & T Broadband.

13 Q There has been some discussion about this  
14 by the other witnesses, and it is true, isn't it, that  
15 A T & T Broadband and now Comcast provide the  
16 telephone service through the cable lines; is that  
17 right?

18 A Yes. The phone service comes in the  
19 customer's home through the same wire that the digital  
20 or cable individually or high speed data enters the  
21 home.

22 Q Can you draw a comparison between how  
23 that service works and how maybe for lack of a better  
24 word, traditional telephone service works as it might  
25 be provided by Bentleyville or Verizon, for example?

1           A           There is not a lot of difference, other  
2           than I have to clarify one thing. We are currently  
3           not providing phone service through the Voice Internet  
4           Protocol. Our service comes out of a switch located  
5           in Allegheny Center in Pittsburgh which is an A T & T  
6           switch that Comcast still leases service off of. That  
7           signal is sent to our cable head. It is digitally  
8           broken down and sent over the same cable as your video  
9           signal. When it comes into a network interface unit,  
10          that is applied to one of our customer's homes. It's  
11          signal is then reversed back into the regular phone  
12          service, regular phone signal that goes through your  
13          house on the existing telephone lines.

14          Q           So if I understand your testimony right,  
15          the main difference between the cable service and  
16          traditional phone service is what people call the  
17          last mile. The cable company comes through the cable  
18          line and the traditional service comes in through the  
19          phone line or the local lines; is that correct?

20          A           That is correct.

21          Q           Can you briefly describe the background of  
22          A T & T Broadband/A T & T Corp. in Western  
23          Pennsylvania?

24          A           Well, like I said, I started with the  
25          company in July of 1999. All of the planning had

1 already been established on where we were going to  
2 offer this service. Our first customers were hooked  
3 up in the South Hills in December of 1999, and then we  
4 gradually have been adding customers to our service  
5 since then.

6 Q Let's take a step back. Who originally  
7 had the idea to employ these cable assets in the  
8 western part of the State of Pennsylvania?

9 A The cable assets?

10 Q Yes.

11 A I know right as I became involved with  
12 the company, we were technically TCI, and I don't know  
13 how many names it was prior to that.

14 Q A T & T purchased these assets from TCI;  
15 is that your understanding?

16 A Yes.

17 Q And are you familiar with what A T & T  
18 did to those assets to make them able to provide  
19 telephone service?

20 A Well, to provide telephone service, you  
21 have to have a 20 A plan, the signals going to the  
22 customers' homes and also coming back, in order for  
23 the customer to have high speed Internet. So from a  
24 period sometime before 1999, TCI was upgrading their  
25 cable footprint to be able to provide one of these,

1        what we now call advance services data and digital  
2        phone high speed data. In order for a customer to  
3        have all three lines of product, we had to update our  
4        cable line in the field. We only can offer all this  
5        three lines business or any of our products in the  
6        franchises that we had agreements with.

7            Q        We will get to that. Now the cable  
8        service that A T & T Broadband, now Comcast, now  
9        provides, that is regulated by the PUC?

10          A        Yes.

11          Q        Is it regulated by the PUC in the  
12        identical or similar way as traditional phone line  
13        service?

14          A        Yes.

15          Q        And did A T & T Broadband get certificated  
16        by the PUC to get phone service?

17          A        Yes.

18          Q        Do you know which phone service they were  
19        certificated?

20          A        Our certification only allows us to  
21        provide phone service in our cable footprint within  
22        the Verizon footprint.

23          Q        Is there any Verizon North territory in  
24        there?

25          A        Yes, there is Verizon North area which

1 used to be GTE, but our cable footprint doesn't go  
2 into there.

3 Q So is it your testimony that A T & T  
4 Broadband never was certificated in what I will call  
5 the independent telephone companies?

6 A That is correct.

7 Q Would that include Bentleyville?

8 A Yes, it does.

9 Q Did A T & T ever develop an interest in  
10 providing customers within the territories that  
11 involves footprints?

12 A Yes.

13 Q Can you tell the judge a little bit about  
14 that?

15 A Going back to a statement that Mr. Povich  
16 made, we understand our phone service that we are  
17 providing is much more attractive. A lot of our cable  
18 customers are paying to their independent phone  
19 company that they currently have; however, since we do  
20 not have the interconnection agreement with those  
21 other phone companies, we can't go in and sign up  
22 customers. The decision was made because of the cost  
23 associated with obtaining these interconnecting  
24 agreements, and this is a decision that A T & T  
25 Broadband has made, and at this particular time

1 Comcast has no proposed thinking on it. The cost as  
2 indicated in the agreement at this time is cost  
3 prohibitive and it may make more or better financial  
4 sense to go after these interconnecting agreements  
5 when the voice over Internet protocol becomes  
6 available.

7 Q If you don't know the answer to the next  
8 couple of questions, say so. Are you aware of an  
9 effort by A T & T Broadband to actually get  
10 certificated in Bentleyville and other territories?  
11 Back before the Comcast merger, were you familiar with  
12 that?

13 A I know there was initial inquiries made to  
14 the PUC to be allowed to enter into the discussion  
15 with these phone companies, and I believe the PUC  
16 granted that request, but again that was never taken  
17 further than that because of the cost.

18 Q And so to the best of your knowledge A T &  
19 T Broadband never was issued a Certificate of Public  
20 Convenience to provide service to the Bentleyville  
21 service territory?

22 A No.

23 Q Has A T & T Broadband ever take authority  
24 of service to the Bentleyville territory?

25 A No.

1 Q Has A T & T ever taken authority of  
2 service to the Bentleyville territory?

3 A No.

4 Q You have heard all of the testimony of the  
5 complainants this morning?

6 A Yes.

7 Q Or this afternoon?

8 A Yes.

9 Q Are you familiar with how A T & T  
10 Broadband became able to provide cable service to the  
11 three complainants?

12 A Yes.

13 Q Can you describe that further?

14 A Unfortunately, their testimony is correct.  
15 It's our error that enables us to provide the phone  
16 service. They are in our cable footprint so we can  
17 have the line going to their home. However, the phone  
18 company's jurisdiction is determined by the rate  
19 center. Bentleyville's footprint is determined by a  
20 rate center actually named Bentleyville Rate Center.  
21 These customers' homes should have been in our  
22 ordering system with that rate center attached to  
23 their address. Had that been the case, no matter,  
24 they were told over the phone that the order system  
25 would not have allowed the order to have been entered.

1 It came back as an error because that is not a valid  
2 rate center to offer service. For the few numbers of  
3 customers in the area, they were incorrectly labled in  
4 our billing system with the Charleroi Rate Center,  
5 which is a Verizon Rate Center, that we do have  
6 authority to provide service in. That is why these  
7 customers were told they were serviceable, because  
8 when the sales person they were dealing with looked at  
9 their accounts, it was showing up as the Charleroi  
10 Rate Center and it was a line allowed to go through.  
11 It was telling them they were a serviceable area.

12 MR. POVICH: I'd like to comment.

13 JUDGE PORTERFIELD: Mr. Povich, hold your  
14 comments until he gets done, please.

15 Q You heard Mr. Povich's testimony earlier  
16 about his discussion with Mr. Bell?

17 A That is correct.

18 Q And Mr. Povich brought it to his attention  
19 that he was a Bentleyville customer and wasn't sure  
20 whether he could be served by A T & T Broadband and  
21 wanted to check into that thoroughly?

22 A That is correct.

23 Q Obviously you don't know what the sales  
24 people said or didn't say, but can you indicate what  
25 your review of the facts is that might have happened

1 here?

2 A I am not in a position to dispute or to  
3 verify what was told to Mr. Povich on the phone, but  
4 what I can gather is the reason why Mr. Bell told Mr.  
5 Povich he could provide him phone service, even after  
6 Mr. Povich told him are you sure, because of where I  
7 live, it is because the billing system was telling Mr.  
8 Bell his address was serviceable. And again it always  
9 comes back to his address being assigned to the  
10 Charleroi Rate Center and not the Bentleyville Rate  
11 Center.

12 Q There had been a discussion about the  
13 Bentleyville Rate Center. Can you describe the series  
14 of events that resulted in A T & T Broadband being  
15 transferred to Comcast, when that occurred?

16 Q The official transfer took place in  
17 November of 2002.

18 Q Was that a merger?

19 A I guess, yes, sir, for lack of a better  
20 term, it was a merger.

21 Q You were not intimately familiar with  
22 that transaction?

23 A Yes.

24 Q After the merger, did Comcast take over  
25 service to customers formerly served by A T & T

1 Broadband?

2 A Yes.

3 Q Were those customers served by Comcast  
4 through the same cable assets that were utilized by  
5 A T & T Broadband?

6 A Yes.

7 Q Let's take a step forward. How did  
8 Comcast discover that it was serving customers? Let's  
9 take a step back. Did A T & T Broadband ever discover  
10 that it was serving customers that it wasn't  
11 authorized to serve?

12 A Yes.

13 Q Prior to the merger?

14 A Yes. We have occasionally gotten an audit  
15 and we found customers not in the Bentleyville area  
16 but in other areas in our footprints that are  
17 bordering Comcast.

18 Q But not these particular customers?

19 A No.

20 Q So it was Comcast that had made that  
21 discovery -- is that right -- as to these particular  
22 customers?

23 A We have been doing that since we started  
24 the phone service. We have gone in and done some  
25 audit of the specific areas that border.

1           Q           Was the discovery of these three customers  
2           being served in the Bentleyville Service Center  
3           territory, was that before the merger or after the  
4           merger?

5           A           I am going to have to say that was after  
6           the merger.

7           Q           And so my next question, if it was after  
8           the merger, how did Comcast discover it was serving  
9           customers in the Bentleyville Service Center?

10          A           We went to the system and ran a check on  
11          the billing system, and ran a check on the rate center  
12          compared to the addresses, and we got a hit back that  
13          these addresses were in the wrong rate center.

14          Q           Was that an audit, as I think you  
15          described it earlier?

16          A           Yes. I don't recall exactly why we did  
17          it. I don't remember if there was another area that  
18          we came across customers that was involved incorrectly  
19          so we decided to do it in every area, but that is how  
20          we found it, by going to the billing system and  
21          comparing the address to the rate center.

22          Q           Do you recall that the discovery was made  
23          by, I think you indicated it was post merger?

24          A           Yes, I believe it was, as Mr. Povich  
25          stated, sometime in June of 2003.

1 Q Okay. What did Comcast do in response to  
2 discovering this?

3 A I am pretty sure the first thing we did  
4 was to contact the customers via the phone to advise  
5 them that we had hooked them up in error and that we  
6 needed to take steps to get them connected back to  
7 Bentleyville.

8 Q Did Comcast also notify these customers in  
9 writing?

10 A Yes. We sent them letters.

11 MR. KOHLER: Your Honor, attached to our  
12 prehearing memo, we attached actually a document that  
13 is made up of three separate pieces of coorespondence  
14 and I'd like to have that marked as Comcast Exhibit  
15 No. 1.

16 (Whereupon, Comcast Exhibit No. 1 was marked for  
17 identification.)

18 JUDGE PORTERFIELD: So marked. The three  
19 identical letters to the customers, the complainants?

20 MR. KOHLER: Yes, sir.

21 JUDGE PORTERFIELD: Okay. Yes, those are  
22 marked as Comcast Exhibit No. 1.

23 Q Mr. Gross, are you familiar with these  
24 letters and can you identify them?

25 A Yes.

1 Q What are the letters?

2 A The letters are stating to the customer  
3 why we reluctantly have to have them moved back to  
4 Bentleyville Phone Company, and also explains the  
5 cause of the error, and for the customer's  
6 inconvenience that there is restitution that we can  
7 make to them to go more smoothly for them. Again, I  
8 don't know if I can interject, I think everyone needs  
9 to understand we are in the business of getting  
10 customers, we are not in the business of losing  
11 customers. And we are doing all of this reluctantly  
12 because of the PUC regulations that we have to follow  
13 as the telephone provider in the State of  
14 Pennsylvania.

15 Q I notice that the three letters are from  
16 Michael Gross. I take it that is you?

17 A Yes.

18 Q And I also notice that the letters, copied  
19 on all three letters are copied Joan Smith from the  
20 PUC; is that correct?

21 A Yes.

22 Q Can you then explain why Joan was copied?

23 A Because when we found the error, we  
24 realized that this was something that the PUC needed  
25 to be aware of. We thought it was our duty to let

1       them know that we had hooked up customers that we  
2       should not and we felt it best we tell them we are  
3       making every attempt to correct the situation before  
4       they got any type of complaints from Bentleyville, or  
5       whoever, that we had taken their customer.

6           Q       Also in the letter is copies on Walter  
7       Siemba (phonetic) from Bentleyville Telephone Company?

8           A       Yes.

9           Q       Do you know who he is and why he was  
10       copied?

11          A       I don't know his exact title. I think he  
12       is obviously an executive in the Bentleyville  
13       Telephone Company.

14          Q       You were just making Bentleyville aware  
15       that you were trying to correct the situation?

16          A       Right.

17          Q       You indicated that you wanted to make the  
18       Commission aware of the problem. Was there any other  
19       discussions with the Commission staff about this  
20       problem that you were aware of?

21          A       Yes. We had meetings with some other  
22       Comcast legal team and the PUC, to let them know, to  
23       keep them abreast of everything that we were doing to  
24       correct the situation.

25          Q       Now, I think you heard, I believe it was

1 Mr. Povich testified that he still is a Comcast  
2 customer. Let me take a step back. Do you know how  
3 many customers in total were effected by this billing  
4 system error in Bentleyville's territory?

5 A Yes, we have around six.

6 Q And three of the six are here today; is  
7 that right?

8 A Right.

9 Q And so can you explain what the current  
10 status of the service is to those six customers?

11 A Their current status is they are still all  
12 customers of ours and we told the PUC that we agree  
13 with the PUC that while these three were appealing  
14 this decision, that we would keep them as our  
15 customer.

16 Q What about the other three?

17 A The other three took our offer and made  
18 other arrangements. They are no longer on our  
19 service.

20 Q I think there was Mr. Povich indicated  
21 that I guess he appreciated that you made an offer but  
22 somehow indicated Comcast had done something wrong and  
23 that is the reason they were making an offer. Do you  
24 agree with that testimony?

25 A No, I don't believe we did something

1 wrong. We did something in error but we are not  
2 trying to get rid of customers that we don't want. We  
3 are trying to put customers back on the phone service  
4 so that they legally need to be connected. As long as  
5 they stay connected to Comcast, they are hooked up  
6 illegally, from a PUC standpoint.

7 Q So the reason that you made the offer was  
8 because the company felt it was the right thing to do?

9 A Yes. If you change phone services  
10 voluntarily, you are always charged a fee, and  
11 obviously that is not fair to these three customers to  
12 be billed for Bentleyville for some mistake that we  
13 did, so we agree to reimburse all three customers any  
14 amounts of money that Bentleyville would charge them  
15 for switching back to their service and also agreed to  
16 give them three month's worth of what they were paying  
17 us for their phone service.

18 Q Is that offer still available to these  
19 complainants?

20 A It sure is.

21 Q Let me ask you a question. If you don't  
22 know the answer, just say so. If Comcast decided that  
23 it wanted to be legally authorized to have employed  
24 service in Bentleyville's service territory and had to  
25 negotiate an Internet Agreement with Bentleyville in

1 order to make that legal, do you have any idea how  
2 long that would take?

3 A I have heard from other sources that an  
4 interconnection agreement at this time with any  
5 I C O, including Bentleyville, would require the  
6 involvement of A T & T, and that is wholly providing  
7 their dial tone from their switches in the City of  
8 Pittsburgh, and it can take upwards of 12 to 16  
9 months.

10 Q Is there anything else that you want to  
11 discuss today?

12 A Not that I can think of.

13 MR. KOHLER: I have nothing more, Your  
14 Honor.

15 JUDGE PORTERFIELD: Mr. Povich, now you  
16 can make the comments that you wanted to make earlier  
17 and then you can ask Mr. Gross questions, if you wish.

18 MR. POVICH: The only thing I wanted to  
19 comment on is what Mr. Gross said about a billing  
20 error about our particular address is coming up as  
21 serviceable. That is incorrect, because on the  
22 Internet, it did come up as not serviceable and that I  
23 could not obtain phone service, and I brought that to  
24 A T & T's attention, and they told me that was  
25 incorrect, and they did explore why that was coming up

1 that way. Once again that delayed my hookup for two  
2 weeks, and they contacted the PUC, and it was cleared  
3 because it was going to cable. What happened, I don't  
4 know, but once again, as far as saying it was  
5 incorrectly posted as serviceable, that is not true.  
6 And it was brought to their attention.

7                   Mr. Gross stated that A T & T was aware of  
8 this before the Comcast merger. Then I don't  
9 understand why it wasn't acted on prior to the Comcast  
10 merger, and also too, I do appreciate the fact that  
11 Comcast wanted to do what was completely right, but I  
12 think the reason why, the reason they brought this  
13 forth, they wanted to make sure, they wanted to get  
14 out of any type of liability. That three months is  
15 nothing. We are looking at three years, ten years, 30  
16 years down the road. That is when you are talking  
17 about a lot of money here. I think that they wanted  
18 to switch the phone and make it nice for us to switch  
19 over, because once again, I think there is the wrong  
20 parties are on the phone today. I think they  
21 obviously do get the fact that they did make a  
22 mistake, they knew -- at least I know in my particular  
23 situation that I was listed as non serviceable and it  
24 still went through, but at this point in time, for  
25 some reason, it is the parties are here now in front

1 of the judge instead of Comcast and Bentleyville,  
2 where the liability really belongs with, because I  
3 think right at this point, if they really wanted to  
4 step up to the plate here, they shouldn't be trying to  
5 document these, they should be trying to make  
6 restitution with Bentleyville with the mistake they  
7 made to us.

8 As far as the other three people in the township,  
9 I don't know their incomes. Maybe income isn't an  
10 issue. Maybe they got a wireless plan. Better for  
11 them. Who knows? Currently I know Comcast works for  
12 them and I know you are not in the business of dumping  
13 people, but I think you are in the business of getting  
14 out of any liabilities that you think you are  
15 responsible for in this mistake, and I think we  
16 shouldn't be penalized for that. We shouldn't be  
17 going back from a \$30 phone bill to a \$150 phone bill.  
18 I can't do it. And you know, I think Comcast knew  
19 there was a liability on their part. They made it  
20 like they stepped up to the plate to correct the  
21 situation, but I think they may have tried to step up  
22 to the plate to get out of the situation, and I think  
23 they are fully aware of that, and I think that is a  
24 big issue here. I hope that the judge takes that into  
25 consideration in considering that is why they have us

1 on this line today, and yes, it is between  
2 Bentleyville and Comcast, and Comcast figured they can  
3 make restitution for the mistakes they did to these  
4 three people.

5 JUDGE PORTERFIELD: I don't mean to  
6 prolong this but I would like to ask a question. I  
7 don't understand what you mean by restitution as  
8 between Bentleyville and Comcast. Who owes whom and  
9 under what conditions, according to you?

10 MR. POVICH: At this point, like I said, I  
11 want to be able to do like --

12 JUDGE PORTERFIELD: No, no, you are not  
13 answering my question. What do you mean by  
14 restitution as between Bentleyville and Comcast?

15 MR. POVICH: As far as some type of  
16 agreement that Bentleyville can provide us the same  
17 level of service at no additional cost.

18 JUDGE PORTERFIELD: What incentive does  
19 Bentleyville have to do that?

20 MR. POVICH: I am sure at this point that  
21 is probably the issue that I am sure there is  
22 pressure to Bentleyville.

23 JUDGE PORTERFIELD: Who has pressure?

24 MR. POVICH: Comcast.

25 JUDGE PORTERFIELD: To do what?

1 MR. POVICH: They are illegally obtaining  
2 some of Bentleyville's customers.

3 JUDGE PORTERFIELD: The only reason they  
4 illegally obtained these customers, they haven't been  
5 able to terminate you because of the pending  
6 complaint; is that correct, Mr. Kohler?

7 MR. KOHLER: Yes.

8 JUDGE PORTERFIELD: Go ahead.

9 MR. POVICH: Once a again that is a  
10 financial burden to myself. I have adjusted my income  
11 and my way of living according to the way -- I budget  
12 my income according to how I have been set up here  
13 with Comcast. I challenged it. I did this from the  
14 very beginning so this wouldn't come back later and  
15 bite me in the butt, but unfortunately it has. I  
16 tried to bring this to everybody's attention. I could  
17 have let this go through but I challenged it. In the  
18 back of my mind, I wondered what was happening. I was  
19 not sure of what is going on. I think we should be  
20 able to maintain this level of service with Comcast.  
21 They should be able to take on Bentleyville customers.  
22 No, I don't think it is right, but that is how the law  
23 is. Unfortunately the mistake was made. I don't  
24 think we should have the rug pulled out from under us.

25 JUDGE PORTERFIELD: I think you are

1 starting to repeat yourself. Is there anything new  
2 you would like to add?

3 MR. POVICH: That is it.

4 JUDGE PORTERFIELD: Karen Gauden, is there  
5 anything you would like to add?

6 MRS. GAUDEN: Yes. I have a work order  
7 where when they hooked me up on 6/23/01, how would  
8 they not know that this is not their area, where they  
9 have the service area, where they have the service  
10 area number, management area number, and the map code?

11 JUDGE PORTERFIELD: Is that Comcast or  
12 A T & T?

13 MRS. GAUDEN: It was A T & T back then.

14 JUDGE PORTERFIELD: Would you know how  
15 would they know it wasn't their area with all of the  
16 numbers they have down there?

17 MR. KOHLER: Your Honor, I will take that  
18 as a question to the witness.

19 THE WITNESS: I will be happy to answer  
20 that. These customers live in our service area.  
21 These customers were valid cable and HSD customers.  
22 However, our serviceable footprint is overlapped by  
23 these telephone boundaries called rate centers. They  
24 do not follow any geographical boundaries, not limited  
25 to communities. They are areas established by the PUC

1 for the phone companies to provide servicing so that  
2 the Charleroi franchise area is here in the servicable  
3 footprint. Some people in Charleroi live in the  
4 Charleroi Rate Center area, which is Verizon  
5 territory, and some people live in the Bentleyville  
6 Telephone Company service area, but it's our cable  
7 footprint and they couldn't tell that by the 239  
8 number that that was Bentleyville.

9           Again, what I am trying to explain to  
10 everyone is that our billing system is in error and  
11 had these customers' addresses listed as Charleroi  
12 Rate Center. Had any of these customers tried to take  
13 the Bentleyville phone number and tried to have what  
14 is called port -- if customers live in the Verizon  
15 telephone area, they can get our service and keep  
16 their Verizon telephone number. That is what is  
17 called porting. Pretty much everyone who changes  
18 phone companies does that, because they don't have to  
19 change phone numbers. Had any of these customers  
20 tried to do that with their phone number, it would not  
21 have worked.

22           MR. POVICH: Yes, it did, that is what I  
23 did. And it did come up no service. That is a false  
24 statement.

25           JUDGE PORTERFIELD: Wait, Mr. Povich. Do

1     you still have the same Bentleyville phone number you  
2     had?

3                     MR. KOHLER: That is a good point.

4                     MR. POVICH: When I applied for the  
5     service, I had a 239 number.

6                     JUDGE PORTERFIELD: But you couldn't keep  
7     that number?

8                     MR. POVICH: No.

9                     THE WITNESS: That is what I am trying to  
10    explain. The sales person that assisted you should  
11    have told you that you were not in a serviceable area.  
12    But the fact that your address had the Charleroi Rate  
13    Center as its address, they were able to give you a  
14    Charleroi Rate Center phone number. The only reason  
15    why you were able to come over to our phone service,  
16    they could give you this other number. Had your  
17    household address in our billing system been labeled  
18    with the Bentleyville Phone Company Rate Center, we  
19    would not have been able to port your number and we  
20    would not have been able to give you a new number for  
21    that rate center because we don't have any phone  
22    numbers, we don't have an inventory for that rate  
23    center. That is why when you ended up with a new  
24    service you had to get another number because we don't  
25    have the ability to port Bentleyville Phone Company or

1 provide any numbers in the Bentleyville Rate Center.

2 MRS. GAUDEN: Can I add -- I don't mean to  
3 interrupt. Let me ask you this. What are we supposed  
4 to to at this point now? Is there something that  
5 Comcast has to work out with Bentleyville? At this  
6 point now, you are placing the financial burden on us.

7 JUDGE PORTERFIELD: Do you have a question  
8 for Mr. Cross?

9 MRS. GAUDEN: Well, that was the question.

10 JUDGE PORTERFIELD: Was the question what  
11 is Comcast going to do to help you?

12 MRS. GAUDEN: Because I can't go back to  
13 Bentleyville anyhow. That is not an issue with me. I  
14 am not willing to go back to Bentleyville. If there  
15 is an appeals process, I have to go through that. I  
16 can't do it. It's out of the question, unless they  
17 will provide me some type of a rate that is similar to  
18 what I currently have.

19 JUDGE PORTERFIELD: I think that Mr.  
20 Kohler suggested maybe earlier that maybe your  
21 complaint is against Bentleyville extending the area  
22 of service.

23 MRS. GAUDEN: Well, we tried that.

24 JUDGE PORTERFIELD: If you tried that, I  
25 am not trying to give you advice. That was my

1 impression of what you were saying.

2 Mrs. Barnot, do you have any concluding comments?

3 MRS. BARNOT: Well, I would like to say I  
4 have been extremely happy with the service that we had  
5 with Comcast. In fact, I just recently tried to  
6 contact them about extending my service to the  
7 extended calling area, and, of course, was declined  
8 because of the hearing pending. But I just feel as  
9 though in today's day and age, that we should be  
10 allowed to in a situation with the Bentleyville  
11 Telephone Company, a privately owned telephone  
12 company, we don't have a choice. And getting this  
13 Comcast line was like manna from heaven for all of us,  
14 and I just think that it is unfair for it to be taken  
15 away from us.

16 JUDGE PORTERFIELD: Okay. Thank you. If  
17 there is no objections, I will admit into the record  
18 what I have identified as Comcast Exhibit No. 1, the  
19 three nearly identical letters to the Complainants  
20 dated June 22, 2003.

21 (Whereupon, Comcast Exhibit No. 1 was admitted into  
22 evidence.)

23 Is there anything else that you would like to add  
24 this morning, Mr. Kohler?

25 MR. KOHLER: A couple of things, Your

1 Honor. One of them is a procedural matter and one  
2 maybe you can take as legal argument. One is a  
3 procedural matter, I think, and I want to check on  
4 this. Mr. Gross may have provided information in his  
5 testimony that is just a couple of sentences which are  
6 proprietary, and I want to check on. I don't have any  
7 problems with the complainants, of course, hearing  
8 that, but if they are, I would ask if I could request  
9 that the transcript or that this portion of the  
10 transcript be marked proprietary. It was the portion  
11 of the testimony that explained that Comcast was still  
12 using A T & T switches.

13 JUDGE PORTERFIELD: In Allegheny Center.

14 MR. KOHLER: I will check on that and  
15 write you a letter one way or the other, and we will  
16 furnish a copy to the court reporter.

17 The other point that I wanted to make and I can  
18 speak --

19 JUDGE PORTERFIELD: Maybe rather than  
20 marking that proprietary -- I don't know how relevant  
21 it is -- maybe we could just redact it, just eliminate  
22 it from the transcript?

23 MR. KOHLER: I will be in contact as to  
24 working out which portion of the transcript we are  
25 talking about.

1           The other point I wanted to make, which I guess  
2           in part is an explanation to the complainants, this is  
3           an odd consumer complaint case, the first one I have  
4           ever been involved in where the complainants are  
5           telling the complainant's company how good their  
6           service is, which we greatly appreciate. I have been  
7           involved in these types of affairs for years in both  
8           representing A T & T, and A T & T Broadband, and  
9           Comcast, and I sort of sense the frustration of the  
10          complainants and there has to be a way that this can  
11          be fixed as to why can't we choose our phone company,  
12          why couldn't Comcast do something to get authority  
13          that they need to service, but I think what you have  
14          to understand from a legal perspective is that  
15          companies like Bentleyville were protected by Congress  
16          in the 1996 Telecommunication Act from competition for  
17          an extended period of time, and while A T & T  
18          Broadband tried and was partially successful in  
19          breaking that up, specifically for a cable to have  
20          the problems that A T & T Broadband ran into, and no  
21          matter how hard they tried, the independent companies,  
22          and including very much Bentleyville, just put up more  
23          and more obstacles, imposed more and more costs, and  
24          eventually you are faced with, frankly, years of more  
25          negotiations and litigation, and they essentially gave

1 up. And that is where we are today. And so, yes, we  
2 would like, Comcast would like to continue to serve  
3 you, but we have to comply with the law. For us to  
4 try to change our legal situation, as Mr. Gross  
5 explained, would cost, not only cost a lot of money  
6 but take a long period of time, and while Comcast may  
7 be prepared to do that at some point in the future, at  
8 this point in time it's just premature for us to try  
9 to grapple with that. So it is a difficult legal  
10 situation, one that certainly we prefer not to have to  
11 deal with. Certainly we appreciate that, however, it  
12 doesn't do you any good as far as our position related  
13 to the future, but we certainly appreciate the fact  
14 you like the service and the rate we have been  
15 charging for the service.

16 JUDGE PORTERFIELD: Okay. Thank you, Mr.  
17 Kholer. Any concluding comments Miss Gauden? This is  
18 the last of the comments.

19 MRS. GAUDEN: No, not at this time.

20 JUDGE PORTERFIELD: Mrs. Barnot?

21 MRS. BARNOT: Just to reiterate what I  
22 have already said, and we did try to fight this, I  
23 might mention, about 25 years ago. To just have our  
24 little six mile -- there is a six mile radius area in  
25 Fallowfield Township that is governed by the

1 Bentleyville Telephone Company, and we tried even  
2 legally to get them to just release our six mile  
3 radius portion and was unsuccessful at that time, but  
4 certainly hoped that things would change after 25  
5 years and that this might be our answer, finally. So  
6 I am just hoping that we would be able to keep this  
7 service and that it would be, you know, that we have a  
8 choice, that we just have a choice. That is all I  
9 have.

10 JUDGE PORTERFIELD: Mr. Povich, one  
11 concluding comment?

12 MR. POVICH: I don't think at this time.

13 JUDGE PORTERFIELD: Okay. If there is  
14 nothing else, I thank you for your participation,  
15 and the exhibits are admitted, and I bid you a good  
16 day. We will conclude this afternoon's hearing.  
17 Thank you.

18 (Whereupon, at 2:30 p.m., the hearing was concluded.)  
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C E R T I F I C A T E

I hereby certify, as the stenographic reporter,  
that the foregoing proceedings were taken  
stenographically by me, and thereafter reduced to  
typewriting by me or under my direction: and that this  
transcript is a true and accurate record to the best  
of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

BY: Anne V. Thompson  
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