

continually enter and leave the market, most new entrants that install their own facilities and begin to develop a substantial market share quickly become candidates for a merger or acquisition. Other companies enter the market with facilities, but focus their efforts on large business customers.

Going from a monopoly (AT&T) in 1984 to an oligopoly in the late 1990s has had some advantages for consumers. Long-distance prices have fallen, and pricing options have increased. Offsetting these changes, though, has been the increase in the cost of local telecommunications service, prompted in large part by the reallocation of costs from long-distance companies to local consumers. For example, from 1984 through 1994, the price that long-distance companies had to pay for one minute of access on a local telephone network dropped from an average of 17 cents per minute to an average of 6 cents per minute. (11) The local phone companies passed on the difference to local residential consumers. The charge for local phone service has risen from a nationwide average for residential consumers of \$11.58 in 1983 to \$19 in 1994<sup>4</sup>. (11) The net effect has been a sustained price reduction for consumers who make a large number of long-distance calls and a net price increase for consumers who make relatively few long-distance calls. Overall, during the period from 1984 (when the AT&T system was broken up by order of a federal court) until 1994, the average monthly telephone bill for a residential consumer increased from approximately \$38 to about \$61 – a 60 percent increase in 11 years. (11)

<sup>4</sup>These figures represent the average monthly charge for a private line (i.e. one party) service with unlimited local calling. Subscriber line charges and taxes are included in these rates.

The advent of competition in the long-distance market also has given rise to consumer fraud. One of the most common types of fraud created by telephone utility industry competition is “slamming”—the unauthorized change of a utility service provider. Slamming often occurs in the context of high-pressure and deceptive marketing telephone contacts or as part of “contests” in which participants are not fully informed that they have authorized a change in their service provider. As a direct result of deregulation, slamming has become a major consumer-protection problem in the long-distance telecommunications industry.

### ***Local Telecommunications Service***

Local phone service for residential consumers and for most business consumers remains a virtual monopoly everywhere in the United States. The only exception is for business consumers in some of the country’s largest cities, where Competitive Local Exchange Carriers (CLECs) are beginning to install their own facilities. In a few places, CLECs have successfully entered the market and taken large business customers away from the local phone company. Few markets in the country have CLECs serving individual residential consumers in other than token numbers. (3)

The Telecommunications Act of 1996 was supposed to change this. That law was designed to enhance the level of competition for local phone service and, at the same time, allow local phone companies to enter the market for long-distance services. The expectation was that this would improve the level of competition in both markets simultaneously.

In reality, though, the law has not accomplished these objectives. The long-distance market continues to be dominated by the three major companies. The local phone market—particularly for residential consumers—remains a monopoly, and those monopolies are getting larger through mergers. In 1996, there were eight large “local” telephone companies. If the currently pending mergers between SBC-Ameritech and Bell Atlantic-GTE are approved, there will be just four in the near future. Further, cable television systems, which were believed to be the natural competitors of the local phone monopolies, have largely decided not to compete against the local phone companies. While this may change with the proposed merger of AT&T and TCI, the extent and timing of that competition remains a matter for much speculation.

In several states and at the federal level, movements are underway to introduce vigorous competition in the local market. So far, these efforts have turned into massive regulatory battles between the local phone monopoly and the long-distance oligopoly. Little has changed, and as of mid-1998, the prospects for vigorous local phone competition and the entry of the regional phone companies into the long-distance market appear to be months, if not years, into the future.

One serious consequence of the movement towards local phone competition already is apparent. The proliferation of CLECs, cellular telephone companies, paging companies, and other entrants into specific segments of the local phone market have led to the proliferation of new area codes. Each new entrant is assigned telephone numbers for an entire exchange (the first three digits of the telephone number after the area code). Each exchange consists of 10,000 phone numbers, but each area code has fewer than 1,000 exchanges available. Thus, even if a paging company needs only 100 telephone numbers, it is assigned 10,000 numbers. This highly inefficient allocation of telephone numbers has resulted in the premature “exhaustion” of available phone numbers in many area codes. This practice, in turn, has led to either the division of area codes, forcing consumers to expend substantial resources to notify others of their new area code (printing new stationery, notifying friends and customers, reprogramming telephone equipment and fax machines, etc.), or the creation of area-code overlays (multiple area codes serving the same area, with new competitors

being assigned to the new area codes), leading to confusion among consumers and discrimination against new competitors who must convince potential customers to change their phone number as well as their phone company.

## **Electricity**

Several states with high electricity costs are embarking on efforts to restructure the electric utility industry to make it more competitive. At the forefront of this effort are states in the West (California, Nevada, and Arizona), Midwest (Illinois and Michigan), and Northeast (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and Pennsylvania). Several other states also are looking for ways to open their electricity markets to more competition.

The status of electricity restructuring changes almost daily, as each state studies the possible effects of restructuring in that state and various interest groups continue to reassess their options. Two years ago, New Hampshire conducted the country's first test in electric competition and enacted the nation's first comprehensive restructuring legislation. This experiment, however, got bogged down in court challenges and New Hampshire is only now getting back to the task of designing and implementing an electricity choice program. So, rather than attempting to review the status of competition in each state, a few general observations will be made about what it means to restructure the electricity market and what is likely to occur over the next few years.

Competition for the generation or supply of electricity is the issue. No state so far is even considering the possibility of deregulating the distribution of electricity. For the foreseeable future, the electricity industry will likely consist of two distinct markets: the generation of electricity, which may become largely unregulated, and the distribution of electricity (the wires, transformers, and substations that are needed to get electricity to the consumer), which will remain regulated. It is for this reason that most people are referring to the "restructuring" of the electric industry, rather than to its deregulation. While a portion of the industry may be deregulated (the supply side of the industry), the distribution, or "wires," side of the industry will remain a regulated monopoly.

For the past 20 years, the national policy has been to encourage the production of electricity by independent companies rather than by the local utility. That policy has given rise to many independent power producers in some regions of the country as well as many large commercial and industrial consumers that generate at least some of their own electricity. Since the passage of the Energy Policy Act of 1992, competition has emerged in the

wholesale electricity market, making it easier for utilities to buy power from the lowest-cost source in the market.

The latest step in this process is giving these diverse generating companies direct access to retail consumers. Rather than being required to sell only to large utilities, electricity-generating companies would be allowed to sell directly to consumers. In addition, companies (and even cities and non-profit organizations) are being encouraged to buy electricity at wholesale and resell it to retail consumers as a way of further broadening the electricity market. The hope is that by giving consumers direct access to the electricity generator, consumer choice will increase, the quality of service will improve, and prices will decline.

It is too soon to tell whether electric industry restructuring will be able to achieve these objectives. At this writing, a few states have begun to set the rules and establish the framework for retail competition, while others are in varying stages of investigating their options. Thus far, the biggest single issue is the recovery of “stranded costs” (or above-market costs) by electric utilities. Stranded costs are the difference between the market value of the utility’s assets and the amount that the utility has been including in its regulated rates (typically, the actual cost of the assets). In the case of some very expensive assets, like nuclear power plants, the disparity between the asset’s market value and its actual cost is large. The issue becomes what to do with the difference: Does it get recovered from the utility’s customers? If so, over what period of time? Should the utility’s investors be required to absorb some of the cost and, if so, how much?

It appears that until these stranded costs are recovered, achieving substantial reductions in electric rates will be difficult. While some states are hoping for 10 to 15 percent reductions in rates in the early years of restructuring, the larger savings—some analysts estimate on the order of 40 percent or more—will not be achievable until stranded costs are removed from the utility’s bills. That could take from five to ten years.

Restructuring also raises questions about what portions of the industry should remain regulated. Are billing and metering services part of the distribution of electricity (a regulated service) or part of the supply of electricity (a competitive service)? Is the presence of generation near large groups of customers part of the supply of electricity or part of the safety and reliability of the distribution network? Added to these questions are concerns about the potential for cross-subsidization between parts of the same company that perform services for both regulated and unregulated businesses.

Restructuring the electricity industry is not a simple task. If the experiences of California, Pennsylvania, Illinois, and Maine are any indication, once the state legislation is passed, restructuring could involve on the order of 15 or 20 separate proceedings in each state to establish the basic ground rules for restructuring. In addition, each electric utility will need to file a new set of rates to separate the costs of supplying electricity from the costs of distributing that electricity to consumers. A wide variety of interests can be expected to be represented in those proceedings, among them utilities, various consumer groups, environmental organizations, labor unions, independent power producers, marketing companies, local governments, and rural electric cooperatives.

## **Natural Gas**

A few states also are beginning the process of restructuring the natural gas market. In the mid-1980s, the wholesale market for natural gas was deregulated on the federal level. Since then, large gas consumers have been able to buy gas directly from gas producers and have it transported directly to their place of business. Current efforts to restructure the gas industry are aimed at giving smaller consumers, including individual residential consumers, the same right.

As this is being written, large-scale test programs are underway or will begin shortly in several states to give consumers the right to buy gas from their supplier of choice. In addition, a few states (Georgia, Montana, and Oklahoma) have enacted legislation that would restructure the retail gas industry in those states, and other states are studying the issue. In each instance, the local gas utility would remain a regulated monopoly and would deliver the gas to the customer, ensure that enough gas is available to meet demand during the winter, and otherwise oversee the safety and reliability of the local gas system.

It appears that restructuring the gas industry will result in much smaller savings to consumers than are possible from restructuring the electricity industry. Much of the savings in natural gas was achieved ten years ago or more, when large consumers were allowed to shop for their own gas supplies. In fact, between 1990 and 1995, the average national price of gas paid by electric utility and industrial gas consumers declined by 36 and 24 percent respectively. (10) By now, large gas producers and marketing companies are selling gas directly to virtually every large gas user in the country. Further, the presence of competition for those large gas supplies put increased pressure on gas utilities to shop for the best prices to serve the remaining small consumers.

This combination of a well-developed gas market and few large consumers who are not already purchasing gas from their supplier of choice makes it

**unlikely that large savings will result from further restructuring the gas market. Early results from some of the test states appear to have created some savings for consumers, at least during the relatively mild winter of 1997-98, but it is difficult to assess the long-term effect of these programs on the price and supply of natural gas.**

**If these early programs show signs of success, it is likely that other states will follow suit, particularly in those states that are restructuring their electricity industries. If consumers can successfully purchase one form of energy in a competitive market, it is likely that they will want to purchase other forms of energy in the same manner or from the same supplier.**



## **Chapter 4: Effect of Deregulation on Utility Consumer Advocates**

Although utility industry deregulation is just beginning in most places, utility consumer advocates are already examining their future roles. This chapter focuses on the changing roles of three types of consumer advocacy organizations: state consumer agencies authorized to represent the interests of consumers before the public utility commission (PUC); private, nonprofit organizations representing consumers on utility-related issues; and legal services organizations representing the interests of low-income consumers. Traditionally, each of these types of organizations plays a distinct role in the regulatory process.

State agencies usually have the responsibility to represent the consumer interest in general. Often, state consumer agencies act without consulting individual consumers; rather, they use professional judgment to determine the actions that are in the best interests of consumers collectively. This approach may lead to particular groups of consumers being affected differently. State agencies usually have substantially greater resources than most other consumer organizations involved in a utility case (except organizations of large industrial consumers) — professional staff (attorneys, accountants, engineers, consumer specialists, and others) and a budget to hire consultants with expertise for a particular case.

Private organizations usually represent a specific membership base. This base may include consumers with specific characteristics (such as AARP's representation of older persons), those who live in a relatively small geographic area (neighborhood associations), or those who share some common interest (such as environmental organizations). The resources of these organizations vary tremendously, from the small community group with no professional staff and a limited budget to highly sophisticated national organizations with professional staffs and multi-million dollar budgets. These private organizations usually educate their members about utility issues and often become formally involved on specific issues of concern to their members in cases before a PUC.

Legal services organizations represent the interests of low-income consumers. Legal services organizations tend to have relatively few resources to devote to utility issues, perhaps one or two attorneys for a city or a small office to cover an entire state. However, these organizations often have much greater expertise in a broad range of consumer protection issues, expertise which may prove invaluable as the utility industry becomes less



regulated and begins to look more like other consumer services industries. Legal services organizations usually represent individual consumers with utility problems but also become formally involved on issues affecting low-income consumers in cases before a PUC.

## **New and Increased Responsibilities**

The movement toward deregulation is changing the traditional role of utility consumer advocacy organizations. In states where utility industry restructuring is occurring, the issues with which consumer organizations must deal are increasing, particularly in the following areas:

1. Consumer education,
2. Consumer complaint handling and consumer protection,
3. Market oversight and merger review, and
4. Coalition-building.

These changes in the focus of consumer advocacy organizations are a function of the proposed changes in the utility industry and the need for consumers and policymakers to ensure that the transition to a different market structure does not adversely affect consumers. These activities are in addition to continuing regulatory responsibilities for the distribution of electric and gas service, ensuring the provision of universal telephone service, and other ongoing regulatory issues.

Moreover, while some consumer advocacy organizations play a role in serving as watchdogs over the quality of utility service, the importance of this responsibility will increase significantly. Traditionally, the quality of utility services has been monitored by many consumer advocates to ensure that utilities are maintaining the safety and reliability of their systems and are remaining focused on the needs of their customers. In a more competitive environment, however, there will be tremendous pressures on utilities to shift resources from their regulated operations to their unregulated operations. Consequently, consumer advocates will need to focus carefully on any change in resource allocation to ensure that such action will not have an adverse effect on the safety, reliability, and overall quality of utility services. Organizations that have not focused on these issues in the past may find that it is now necessary to do so. Organizations that have developed some expertise on quality of service issues may find that they will need to enhance their capabilities in this important area.

### **1. Consumer education**

Consumers are not used to shopping for electricity, natural gas, or local telephone services. Numerous questions will arise about how to determine the best deal, how to evaluate offers that are not expressed in comparable

terms, and how to evaluate the value of bundles or packages of services. In the past, many consumer advocates have not found it necessary to expend significant resources on educating consumers, but that is changing.

One of the best ways to protect consumers in a competitive market is to educate the consumer about how to participate in the market. Consumer advocates now find it necessary to educate consumers about their utility bills and services. Most consumers have no idea what it means to use a kilowatt-hour of electricity or a cubic foot of gas. They do not understand how the prices of gas and electricity in the marketplace vary during certain times of the year, or even during certain times of day. Advocates must make these concepts clear to consumers. Consumer advocates will need to spend much more time and money educating consumers, using various media—brochures, newsletters, and meetings with community organizations.

In California and Pennsylvania, PUCs are directing massive, statewide education efforts designed to inform consumers about the opportunity to choose electricity providers. Those multi-million dollar efforts have focused on consumer “awareness” that electric choice is available. They have not yet provided the basic information that consumers will need to understand what competition involves (such as what a kilowatt-hour means, how utility bills can be lowered through conservation, and what the risks are of having energy prices vary with the time of day or season of the year). Whether and how this information will be provided remains to be seen.

## **2. Consumer complaint handling and consumer protection**

Everything does not always go according to plan. That unfortunate truism means that problems will arise between consumers and utility companies or other suppliers. Whether the problems are the result of honest mistakes or dishonest activities or consumer confusion, consumers need a place to turn.

In most states, that place has been the PUC consumer complaint division. However, as utility services become deregulated, the PUC may lose jurisdiction to deal with many complaints. In other states, PUCs find their consumer staff ill-equipped to deal with the volume and nature of consumer inquiries that arise as utility industries are becoming more competitive.

Consumer advocacy organizations, small and large, are attempting to fill this gap by increasing their ability to respond to consumer complaints and questions. The problem, of course, is that this can be an expensive proposition, requiring additional staff, telecommunications resources, and a commitment to providing timely, responsive service to consumers. Many consumer advocacy organizations do not have the budget or the staff to provide service to a large number of consumers.

Smaller organizations are trying to fill this need by establishing better links with other organizations. These networks of consumer advocacy organizations may include several state agencies (attorney general, PUC, governor's office), nonprofit organizations, local governments, and the utility companies themselves. Larger organizations are increasing their consumer complaint handling capability so that they can respond to more consumer inquiries directly. They are not only increasing the staff and physical equipment of the office but also expanding the ability of the office to respond to inquiries in languages other than English.

### **3. Market oversight and merger review**

Helping ensure that a new market becomes and remains competitive is one of the most difficult and complex tasks that a consumer advocacy organization can undertake. Traditionally, utility consumer advocates did not need to worry about these issues at all—by definition, the utility was a natural monopoly. It did not have any competition. With restructuring, however, assurance that the market is competitive and is not being abused is needed. Part of this assurance is the review of proposed mergers to ensure that consumers and competitors will not face higher prices or poor service as a result of the combination.

Within the past two years, the merger activity in the utility industry has been overwhelming. If all currently pending mergers are consummated, the telecommunications industry will have gone from eight major local telephone companies to four, all within the two years since the Telecommunications Act was enacted in 1996. At the same time, numerous mergers are being proposed in the energy industry, further draining the resources of utility consumer advocates.

Overseeing the market requires more than reviewing proposed mergers. Mechanisms need to be created to deal with allegations of unfair competition and policies and procedures need to be developed to prevent cross-subsidization between regulated and unregulated operations within the same company. Consumer representatives will find themselves negotiating with utility companies, independent marketing companies, marketing affiliates of the utility, and local businesses (such as fuel oil dealers). Each

interest has a different set of issues that concerns them, and each wants to ensure that the new market begins on a level playing field, rather than one slanted to the benefit of one participant or another.

#### **4. Coalition-building**

Restructuring utility industries is neither simple nor straightforward. Tradeoffs and inter-relationships are often complex and not always readily apparent. Is it better to achieve immediate rate decreases or to provide incentives for consumers to shop for utility services? Should a utility be prohibited from entering the market for competitive services if it has a monopoly on other related services or should it be allowed to compete and encouraged to provide the best deal that it can for consumers? Should stringent consumer protection requirements be put in place, or should marketers be given the flexibility to develop products and services that meet the needs of certain portions of the market?

There are no easy answers to these types of questions. Each involves a series of tradeoffs that ultimately will determine whether a competitive market can work for consumers. No one organization can be expected to figure out all of these complex inter-relationships or decide what is in the best interest of all consumers in an entire state. The result, in many states, is that utility restructuring provides a magnet to attract organizations that often have been on opposite sides of the table in utility cases, such as industrial plants, low-income consumers, and small businesses. The task of building a coalition among these groups is difficult, time-consuming, and not always successful.

Typically, the state consumer agency provides the catalyst for bringing together these diverse groups to develop a set of principles to which they can all agree. Forming the coalition, finding a set of common principles, keeping the organization on task, and allowing differences to get resolved can be a full-time job. From the experience of consumer advocates in several states, however, it appears that coalition-building is a critically important component of a restructuring process that protects consumers while developing a competitive market.

In those states where utility industry restructuring is occurring, consumer advocates will almost certainly find that they have an increased work load, a need for different expertise, new incentives to coordinate with other consumer advocates, and inadequate funding. An advocacy organization's effectiveness will depend on its ability to cope with these three issues.

**Issues  
Associated  
with New  
Responsibilities**

### **Work load**

The complexity of utility industry restructuring should not be underestimated. It is not simply a matter of enacting legislation or changing commission policy and watching a free market develop. The process is time-consuming and can seriously strain the resources of a consumer organization.

California, Pennsylvania, Maine, and Illinois are each in various stages of restructuring their electricity industries. All four states have enacted restructuring legislation, but that is just the beginning. In each state, there have been, or will be, at least two dozen separate proceedings covering topics as diverse as the licensing requirements for electricity suppliers, metering standards, electronic data exchange requirements, permissible activities of utility affiliates, codes of conduct for relationships between utilities and their unregulated affiliates, and utility bill formats. In addition to these generic proceedings, each electric utility is required to start a highly complex legal and financial proceeding so that the utility's charges can be divided between its regulated services (the transmission and distribution of electricity) and its unregulated services (the sale of kilowatt-hours of electricity) and its "stranded costs" can be determined.

In essence, then, in the space of a year or two in these states, consumer advocacy organizations are faced with an unprecedented workload: 20 or more nearly simultaneous generic proceedings coupled with complex cases for every electric utility in the state.

On top of these statutory mandates to implement restructuring is the unprecedented level of merger activity in the energy and telecommunications industry. Nearly every state has had at least one major utility merger during the past two years; many states have faced several such cases. Evaluating a merger, determining its impact on consumers and the marketplace, and developing recommended solutions to any problems are not easy tasks. A major utility-industry merger can be as complex as a multi-million dollar rate case. Every state also is dealing with the requirements of the federal Telecommunications Act of 1996. That law requires each local telephone utility to go through numerous proceedings in each state in an attempt to open up the market for local telephone service and to provide local telephone companies with the ability to offer long-distance services. In addition, some states have separate legislation that governs the regulation of telephone utilities. In Pennsylvania, for example, 19 small local telephone companies recently filed plans to modernize their networks and change the way in which they are regulated. These applications came at the same time that the state is restructuring its electricity industry and

evaluating pilot programs to allow consumers to purchase natural gas directly from suppliers. At the same time, the state is evaluating a proposed merger between two of its largest energy companies and another merger that involves its two largest telephone companies.

Simply put, many utility consumer advocacy organizations are busier than they have ever been. Their responsibilities are expanding and changing, but their old work is not going away. Expectations are rising that consumer organizations will help educate consumers about utility markets and the effects of restructuring. In addition, many of these same organizations are expected to help consumers resolve problems they have with utilities.

### ***Need for Different Expertise***

Changing the structure of the utility industry, breaking apart utility rates into separate components, writing rules for consumer protection in a competitive market, and evaluating mergers and acquisitions in a competitive market are new responsibilities for most consumer advocates. Finding and developing expertise in these new areas is not a simple task.

Utility consumer advocacy organizations tend to rely on their internal expertise, coupled with a relatively small number of outside consultants who regularly work on utility-related issues for consumer advocates. As an example, the National Association of State Utility Consumer Advocates lists just 50 consulting organizations in the entire country that advertise their services to utility consumer advocates. (18) Most of these consultants have experience on the more traditional issues involved in utility regulation (such as estimating the cost of capital, determining the appropriate levels of investment and expenses, estimating future revenues, and designing rates to recover the utility's revenue needs). While many consultants are developing the expertise needed to help consumer advocates deal with restructured utility industries, many gaps remain in the available expertise.

Jim Hurt, the director of the Utility Consumers' Counsel in Georgia, states that on issues like market power and antitrust, "we're flying by the seat of our pants. Most consultants are still thinking in terms of traditional ratemaking. There are not many consultants who understand these issues. We're finding out about issues before the consultants are. It's hard to find consultants who understand these issues and are out in front of them." This concern is echoed by several other consumer organizations. It seems that as each state begins dealing with these new issues, consumer organizations are left to develop some or all of the necessary expertise in house. Hiring a consultant is not sufficient. Mr. Hurt suggests that it would be

worthwhile for consumer advocates who deal with issues first to help other consumer advocates, not just in an informal way, but actually as consultants and expert witnesses.

The lack of readily available expertise poses several problems for consumer advocacy organizations. It makes it more difficult for them to participate in negotiations or litigation involving these highly complex issues. Even after identifying a consultant, more time is needed to develop positions, strategy, and testimony. Often, time is something that is in very short supply in many of these cases.

As more states go through utility industry restructuring, it is anticipated that some of the issues will become more routine and that consultants will be available who have been through these issues in other states. It may take several years, however, for this to occur. In the meantime, it will continue to be difficult for consumer organizations to find and develop the expertise that they need to participate fully in many of these proceedings.

### ***Coordination with Other Organizations***

The significant changes in the utility industry have highlighted areas where consumer advocacy can be improved and strengthened. One of those areas is the coordination and communication among organizations with similar interests.

In Maine and the District of Columbia, this has involved the creation of coalitions of consumer organizations. In Maine, the formation of a coalition was prompted by the introduction of legislation to restructure the electric utility industry. In the District of Columbia, the driving force was the proposed merger of the local electric utility, Potomac Electric Power Company (PEPCO) with a neighboring utility, Baltimore Gas and Electric Company (BG&E). In both instances, these major policy and consumer protection issues resulted in usually disparate consumer groups (including industrial customers, other small and large business groups, low-income consumers, labor unions, and others) coming together, putting aside their differences, and finding a common set of issues on which they could agree. Betty Noël, the People's Counsel for the District of Columbia, highlights the strength of the consumer alliance that was formed: "We have seen an alignment of consumer interests across the spectrum—business, government, labor, consumer groups, and others were aligned against the PEPCO merger. This was the first time that we had a chance to appreciate how powerful the alliance was. Utilities were very surprised by the strength of the alignment, too." She is hopeful that the coalition will be able to remain in place for other important issues, including the potential restructuring of the electric industry in the District.

This type of concerted effort has not occurred in other states. Instead, each group of consumers has taken its own approach, with large consumers of utility services seeking to reduce their expenses, either at the cost of the utility or at the cost of smaller utility consumers. For example, in California, there is no permanent consumer alliance following electric restructuring activities. As different issues arise, the coalitions shift such that groups may support one another on some issues but oppose each other on different issues. Nettie Hoge, the executive director of The Utility Reform Network (TURN) in California, explains the problem this way: "It's becoming harder to put together a coalition. The issues aren't as clear cut and the utilities are working harder to divide and conquer. Agendas for various groups are different than they once were (for example, small business interests may not coincide with residential interests anymore) because of the complexity of the issues."

The relationship between consumer advocates and PUCs also is changing. In some states, consumer advocates and PUCs have a very cooperative relationship, while in others the relationship is much more confrontational. Proposals to restructure the utility industry and to change the nature of regulation have placed additional strain on some of these relationships. In some states, tension has increased between consumer advocates and the PUC, as both attempt to figure out how they fit into a new industry structure. For example, in Ohio there has been a good deal of tension between the PUC and the Office of Consumers' Counsel (OCC), as the PUC attempts to determine what role it will play in consumer protection and consumer education in a restructured utility marketplace. Rob Tongren, the Consumers' Counsel, describes the source of the tension: "There is a question of who should handle residential consumer complaints. The PUC has been moving more into that area, but its charge is to protect the public interest (that is, to act as the judge). OCC's enabling statute gives it the authority to take 'appropriate action with respect to residential consumer complaints' whereas the PUC lacks similar specific statutory authority."

Maine has taken a more cooperative approach toward ensuring that the PUC and the Public Advocate are not duplicating their efforts. Under the direction of the State Planning Office, the PUC and the Public Advocate have worked together to redefine the roles of both organizations. Under this new structure, which has yet to receive legislative approval, the PUC would focus on regulation of utilities and the market and would no longer perform an advocacy function. The Public Advocate would be primarily responsible for serving as a watchdog over emerging markets, seeking to protect competition, giving consumers tools to make informed choices, and protecting consumers from market abuses.



In redefining the role of consumer advocacy organizations, it is important to recognize the inter-relationships and synergies that exist between organizations. For example, smaller consumer organizations may be dependent on the large state consumer agency to provide certain information, expertise, and other support in complex cases. If the state consumer agency reorganizes, care is needed to ensure reorganization does not have an adverse effect on smaller organizations. Ellis Jacobs, from the Legal Aid Society of Dayton, Ohio, discussed this concern: "My effectiveness will depend on the availability of OCC and other groups. We need to share the work and have the ability to bounce ideas off of others. OCC seems to be moving more into the consumer education function and away from litigation. If that happens, we will have to beef up our litigation ability (we may need as many as five people, rather than our current 1½ doing utility-related work)."

Finally, consumer advocacy organizations need to better coordinate their efforts on a national level. Several organizations work on a national level to represent the interests of utility consumers, including the National Association of State Utility Consumer Advocates (NASUCA), the National Association of Attorneys General (NAAG), the Consumer Federation of America (CFA), AARP, the National Association of Consumer Agency Administrators, Consumers Union, and the National Consumer Law Center. These and other organizations have worked together on some issues, but they do not always take advantage of opportunities to work together when their interests converge. Fred Schmidt, the director of the consumer protection bureau for the Nevada Attorney General, readily acknowledges that "there has not been good communication between NAAG and NASUCA." With a restructured utility industry, however, that communication will be more important than ever. Mr. Schmidt explains, "NASUCA members tend to view the PUC as the way to solve problems. In a restructured world, that won't necessarily be the case."

As an example, one of the most pernicious problems that has been created by utility industry competition is "slamming," the unauthorized change of a consumer's utility service provider. Within the telecommunications industry, there are thousands of complaints each year regarding slamming. In Nevada and Oregon, slamming complaints are being handled by prosecutors in the attorneys general offices as consumer fraud cases, which has proven to be effective in combating the problem. Utility consumer advocates, also trying to find ways to deal with this problem, may not be aware of the efforts that have been undertaken by attorneys general.

In summary, as the structure of the utility industry changes, traditional relationships among consumer advocacy organizations will need to change as well. It will be increasingly important to keep open the lines of

communication and to develop coalitions and working groups to ensure that scarce resources are being used in the most effective way possible.

### **Funding**

Consumer advocacy organizations are funded in several different ways. Most state agencies that perform a utility consumer advocacy function are funded through an assessment on each utility operating in the state, though some receive funding from the state's general fund. Legal services organizations receive funding from the federal government, state governments, the United Way, or from Interest on Lawyer Trust Accounts (IOLTA) programs. Nonprofit consumer organizations receive most of their funding from the contributions of individual consumers, though foundations and other private charities may provide grants. The restructuring of the utility industry could have a major impact on funding for all three types of consumer advocacy organizations.

Most organizations will need additional resources to make the transition from a fully regulated utility industry to a partially deregulated industry. The number and complexity of proceedings that are necessary to do the job properly means that additional staff and/or outside consultants will need to be hired. As an example, the Maine Public Advocate received a 50 percent increase in its budget for fiscal year 1998-1999, primarily for consulting costs associated with electric industry restructuring. This additional funding is being provided during the transition period to a competitive utility industry. It remains to be seen whether the Public Advocate receives additional responsibilities as a result of changes in the utility industry, which might lead to increased funding requirements in the future.

Historically, utility consumer advocates have relied on their success in saving money for consumers to justify their budget requests or to encourage consumers to join their organizations. During the 1970s and 1980s, when utilities were filing for unprecedented, multi-million dollar rate increases, the need to fund a consumer advocate was clear. However, the issues involved in utility industry restructuring are much less concrete than the dollars and cents involved in a rate case. For example, restructuring involves questions about market power, rules for corporate affiliates dealing fairly with each other, guidelines for communicating with consumers, requirements for utility bill formats, and numerous other consumer-protection issues that do not have an immediate effect on the amount of the monthly utility bill. How does an organization explain the benefit of participating in a proceeding to determine the rules for participating in a competitive market? Will consumers readily contribute to an organization

if they cannot discern the effect on their utility bill? Will legislators be as understanding of budget requests when the state consumer agency can no longer quantify the savings on utility bills from their advocacy efforts?

The answers to these questions are far from clear. It remains to be seen whether legislatures, foundations, and individual consumers will be willing to contribute to consumer advocacy organizations when the issues move from the pocketbook to public policy and market structure.

For those organizations funded through an assessment on utility companies, there is a serious question of the fairness and adequacy of that funding method. If consumer advocates are spending more of their time dealing with competitive-market issues, then a portion of their funding arguably should come from companies that are participating in that market. It would not seem fair to require regulated utility companies to bear the entire burden of supporting these organizations, while relieving competitors of that same responsibility.

Moreover, if funding remains tied to utilities' regulated revenues, then the level of funding can be expected to decline as more of the utilities' activities take place in the unregulated market. For example, if the only portion of an electric bill that is regulated are the transmission and distribution charges, that would remove about one-half of the utility's revenues from the regulated side of the business. If the consumer advocate's funding is based on the utility's regulated revenues, then the funding could decrease by 50 percent or more.

## **Strategies for Changing and Adapting**

Many consumer advocates are actively transforming their organizations to deal with the new structure of the utility industry. The following case studies provide examples of some of the changes taking place.

### ***Case Study 1: Building a Network***

Consumers in Maine will not be able to buy electricity on the open market until March 2000. By that time, a statewide coalition of consumer groups expects to be in its fifth year.

Legislation to restructure the electric industry in Maine was negotiated during countless meetings involving utilities, consumers, legislators, and the PUC. Early in the process, the various consumer interests (large industries, low-income consumers, small businesses, and residential consumers) recognized that they needed to find a way to put aside their differences and work toward a common, consumer-oriented position.

Steve Ward, Maine's Public Advocate, started the effort to organize the

Maine Electric Consumers Coalition but did not expect it to last very long. Past efforts to get various consumer groups together had not been very successful. This time, however, the group had a clearly defined mission to counteract the lobbying clout of the utilities in the debate over restructuring the electric industry. Members of the coalition recognized the need to find common ground and develop a consumer alternative to utility-industry restructuring proposals. The coalition developed a common set of consumer principles and met frequently to compare notes and discuss strategy. Mr. Ward thinks that the coalition will continue through the implementation phase of the electric restructuring legislation and may work on other utility issues as well. "Above all, form a consumer coalition," he advises. "The coalition provides us with information from real consumers speaking from various perspectives."

### ***Case Study 2: Educating the Consumer***

The District of Columbia Office of the People's Counsel (OPC) has placed a great emphasis on consumer education. Betty Noël, the People's Counsel, has taken a number of actions to help ensure that utility consumers are informed about the benefits and drawbacks of competition. For example, prompted by the public's concern with a lessening of service quality, OPC filed a request for a quality-of-service investigation, covering all three utilities that serve the District. Subsequently, OPC held a public hearing focusing on quality of service, creating a public record of consumer concerns and allowing utilities to hear those concerns.

OPC also is actively involved in a Washington Gas Company working group that is evaluating educational materials about customer choice. Recently, OPC convened a consumer focus group to review and comment on these educational materials. The group provided valuable input and recommendations that the utility incorporated into its revised materials.

### ***Case Study 3: Helping the Consumer***

From its community outreach efforts and work with other consumer organizations, the Ohio Office of Consumers' Counsel (OCC) recognized the need to provide better service to Ohio's residential utility consumers. OCC is one of the largest state agencies in the nation that represents utility consumers, with more than 60 employees and an annual budget in excess of \$6 million.

In 1996, OCC responded to about 1,300 inquiries from utility consumers. During the next year, OCC increased its complaint-handling staff and began to publicize its toll-free number. The level of inquiries received by OCC increased more than forty-fold. OCC received 35,635 inquiries from

consumers and expects that number to be eclipsed in 1998. Through July 1998, OCC received 35,251 customer contacts and anticipates total inquiries for 1998 to exceed 72,000. Today, as a result of OCC's negotiations with companies, many utility bills in Ohio list OCC's toll-free number for consumers to discuss any questions or complaints with their utility service.

Rob Tongren, the Consumer's Counsel, explains that with the possibility of competition in the utility industry, "the demands on OCC are increasing dramatically, particularly in the area of complaint handling and consumer protection." In order to meet the demand for these services from all consumers, Mr. Tongren is devoting more resources to these activities and "making an effort to hire people with skills in other languages."

#### ***Case Study 4: Reorganization***

The Nevada Office of Consumer Advocate (OCA) is one of about 20 in the country that is part of the state attorney general's office. In 1997, the attorney general's office was reorganized, making the OCA part of the Public Protection Bureau. Now, the utility consumer advocates work side by side with experts on consumer education, fraud, and antitrust.

Fred Schmidt, Nevada's Consumer Advocate and the new director of the Public Protection Bureau, sees major advantages to this new structure: "We have brought together expertise in telemarketing, consumer fraud, antitrust, and utility advocacy. Our reorganization is providing the resources and expertise that is needed to deal with changing issues involving utilities." Mr. Schmidt also noted the benefits of having prosecutors, investigators, and consumer education specialists available for help on utility-related matters.

#### ***Case Study 5: Helping Low-Income Consumers***

Low-income consumers may have the most to lose when utility industries are restructured. A new program in New York is finding ways to help these consumers without resorting to costly litigation.

Several years ago, the federal government established a "lifeline" program to help low-income consumers afford basic telephone service, but in order for lifeline to work, consumers need to be informed that this program is available, and the local phone company must agree to administer the program and receive the approval of the state PUC. After years of fighting about the lifeline program, the Public Utility Law Project (PULP) in New York reached an agreement with the largest local phone company in the state (NYNEX, now part of Bell Atlantic) and the state Department of Family Assistance. NYNEX now has access to state social service records so that it can automatically enroll eligible consumers in the lifeline pro-

gram. The result: enrollment has increased by more than 250,000 people in two years, and more than 100,000 people who are no longer eligible have been dropped from the program. Gerry Norlander, a senior attorney at PULP, explains that they now have about 750,000 people statewide on the lifeline program which is “probably 60-70 percent of the eligible population, compared to most states where less than 25 percent of the eligible households participate in lifeline.”

### ***Case Study 6: Finding New Ways to Protect Consumers***

Consumer advocates’ focus on litigation is changing. As utilities file fewer rate cases, consumer advocacy organizations have realized that they need to find new ways to protect consumers and enhance the quality, affordability, and availability of utility services. In California, The Utility Reform Network (TURN) participated in a statewide ballot initiative on electric restructuring. TURN’s network of volunteers gathered more than 720,000 signatures to place the initiative on the ballot. In addition, while TURN continues to be actively involved in litigation, it is looking for ways to provide information to consumers, such as becoming a resource for cities and towns that want to buy electricity for their residents. Nettie Hoge, TURN’s executive director, explains: “We want to help local governments understand their options and become educated about electric restructuring.”



## **Chapter 5: Conclusions / Implications**

The utility industry is changing, and utility consumer advocacy organizations must change along with it. The issues are changing, the work load is increasing, and responsibilities are being redefined. Old funding sources may no longer be available, and new sources may be difficult to find. Organizations that used to share the same points of view may become adversaries but old enemies may become allies.

When other industries were deregulated, the transition often resulted in a loss of important protection for the consumer. Large consumers received better service and lower prices but often at the expense of small or low-income consumers. Deregulation in other industries also has raised concerns about the safety, reliability, and overall quality of service. It is still early enough in the restructuring of the utility industries to learn from these experiences.

Utility consumer advocates must increase their effectiveness. A theme that recurred in discussions with consumer advocates throughout the country was the need to form coalitions and networks of consumer organizations on the local, state, regional, and national levels. Utility companies are getting much bigger, and consumer advocates need to increase their impact as well. This does not necessarily mean that an individual organization needs to grow; rather, growth can come by sharing resources and expertise across many organizations. Each consumer organization has a different core competency and a different constituency. Bringing these groups together not only increases resources but also makes each organization more sensitive to the particular interests of the others.

Consumer education and consumer protection will be increasingly important functions for consumer advocates. If utility services are purchased in a competitive market, then consumers will need to be educated about how to make wise decisions. As utilities are deregulated, consumer advocacy organizations must be vigilant about consumer fraud and other marketing abuses.

Consumer organizations need to take a hard look at their structure and function. They need to explore and understand the relationship between their organization and others, both within state government and in the private sector. They need to forge ties with organizations in other states and perhaps even other countries as utility companies expand their operations throughout the world. With competition and restructuring come mergers and acquisitions. The telecommunications industry now has just a



handful of companies that control local telecommunications services and three companies that control the long-distance market. The energy industry has seen an unprecedented number of proposed mergers during the past year, and more are likely to occur as restructuring spreads throughout the country. More issues will be decided on a regional or national—or even international—level rather than in an individual state. Consumer advocacy organizations need to have structures in place to deal with these much larger, regional utilities.

In doing this, consumer advocacy organizations cannot just rely on what might have worked in another state or for another organization. While those experiences may provide some useful insight into strategies that should be explored, one state's experience is not always directly transferable to another. Each state, each organization, and each national association may need to reexamine its role, form new networks, and evaluate issues as they emerge.

Consumer advocacy organizations cannot rely solely on experiences from other deregulated industries. One factor that separates the utility industry from other previously regulated industries is that the utility industry has a number of highly skilled, institutionalized consumer advocacy organizations. Restructuring the utility industry provides a unique opportunity for consumer advocacy institutions to make a transition to dealing with competitive businesses in less-regulated markets. Their experience in making this transition may help show the need for similar types of consumer advocacy organizations to protect consumers in other competitive markets.

It is possible that over time, at least in some states, the functions of utility consumer advocates will be a routine part of a larger consumer protection and consumer education organization, but the transition from the current, regulated utility industry to a less-regulated industry structure will be complex and difficult. Consumer advocates are needed to ensure that the new industry structure contains protections for consumers and that educational programs promote smart shopping in the new market. The work load will be enormous, the issues will be complex, funding sources will change, and coalitions will shift. Strong consumer advocates can help assure that the new utility industry provides safe and reliable service to all consumers at affordable prices.

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# Consumer Advocacy for the Future

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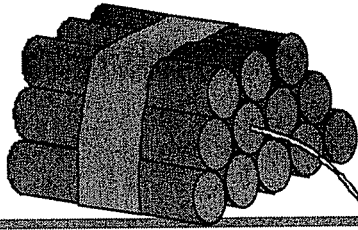
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# Moral

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- ◆ Change is not always good.
- ◆ Massive change can really confuse things.





## Dead or Alive?

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- ◆ Braniff - born 1931
- ◆ Eastern - born 1927
- ◆ Frontier - born 1950
- ◆ National - born 1934
- ◆ Pan Am - born 1925
- ◆ People Express - born 1980
- ◆ Piedmont - born 1931
- ◆ Value Jet - born 1993

# Lots of Death

## You Call this Living?

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- ◆ Braniff - 1931-1993
- ◆ Eastern - 1927-1990
- ◆ Frontier - 1950-1986
- ◆ National - 1934-1998
- ◆ Pan Am - 1925-1998
- ◆ People Express - 1980-1986
- ◆ Piedmont - **alive (US Airways)**
- ◆ Value Jet - **alive (AirTran)**



# Winners and Losers - 1

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- ◆ Within 5 years after deregulation of airlines, how many communities in the U.S. lost *all* of their commercial air service?
  - a. less than 25
  - b. 25-50
  - c. 50-100
  - d. more than 100
  
- ◆ Answer: d. About 116.

# Winners and Losers - 2

---

- ◆ From 1990 to 1998, how much did the average airfare change in the U.S.?
  - a. decrease more than 25%
  - b. decrease 0-25%
  - c. increase 0-25%
  - d. increase more than 25%
  
- ◆ Answer: a. About 26% decrease

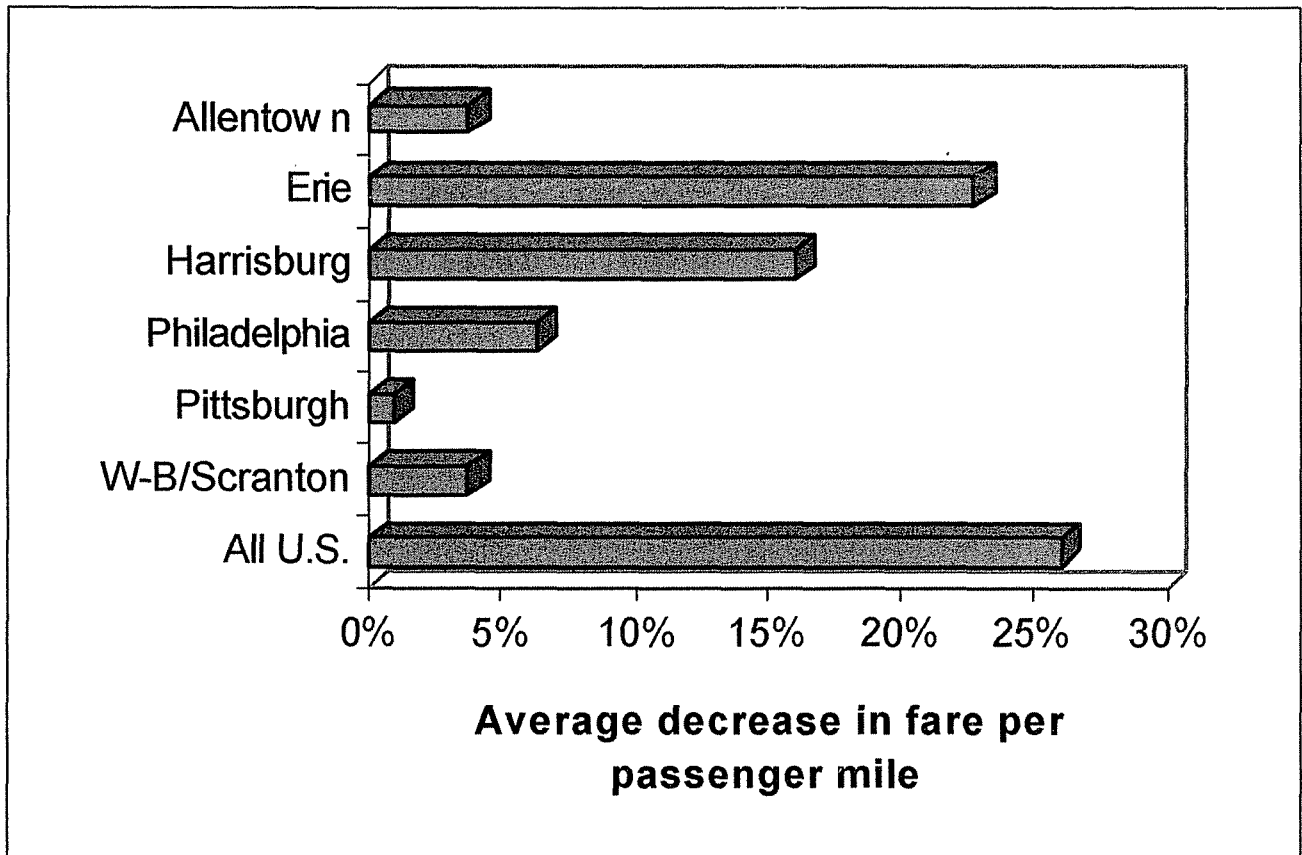
# Winners and Losers - 3

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- ◆ From 1990 to 1998, how much did the average airfare change from the Pittsburgh airport?
  - a. decrease more than 25%
  - b. decrease 0-25%
  - c. increase 0-25%
  - d. increase more than 25%
  
- ◆ Answer: b. About 1% decrease

# Average Change in Pa. Airfares 1990-1998

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# Winners and Losers - 4

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- ◆ From 1978 to 1998, what was the average increase in the number of airline seats available at medium-large airports in the U.S.?
  - a. 0-25%
  - b. 25-50%
  - c. 50-75%
  - d. more than 75%
  
- ◆ Answer: d. About 85% increase

# Winners and Losers - 5

---

- ◆ Pennsylvania has 3 airports in this size category (Allentown, Harrisburg, Wilkes-Barre/Scranton). How many of them saw an increase of 85% or more in the number of available seats from 1978-1998?
  - a. 0
  - b. 1
  - c. 2
  - d. all 3
- ◆ Answer: b. Just Harrisburg

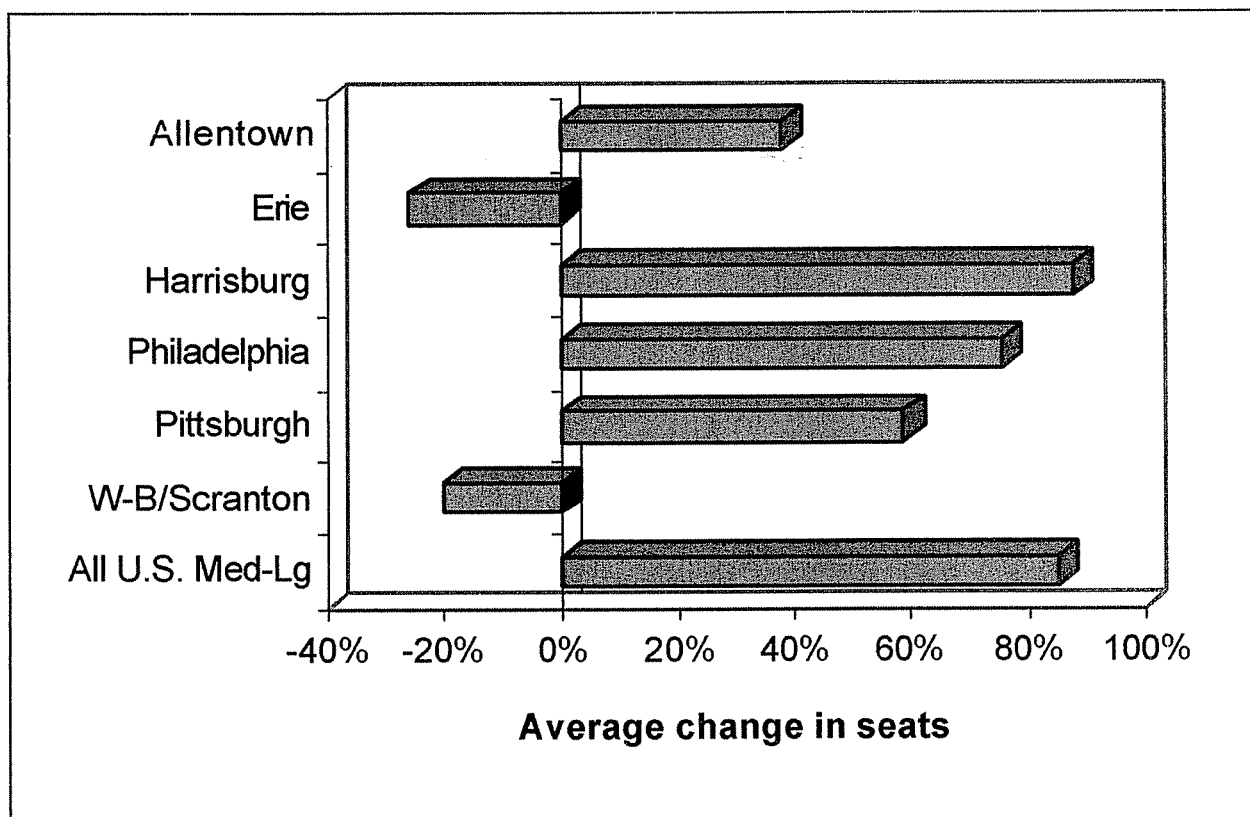
# Winners and Losers - 6

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- ◆ Was the 20% decline in available airline seats at Wilkes-Barre/Scranton airport the worst decline in Pennsylvania?
  - Yes
  - No
  
- ◆ Answer: No (Erie 26% decline)

# Change in Pa. Airline Seats 1978-1998

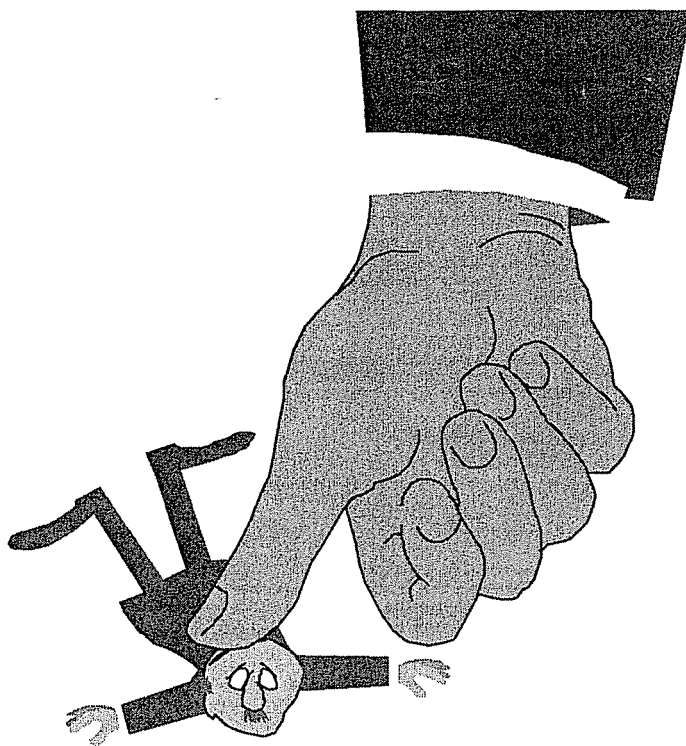
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# Big Dogs Eat First

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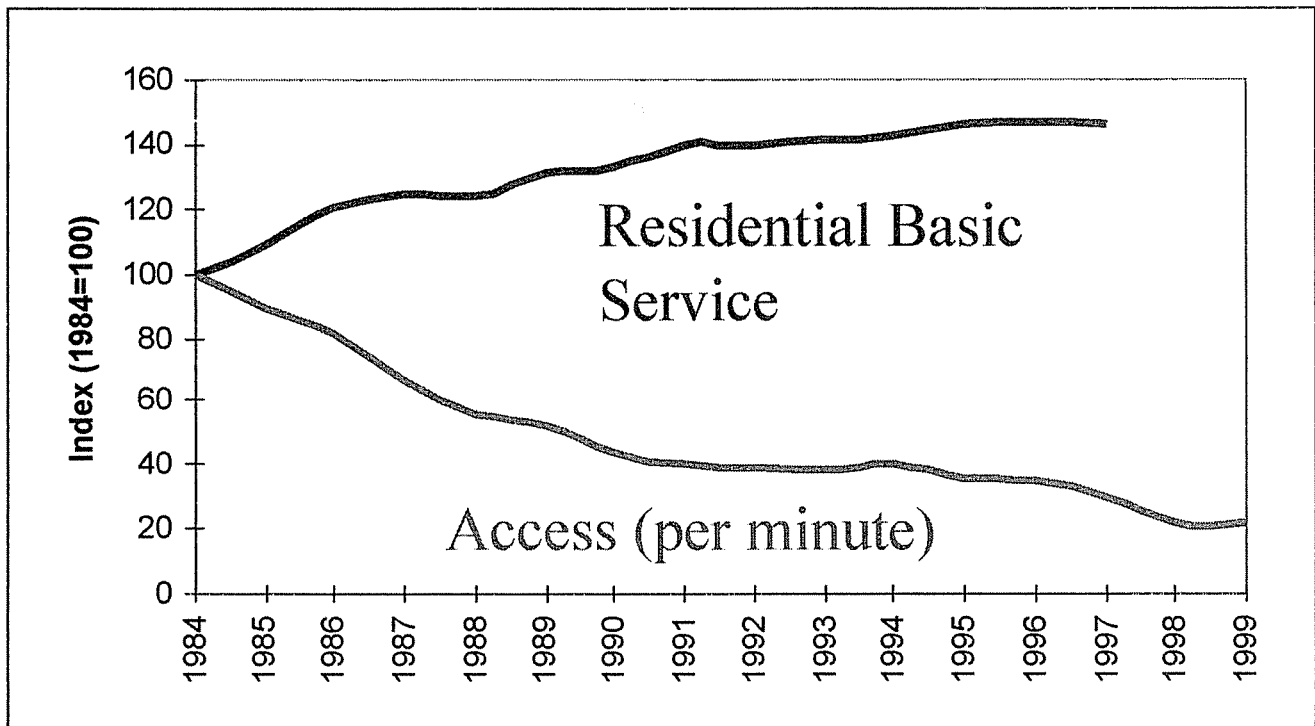
# Big Dogs Eat First

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- ◆ Who is the largest customer of Bell Atlantic?
- ◆ What has happened to that customer's rates since 1984?
- ◆ Since 1984, what has happened to the rates that residential consumers pay for local phone service?
- ◆ Since 1984, what has happened to the rates that residential consumers pay for all of their phone service (local and long distance)?

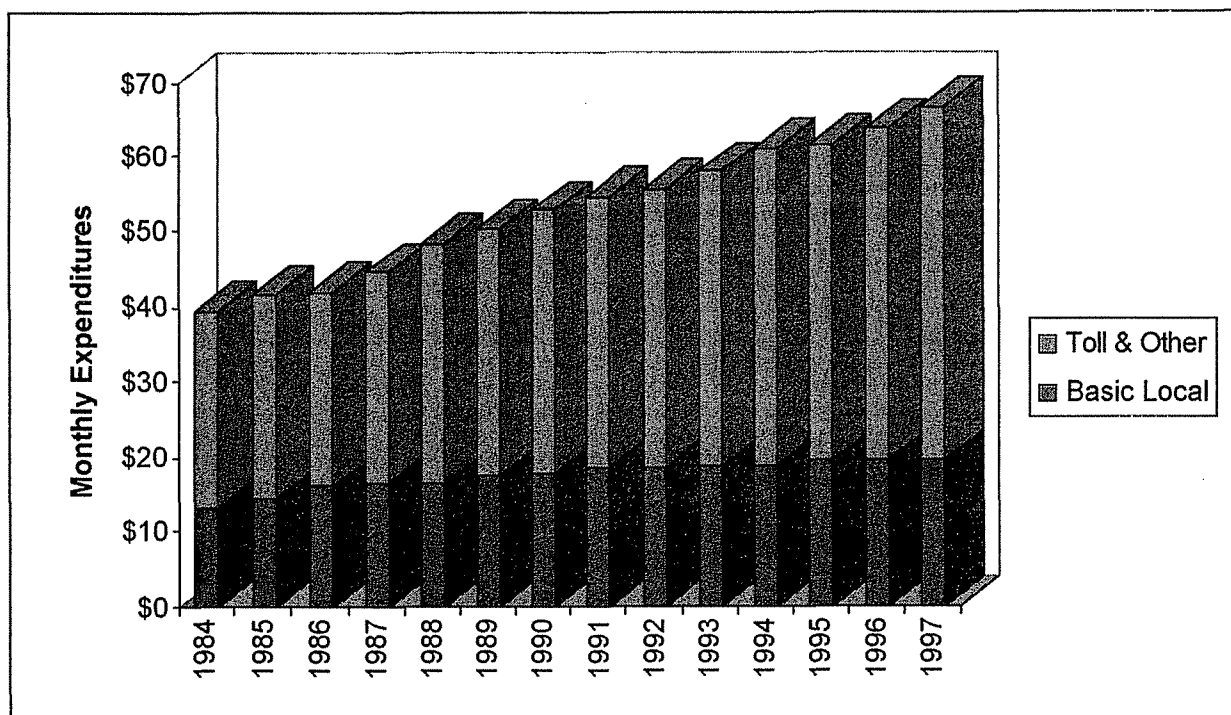
# Big Dogs Take Big Bites

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# Average Monthly Household Expenditures on Telephone Service 1984-1997

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# Consumer Advocacy for the Future

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- ◆ Fight convergence with convergence
- ◆ Consumer education
- ◆ Consumer protection
- ◆ Policy work

## **Consumer Advocacy for the Future**

by Scott J. Rubin

Age of Awareness Conference, Changes & Choices: Utilities in  
the New Millennium, Carlisle, PA

August 25, 1999

Good afternoon! I want to thank the conference organizers for inviting me to be here today. It's important that we all try to understand what will happen to various groups of consumers as we make massive, unprecedented changes in the electric, natural gas, and telecommunications industries.

Massive change will be our theme today. And that reminds me of a story; I don't know if it's true or not, but it's a great story anyway.

A middle-aged woman has a heart attack and is taken to the hospital. While she's on the operating table, she has a near-death experience and sees God. She asks God, "Is this it?" God says, "No, you have another 30 or 40 years to live."

Well, the woman recovers and she decides that if she's going to be around for another 30 or 40 years, and since she's in the hospital for a while anyway, she might as well make a few changes. So she has a face lift, some liposuction, she has a few body parts enhanced and tucked and what not. She even has someone come in to change her hair color. She figures if she's got 30 or 40 years to go, she should make the best of it.

After a few weeks, she walks out of the hospital. On the way to her car, she passes the emergency room entrance. She doesn't watch where she's going and she's hit by an ambulance and killed.

Well, she gets to Heaven and she marches right up to God and says, "Hey, what gives? You said I had 30 to 40 years to live and, bang, just as I get out of the hospital I'm killed by an ambulance." And God says, "I'm sorry. I didn't recognize you."

Change is not always good. Massive change can really confuse things.

It's always hard being the luncheon speaker because people want to be entertained. And my topic today isn't all fun and games. But we are going to have some fun. In fact, we're going to start with a game. And to get things started, I need some contestants. Don't raise your hands, we're going to select our contestants democratically. I'm looking for our resident utility competition experts! I would like everyone to stand up, or if you can't stand, just raise your hand.

If you are a utility professional - lawyer, accountant, work cfor a utility or the PUC or the Consumer Advocate, whatever, please sit down.

If you use AT&T for long distance telephone service, please sit down.

If you buy electricity supply from your local electric utility, please sit down.

If you use your local phone company for intraLATA toll calls, or what you might think of as local toll calls, please sit down.

If you buy natural gas from your local natural gas company, please sit down.

[if need to go further, internet from local phone company, cellular from local phone company, satellite TV, never shopped on-line]

All right, here are our contestants - maybe the most competition-savvy people among us. You're out there buying utility services from different suppliers. Now let's see how much you know. [get 3 contestants] [start with #1]

Before we start, I have to say that I'm not trying to make anyone look stupid. These are tough questions that I've had the benefit of researching. So if we laugh, we're laughing not at your not knowing the answers, but at our surprise at the answers. Because, believe me, I was surprised at some of the answers, too.

There's a radio station in Williamsport that plays a very funny, but slightly sick, game called "dead or alive." They read the names of famous people and you have to say whether they're living or dead. We're going to play the deregulation



version of "dead or alive" with airlines. You see, the airline industry used to be regulated exactly like public utilities - tariffs that were hundreds of pages long, enormous hearings involving rate changes, and so on. But all that changed in 1978 when the airline industry started to deregulate. By 1984, economic regulation in the industry was completely gone. So, on with our game. After I name each airline, you have to tell us whether it's dead or alive. And just so we're clear, dead means that the airline stopped operating, alive means that it's still around - either independently or as part of a larger company. So you know what's coming, I've chosen 8 companies, and we'll do them alphabetically. And to make it even easier, they're shown up on the screen.

- Braniff Airlines - founded in 1931 - died in 1993
- Eastern - founded in 1927 - died in about 1990
- Frontier - founded in 1950 - died in 1986
- National - founded in 1934 - taken over by Pan Am in 1980
- Pan Am - founded in 1925 - died in 1998
- People Express - founded in 1980 - died in 1986
- Piedmont - founded in 1931 - part of US Airways
- Value Jet - founded in 1993 - now AirTran Airlines

There's our first lesson about deregulation or restructuring - it kills companies and it forces others to merge or change a lot. Competition is nasty. Companies that

were at the top of their industries can make a mistake or fail to keep up, and they're dead.

The same thing will happen in the utility industries as they become more competitive. I can't tell you which companies will die, but I assure you that some of the household names in the utility industry will not be around 5 or 10 years from now.

What will that mean for consumers? What did it mean for consumers holding tickets when Pan Am and Eastern and Braniff closed their door? For many of them, it meant they were out of luck. Tickets that went down the drain, frequent flier miles, promises of future benefits, gone.

Do you remember the savings and loan crisis in the 1980s? It happened soon after that industry was deregulated. Though we can't say for sure that deregulation as such was the cause, it is fair to say that competition from brokerage firms and insurance companies was a major factor that contributed to the death of many S&Ls. What happened to consumers? Federal insurance bailed out many depositors, but others were out of luck - lost a good chunk of their life savings.

What will happen when your electricity or gas supplier closes its doors? Is there an insurance program that will cover it? Will you lose your deposit? Will you get that free month next year that you were promised? Will the lights go