

CLEARINGHOUSE REVIEW

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INSIDE

Medicare Secondary
Payer Procedures for
Recovery of Program
Expenditures from
Liability Insurance
Payments

Expanding Low-Income
Communities' Access to
Telecommunications
Technology

Tenants' Rights to
Pretermination Notice in
Cases of Landlords'
Nonpayment of Utilities

The Divisible Pension:
Another Income Source
for Low-Income
Divorced Clients



Assisting Clients Seeking the Road to Decent Jobs: Job Training Advocacy

Expanding Low-Income Communities' Access to Telecommunications Technology

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I. Introduction

Utility regulation provides an opportunity for advocates to address two problems important to low-income people: lack of access to basic phone service and lack of access to computer and telecommunications technology and related educational opportunities. /1/

Lack of a telephone is common problem for low-income families. While 93.6 percent of all American households have a phone, 31 percent of all families receiving food stamps have no telephone, and 43.5 percent of households completely dependent on public assistance lack a telephone. /2/ African American and Hispanic households are more than three times as likely as white households not to have phones. /3/ Households headed by women are also more likely not to have a telephone. /4/

Not having a phone poses significant problems. It creates a barrier to getting timely medical attention and makes it difficult to report other emergencies such as fire or crime. It jeopardizes access to public assistance programs. More and more social service agencies depend on the telephone to provide services. Outreach, consultation, and, increasingly, intake and referral functions are conducted over the phone for a host of essential services. One study has shown that the inability to contact agencies by phone was one important factor in keeping people from getting benefits for which they qualified. /5/

The lack of a telephone is also a barrier to employment. Jobs are frequently offered and accepted via telephone. /6/ In addition, lack of phone service has a serious impact on a household's ability to keep gas and electric service, making it more difficult for a household to enter into utility payment plans, to contact social service agencies, and otherwise to respond to an impending shutoff. One study conducted by the National Consumer Law Center for the Maine Public Utilities Commission showed that 80 percent of disconnected households had no telephone and that people without a phone were underrepresented in utility payment plans. /7/

Today, however, phone lines are used for far more than just voice communications. Phone lines make possible data transmission, computer networking, and the use of the developing "information superhighway."

Many jobs in the future will call for people who are well educated in the use of telecommunications and computer technology. Already a working person who is able to use a computer earns 10 to 15 percent more than someone in a similar job who cannot. /8/ Computer networks offer their users access to communities of people who share interests, make possible communication around the globe, and provide access to much of the world's information resources. Public data are becoming available on line, and the expectation of access has taken root. Those with access have a distinct and growing advantage. Those without access will fall behind.

Obviously, the many low-income families without phones are missing out on these developments. However, the problem extends to those with phones as well.

According to 1993 census data, /9/ the wealthier the family, the more likely it is to own a computer. Seventy-four percent of families making over \$75,000 own at least one computer. By contrast, only 15 percent of families with incomes under \$20,000 own a computer. The census revealed a racial disparity as well. White families are three times as likely as African American or Hispanic families to have a computer. As computer networking becomes more prevalent, the division of society into information "haves" and information "have nots" looms larger.

Currently, much of the future of telecommunications and how that future will affect low-income people is being decided in proceedings in front of state public utility commissions. In these proceedings, existing phone companies are seeking to change the way they have historically been regulated, and new competitors are submitting to state regulation for the first time.

II. The Ameritech Ohio Alternative Regulation Case

A. Background

During much of 1993 and 1994, the Legal Aid Societies of Dayton and Cleveland represented clients in a case in front of the Public Utilities Commission of Ohio (PUCO). That case provided the opportunity to address many of these issues. The result of that case includes some important steps forward for low-income communities and points to opportunities for advocates for low-income people.

On March 23, 1993, Ameritech Ohio (the Ohio Bell Telephone Company) began seeking alternative regulation from PUCO. On April 6, 1993, the Office of Consumers' Counsel, the statutory legal representative of Ameritech Ohio's residential customers, filed against Ameritech a complaint alleging that its current rates were unjust and unreasonable and should be reduced. By entry dated September 2, 1993, PUCO consolidated the two cases for purposes of hearing.

Twenty-five parties filed for and were granted intervention in both of these cases. The intervenors included long-distance carriers, cable operators, other telecommunication providers, and a variety of entities representing consumer interests. The consumer parties included the Office of Consumers' Counsel, American Association of Retired Persons, Greater Cleveland Welfare Rights Organization, the Edgemont Neighborhood Coalition of Dayton, the City of Cleveland, the City of

Columbus, the City of Toledo, the Ohio Department of Education, and the Ohio Department of Administrative Services. These groups coalesced during the course of the case into the "Consumers' Coalition."

Ameritech's application for alternative regulation was part of the company's effort to change the way it was regulated in Ohio. Previously Ameritech, like most utilities, was subject to rate-of-return regulation. Using rate-of-return regulation, utility regulators examine the cost of providing service, the amount of investment, the fair rate of return in comparative settings, and set rates based upon those factors. Ameritech was seeking the alternative of price-cap regulation, which commits the company to providing services at certain set rates but eliminates all regulation of the amount of profit the company may make. Ameritech, along with just about every other player in the telecommunications field, wanted to enter new areas of service provision and claimed that alternative regulation was a prerequisite to being able to do that.

The Ameritech case took place within an evolving regulatory context. In 1989, the Ohio legislature enacted new legislation that provided for alternative regulation of telecommunications companies under certain circumstances. /10/ The legislation established that it was the telecommunications policy of the state (1) to ensure the availability of adequate basic local exchange service to citizens throughout the state; (2) to maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service; (3) to encourage innovation in the telecommunications industry; (4) to promote diversity and options in the supply of public telecommunications services and equipment throughout the state; and (5) to recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate. /11/ The legislation further provided that PUCO could grant alternative regulation where it found that it would be in the "public interest" to do so. /12/

In rules adopted by the Ohio Public Utilities Commission in 1993, PUCO specified how an applicant for alternative regulation may show that its proposed plan is in the public interest. Applicants must demonstrate, among other things, "how the plan might impact the goal of universal service. . . ." Each alternative regulation proposal must also include "commitments," expenditures beyond what is needed to meet minimum service standards. The utility company must demonstrate how those commitments are consistent with the policy goals of the state law. /13/

Ameritech's application for alternative regulation included a number of commitments to make general infrastructure improvements as well as a commitment to create a broad-band interactive network connecting Ohio's schools. The company widely promoted this educational commitment as its primary way of trying to win public support for its proposal.

On March 25, 1994, PUCO filed its report, which concluded that the company had been overcharging its customers and that the "commitments" made by Ameritech in its alternative regulation application were not sufficient to justify the regulatory relief Ameritech was seeking. Staff reports are not dispositive of any issues but do provide an indication of the Commission's likely findings.

It was in this context that evidentiary hearings on the consolidated case commenced on June 22, 1994, and continued through September 13, 1994. Through the cross-examination of Ameritech's witnesses and through presentation of their own witnesses, the consumer coalition developed a record showing, among other things, that Ameritech had been overcharging its customers, that the company's education commitments were hollow and somewhat illusory, and that the existing low-income telephone program was ineffective, leaving a great many low-income Ohioans without phones.

Ameritech claimed that its educational network would lessen the inequality between wealthy and poor school districts. However, the evidence showed that, in order to connect to the network, each school would have to provide equipment costing between \$35,000 and \$50,000 per classroom. Because of the cost barrier, it was likely that only wealthy school districts would take advantage of this new technology. The effect would be to increase rather than decrease the disparity in educational opportunity between wealthy and poor school districts.

In addition, cross-examination established that, where students did have access to computers and networks at school, those students who also had access to similar technology at home would derive far more benefit than students who did not have after-school access.

Further, an expert witness sponsored by low-income advocates, Nancy Brockway from the National Consumer Law Center, also testified that access to and knowledge about computer networks was becoming more and more important to participation in the economic and political life of the country and that low-income communities had virtually no access to those networks. Without some affirmative corrective action, she testified, it was likely that the proliferation of this technology would reinforce and exacerbate existing economic and racial inequality.

With regard to basic phone access, the evidence showed that service for low-income people was far from "universal" and that existing low-income telephone programs, with their very limited eligibility and benefits, were not helping correct the problem in any meaningful way.

B. The Agreement

While the evidentiary hearings were pending, Ameritech and the consumer coalition began to negotiate in earnest. The consumer coalition was able to fashion a joint negotiating position and strategy. The Edgemont Neighborhood Coalition pressed for community computer centers and the education technology fund. Other coalition members pushed other issues. Altogether, the consumer coalition sought computer centers, a school technology fund, general rate reductions for all residential customers, and the establishment of a Universal Service Assistance (USA) program that would allow low-income people to get reduced-rate phone service without having to pay a deposit and connection charge. Coalition members remained unified throughout the negotiations and continued to support these goals, all of which were achieved in the final agreement with Ameritech. PUCO staff also joined the negotiations and ultimately signed the agreement. /14/

C. A Step Toward Universal Phone Service

The USA program has broad eligibility. Recipients of home energy assistance, Ohio Energy Credits, Aid to Families with Dependent Children, supplemental security income, general assistance, disability benefits, and/or Medicaid are eligible for the USA program. Approximately 600,000 households in the Ameritech service territory qualify; 100,000 of these households do not presently have a phone.

Benefits include an \$8 per month discount from standard prices with free touch-tone service. As standard prices decrease, as they will for all residential customers under the settlement, prices for customers under the USA program will decrease as well.

For a USA program participant, current monthly rates are as follows:

Flat Rate: \$18.87 -- \$8 = \$10.87

Call Plan 30: \$13.22 -- \$8 = \$5.22

Minute Line: \$10.32 -- \$8 = \$2.32

Non-flat-rate customers will be capped at the flat rate for the first six months and be able to switch to flat rate at any time for free. No deposit is required. No service connection fee is charged. Free toll restriction and 900 and 976 blocking are available if requested. The company must enter into arrearage payment arrangements with those who have been or who are in danger of being disconnected. There are some limitations. USA program participants, unless they have a special need, cannot take most deluxe or custom calling services and cannot have other telephone lines in their households.

A committee of low-income advocates and Ameritech has been established and is working to ensure that this program is aggressively marketed.

D. Access to the Information Superhighway

The agreement addresses low-income persons' need for access to technology in two ways.

The settlement provides for 14 computer centers to be created in seven Ohio cities in the Ameritech service territory. /15/ Each center will receive \$150,000 over three years for staff and equipment. The total expenditure on centers will be \$2.2 million.

The community computer centers will be designed to make computer technology and networks available in low-income neighborhoods. Generally located in storefronts, they will bring together hardware, software, and network access in a tutorial and workshop atmosphere. In addition, they will be staffed by experts in community outreach and computer technology and will be open in the evening.

In this respect, the result of the Ameritech alternative-regulation case is precedent setting. This is the first time that community computer centers have been included in the settlement of a case in front of a state public utility commission.

An \$18 million school technology fund was also established. The fund will be administered by the state Department of Education. Low-income school districts will be given preference in accessing these funds, which can be used to purchase "consumer premises equipment" for use with computer and distance-learning networks.

III. Conclusion

The settlement in Ohio was made possible by the combination of several factors. PUCO's initial staff report, which supported consumers' allegations that Ameritech was taking excess profit and that its commitments were insufficient, provided consumers needed leverage. State regulations specifically required that the "public interest" and "universal service" be considered in the regulatory process. The evidentiary record supported the need for computer centers and an education fund in order for alternative regulation to be in the public interest. In addition, the evidence supported further efforts at overcoming barriers to low-income persons' ability to receive telephone service. The developing competitive environment spurred Ameritech, as it will several other large companies, into competing for pieces of an expanding telecommunications pie. The consumer coalition's demands had a realistic price tag. Finally, the coalition attempted to address the needs of all of its members, including low-income persons' interests, and stuck together throughout the negotiations.

On November 23, 1994, PUCO approved the settlement because the parties to it represented a broad enough spectrum of interests, because the concerns of its staff were satisfied in the agreement, and because the record developed in the hearing supported the terms of the settlement.

Throughout the country other "baby Bells" will be seeking regulatory relief from public utility commissions. Each such case will present the opportunity to raise many of the issues raised in the Ohio Ameritech case. In addition, cable and long-distance companies will seek to begin providing local phone service, in competition with the existing phone companies. These would-be competitors will be seeking the blessing of state regulators, thereby providing additional opportunities to further low-income persons' interests.

Footnotes

/1/ All but five states allow telephone companies to seek alternative forms of regulation. In 34 states, at least one company is already operating under alternative regulation. In 11 states, all telephone companies are already covered. K. Bauer, National Ass'n of Regulatory Utility Commissioners, Report on the Status of Competition in Intrastate Telecommunications (Sept. 23, 1994).

/2/ A. Belinfante, Telephone Penetration and Household Family Characteristics (1989) (Federal Communications Comm'n CC Docket No. 87-339).

/3/ Id., Monitoring Report: Telephone Penetration and Household Family Characteristics (1991) (Federal Communications Comm'n CC Docket No. 80-286).

/4/ Belinfante, supra note 2.

/5/ U.S. Bureau of the Census, Population Div., Current Population Survey: Computer Use in the United States (Oct. 1993).

/6/ In Butte Community Union v. Lewis, 745 P.2d 1128, 1131 (Mont. 1987) (Clearinghouse No. 37,503), the court found that lack of telephone service was a significant barrier to employment.

/7/ Testimony of Nancy Brockway, National Consumer Law Center, in Office of the Consumers' Counsel v. Ohio Bell Tele. Co., No. 93-487-TP-ALT (Ohio Pub. Util. Comm'n filed Nov. 23, 1994) (Clearinghouse No. 50,279).

/8/ Newsweek, Feb. 22, 1995, at 50 (quoting Alan Kruger, chief economist for the U.S. Labor Department).

/9/ U.S. Bureau of the Census, Population Div., Current Population Survey: Computer Use in the United States (Oct. 1993).

/10/ Ohio Rev. Code Sec. 4927

/11/ Id. Sec. 4927.02

/12/ Id. Sec. 4927.04

/13/ Rules for Alternative Regulation of Large Local Exchange Companies, Case No. 92-1149-TP-COI (Mar. 10, 1993). "Universal service" is not just an Ohio policy. The Communication Act of 1934, which created the Federal Communication Commission, proclaimed that the goal of telecommunication regulation was "to make available, so far as possible, to all the people of the United States, a rapid, efficient, nationwide and worldwide . . . communication service with adequate facilities at reasonable charges . . . for the purpose of promoting safety of life and property through the use of . . . communications." 47 U.S.C. Sec. 151.

/14/ Copies of the agreement as well as the PUCO staff's recommendations are available from the Clearinghouse, No. 50,279.

/15/ Cleveland, Columbus, Dayton, Toledo, Akron, Youngstown, and Marietta will all receive centers.