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BEFORE THE ARIZONA CORPORATION COMMISSION

|                                 |                               |
|---------------------------------|-------------------------------|
| IN THE MATTER OF THE            | ) DOCKET NO.                  |
| ARIZONA CORPORATION COMMISSION  | ) T-00000D-04-0582            |
| INVESTIGATION INTO THE BILLING  | )                             |
| PRACTICES OF TELECOMMUNICATIONS | ) <b>SPECIAL OPEN MEETING</b> |
| PROVIDERS IN ARIZONA.           | )                             |
| <hr/>                           |                               |
|                                 | ) <b>PUBLIC COMMENT</b>       |

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At: Sun City, Arizona

Date: October 27, 2004

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Prepared for:

**ACC**

**ORIGINAL**

1 BE IT REMEMBERED that a Special Open  
2 Meeting was held at the Sundial Recreation Center,  
3 14801 North 103rd Avenue, Sun City, Arizona, commencing  
4 at 3:10 p.m. on the 27th day of October, 2004.

5

6 BEFORE: MARC SPITZER, Chairman  
7 WILLIAM A. MUNDELL, Commissioner  
8 JEFF HATCH-MILLER, Commissioner  
9 MIKE GLEASON, Commissioner  
10 KRISTIN MAYES, Commissioner

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1 CHMN. SPITZER: Good afternoon, and welcome  
2 to this public comment meeting. This is the time set  
3 for the Arizona Corporation Commission's public comment  
4 meeting on telecommunications -- what we have described  
5 as Truth in billing.

6 I guess it's a sad commentary when I'm --  
7 I'll disclose my age here. I think it's okay. 47.  
8 I've been a practicing attorney for 22 years, with four  
9 years of college, three years of law school, and  
10 various certifications from the State Bar of Arizona.  
11 And now I've been on the Corporation Commission for  
12 four years, and I can't figure out my phone bill.

13 And a lot of people are very frustrated and  
14 very angry with the circumstances that they're under.  
15 We're supposed to be in an environment where there's  
16 competition. And I think competition is good, because  
17 it let's consumers choose who provides their services  
18 based upon quality of service and price. And we've  
19 tried at the Commission to have local service be  
20 competitive so people get to choose.

21 The federal government 20 years ago broke up  
22 AT&T in order to create a competitive market so people  
23 could choose their long distance carriers. But what in  
24 my view is at best confusion and at worst outright  
25 deception, has created a situation where we do not have

1 free competition, because we don't have fully-informed  
2 consumers because the telecom companies have  
3 effectively hidden the ball. And it is beyond  
4 frustrating. It's a situation of anarchy, which is  
5 contrary to all of my instincts governing rule of law.

6 And Commissioner Mundell, who was not able  
7 to be here, William A. Mundell, conceived the idea for  
8 a docket at the Commission where we could hold --  
9 consider proceedings and have public comment meetings  
10 across the State of Arizona to hear from the people of  
11 the state, and that is what we're doing.

12 I commend him for that, and all five  
13 Commissioners are fully in support of this project.  
14 And we're very anxious to hear from all of you this  
15 afternoon.

16 I'll now turn the microphone over to  
17 Commissioner Hatch-Miller for opening comments.

18 COM. HATCH-MILLER: Thank you, Mr. Chairman,  
19 and good afternoon everyone. Thank you for coming and  
20 joining us and helping us understand how the billing  
21 from utilities is affecting you.

22 I had a man last night that came up to me  
23 last night and said, I just got a cell phone. I went  
24 out and I used it. And it had a little camera on it,  
25 so I took a few pictures and I sent them to my friends.

1 And I went home, and the next month I got a bill for 35  
2 bucks for the pictures, and I didn't expect it.

3 And what had happened was when he went in to  
4 buy the telephone, they really didn't tell him all he  
5 needed to know about that cost. And I don't know if  
6 any of you have cell phones. I know I have one. I  
7 assume a lot of you do. You probably looked at a  
8 brochure, maybe even looked on the Internet, and it  
9 gave you a list of the different plans. And it said  
10 that one plan is \$29, another plan is \$49, and another  
11 plan might be \$69.

12 But I don't care what that base amount was,  
13 I'll bet you none of you have seen that amount at the  
14 bottom of your bill when it came to pay it. You're  
15 paying 20, sometimes 30 percent more than that.

16 I have telephone bills from Qwest that,  
17 quite frankly, I can look at some of the charges, and I  
18 have not a clue as to what that charge really is for.  
19 It sounds good, but I can't tie it to anything  
20 specifically in terms of what the state or the federal  
21 government or the local jurisdiction has suggested  
22 ought to be part of the taxes or other kinds of fees.

23 And so our job here is to make sure we go  
24 around in your community where you live, allow you to  
25 come forward and say, these are the things I'm

1 concerned about when I see my bill. And after we've  
2 had a chance to go around this state and go to many of  
3 the communities in this state, to put that information  
4 together and start coming up with some recommendations  
5 to change the way utilities engage in billing.

6 I really am honored to be here, and I thank  
7 you very much for your time today.

8 MALE VOICE: Competition is good, especially  
9 if you're a Red Sox fan.

10 CHMN. SPITZER: We'll see how they do  
11 tonight.

12 Commissioner Gleason.

13 COM. GLEASON: Yeah. Glad to see you come  
14 out. And I have been giving the other Commissioners  
15 here a hard time in that I pointed out to them that  
16 it's a short distance home tonight. We can let this  
17 thing run as far as we can. When I'm over in the east  
18 side of the Valley, they give me the same thing, that  
19 it's a short distance home. And, of course, I have to  
20 drive clear over to Sun City West where it's not so  
21 short.

22 But let me -- I agree with what Commissioner  
23 Hatch-Miller said. When you look at your -- we were  
24 just going over Jack's bill here, and the same thing.

25 MR. HART: Yeah.

1 CHMN. SPITZER: Hi, Jack.

2 COM. GLEASON: You get down to what's this,  
3 what's this, what's this? I have proposed three  
4 things. One, that the bill should be broken up. One  
5 is there are mandatory charges. You know, for  
6 instance, the 13.18 bucks for the plain old telephone  
7 service. There's all kinds of taxes, the city tax,  
8 da-da-da-da-da, and also there's the Federal Access  
9 Charges. Those are mandatory things that you have to  
10 get charged.

11 There are optional charges. For instance,  
12 if you have -- you get charged for number portability.  
13 That went in. They don't have to charge you for number  
14 portability. That's their option. They either can or  
15 they can't.

16 And then there's the bells and whistles  
17 that, you know, if you get messaging, three-way  
18 calling, caller ID, all of those, those are the things  
19 -- those are optional items that if you don't want  
20 them, you can take them off, and they should be listed  
21 that way.

22 The other thing is there's a little  
23 telephone company in Kerrville, Texas. I've been to  
24 Kerrville several times, but I can't spell it. But the  
25 Kerrville phone company has a website which in detail

1 tells you exactly what each one of those charges are,  
2 why it's there, who the charges go to, and who the  
3 money goes to. For instance, now, the access charge  
4 that we were looking at on Jack's bill, that goes back  
5 to the phone company because the SEC said it was that  
6 way.

7 But so there's two things I think we should  
8 itemize. What those charges -- what kind of a charge  
9 it is. And if the phone companies would have a good  
10 website where you could easily pull up and find out  
11 what that charge is.

12 Now, if you look at your phone bill, there  
13 is a brief description on there and you can somewhat  
14 figure it out, if you know. But I think a website  
15 would be a great help so that then the people could  
16 understand what the charges are.

17 CHMN. SPITZER: Commissioner Mayes.

18 COM. MAYES: Thank you, Mr. Chairman. It is  
19 indeed a pleasure to be here with you today in the West  
20 Valley.

21 Commissioner Gleason failed to mention that  
22 we also had a promise from him that this would be the  
23 most well-attended meeting, and so far he's right  
24 actually. This is actually a very good turnout, and  
25 we're glad to see all of you here today.

1           A lot has already been said, and I don't  
2 want to cover all of that territory again, but one of  
3 the things that I have been very concerned about, and  
4 it has to do with truth in billing, is a new charge  
5 that Qwest just put on their long distance bills.

6           You may have just recently seen it pop up, a  
7 \$2.99 charge that they decided they were going to put  
8 on your bills after having promised all of its  
9 customers that there would be no monthly charges on its  
10 long distance bills.

11           And I wrote a letter to Qwest objecting to  
12 that, also telling them that I thought they had a duty  
13 under Arizona law to come to the Corporation Commission  
14 for approval first, which they did not do. And they  
15 had a duty to their customers to at least allow you to  
16 object or allow you to have some input into that, which  
17 they also did not do.

18           And I think that \$2.99 fee is really being  
19 looked at by a lot of people as bait and switch. They  
20 enticed people to come in under a no monthly fee plan,  
21 and then six months later, whammo, they hit you with a  
22 \$2.99 fee, and you don't have any choice about it.

23           And so that's what this Commission is here  
24 for. We're here to look at those decisions by the  
25 phone companies. We're here to make sure that the law

1 is applied correctly. And we're going to do that in  
2 the case of the \$2.99 fee on Qwest's long distance  
3 bills.

4 You know, it's obvious that a lot of these  
5 fees are becoming, you know, the local telephone  
6 company's sneaky way to raise revenue, and that seems  
7 to me to be just plain wrong. There is a right way to  
8 raise revenue and there's a wrong way, and it's wrong  
9 when it's deceptive.

10 So I'm looking forward to hearing from  
11 everyone today. I think it was said by one of my  
12 fellow Commissioners that we learn something new every  
13 time we do one of these meetings, and that's why  
14 they're so critical and that's why we're here.

15 We have learned something new about this  
16 issue already in Mesa, and Phoenix last night, although  
17 we had to compete with the Red Sox so there weren't too  
18 many people that turned out. But we're glad to be here  
19 today. And I don't know if there's a game tonight, but  
20 at least it's before the game. So, again, thank you  
21 for coming out.

22 CHMN. SPITZER: Thank you, Commissioners.

23 We will now move into the public comment  
24 session, and the first individual is Jack Hart.

25 MR. HART: Thank you very much,

1 Commissioners, for taking the time to look into this.

2 My point is simply that I don't understand.  
3 I'm paying about \$240 a year in taxes, fees and  
4 surcharges for my telephone. Given my limited income  
5 situation, that's far more than I pay in federal income  
6 tax. Maybe I should be paying more federal. I don't  
7 think so.

8 But, I mean, there's something screwy about  
9 this. There's something out of sync when I'm paying  
10 much more just for using my phone than I am for all of  
11 my federal income tax.

12 So I spoke with some the Qwest people back  
13 here, and they were nice enough to tell me there are  
14 ways that I can make some adjustments, and I very much  
15 appreciate that. But to me --

16 COM. HATCH-MILLER: Hold on for a second.  
17 Can everybody hear?

18 No. Could you check the microphone and make  
19 sure it's working?

20 MR. HART: Now?

21 COM. HATCH-MILLER: There you go.

22 MR. HART: Well, I was hearing myself.

23 COM. HATCH-MILLER: I could hear you, Jack.  
24 Do you want to summarize what you said?

25 MR. HART: Briefly, what I'm saying is I'm

1 paying more in taxes, fees, and surcharges than I am in  
2 federal income tax, which seems to be skewed somewhere.  
3 That there's something wrong here.

4 I did say that in talking to some of the  
5 Qwest people here, they suggested some ways in which we  
6 can adjust -- make some adjustments that might save  
7 some money, and I very much appreciate that.

8 But when I saw this in the paper, it struck  
9 a chord. And I thank you people for getting into this,  
10 and let us know what's going on.

11 CHMN. SPITZER: And we'll be -- the  
12 Commissioners will be also available after the public  
13 comment is closed to talk about individual cases in  
14 further detail.

15 MR. HART: Thank you very much.

16 COM. HATCH-MILLER: Jack, stay with me for a  
17 second here.

18 MR. HART: Yeah.

19 COM. HATCH-MILLER: You know, because you  
20 bring up a really interesting point, and it's one I've  
21 been working on for a while.

22 When I was up in Flagstaff last winter and  
23 in Prescott last winter, I started to realize that on  
24 utility bills in general-- and at the time we were  
25 looking at natural gas and electricity -- oftentimes we

1 in Arizona are paying 14, 15 percent tax on the cost of  
2 our electricity or the cost of our natural gas.

3 Now, when I go down to buy a pair of shoes,  
4 I think I'm being ripped off by paying 8.2 percent.

5 MR. HART: Exactly.

6 COM. HATCH-MILLER: But I'm paying a lot  
7 more on my utilities. And as I've looked into it --  
8 and I've done things. I met with the Governor's staff,  
9 and I met with the president of the Senate and the  
10 Speaker of the House, and tried to work on this issue.

11 And what I hear is that these are kind of  
12 the cash cows of revenue to the cities and counties and  
13 state and federal government. They're great revenue  
14 sources, and the government wants to have its money so  
15 that they can run their programs.

16 And Qwest doesn't really decide how much  
17 state tax to pay. That's given to them. You know,  
18 just like the shoe store. They don't get to make up  
19 the tax.

20 And so I would love to have your help in the  
21 coming months to work with our elected officials and  
22 say, wait a minute. You know, there isn't any  
23 justification, as you say, for paying more taxes on  
24 your utility bills, especially when they're so much  
25 higher in percentage than everything else --

1 MR. HART: Right.

2 COM. HATCH-MILLER: -- than you are paying  
3 for property tax or for income tax. So I appreciate  
4 your help on this.

5 MR. HART: Sure. I would be more than glad  
6 to do that.

7 COM. HATCH-MILLER: A little separate issue  
8 than what we're talking about in a way, but it's still  
9 part of the whole process. Because I think it's a  
10 shocker for most people.

11 MR. HART: Yeah. That's right. That's it.  
12 And it just occurred to me, this what I'm  
13 paying here, I don't remember having voted on it.

14 COM. GLEASON: You didn't.

15 MR. HART: Okay. Thank you very much.

16 COM. HATCH-MILLER: Good point.

17 CHMN. SPITZER: Well said.

18 Mr. Michaels.

19 MR. MICHAELS: I shall be very brief. I'm  
20 very angry. I'm mad. I'm here to not bury -- I'm here  
21 not to address Caesar, but I'm here to bury technology,  
22 because it's making our lives miserable. It's making  
23 it difficult to live, if you know what I mean. And  
24 from what the expressions you have made so far, I think  
25 you will understand what my gripe is all about.

1           Two months ago, three months ago, I renewed  
2 my cell phone with AT&T. And I was walking by the  
3 kiosk -- no. I renewed it four months ago, and two  
4 months later walking in the mall, I found -- there was  
5 a kiosk, an AT&T kiosk. And my phone was about six  
6 years old or eight years old and it was rather bulky.  
7 And so I thought it would be nice to have a smaller  
8 phone and put it in my pocket.

9           And so then I opened a whole Pandora's box,  
10 because it led to all kinds of problems I have been  
11 having with the billing for that phone. They told me  
12 that I could get a free phone because I'm an AT&T user,  
13 and they had a small compact phone.

14           And that was fine. I said, well I want the  
15 same -- will the rate be the same? And they said, oh,  
16 yes. No problem about that. You'll have the same  
17 rate. And so I said, fine, I would like to do that.  
18 And so I did that, and then the following month I  
19 received a bill, and the statement instead of being \$39  
20 was \$55, and there was a \$15 difference.

21           So I went back there, and the fellow said,  
22 I'll take care of that. It was a mistake. And he  
23 didn't tell me why the mistake, but anyway. The  
24 following month I received the same amount of over  
25 billing, \$55 rather than the \$41, \$39 plus the taxes

1 you were talking about, \$3.50 or whatever that turned  
2 out to.

3 Well, at any rate, the result was that this  
4 chap who I talked to was no longer at the kiosk, and  
5 the guy that I met there had no idea what I was talking  
6 about. So he gave me a number. I had no telephone  
7 number to call, but he gave me a number. And I called  
8 this phone number, and lo and behold I was talking to  
9 someone in Malaysia, and he had no idea what I was  
10 talking about.

11 And he said, well, you have this -- the only  
12 thing that I was able to interpret was that there was a  
13 -- I was being charged \$15 for text messaging, which I,  
14 of course, I had said earlier I hadn't -- I didn't want  
15 any additions, and I assumed that the bill would be  
16 right. The fellow at that end had no idea what I was  
17 talking about, and I certainly was floored as to what  
18 he was saying.

19 Well, anyway, I finally was able to get a  
20 number. This took a great deal of time. And my  
21 problem -- my focus is on the fact that communication  
22 companies are supposed to be communication companies,  
23 and it's the last thing that comes to their mind. They  
24 do not communicate. That's my objection.

25 And I feel that we are all being used by

1 this complexity of every situation. It's not only the  
2 -- it's not only the telephone companies. It's the  
3 other utilities and practically every area in our lives  
4 that we have to deal with.

5 And I'm angry, and I wish we could and  
6 should do something about it.

7 CHMN. SPITZER: Mr. Michaels, since it's  
8 been asserted that I have a bias against the wireless  
9 companies, I would like someone else on the panel to  
10 address your issue.

11 Commissioner Mayes.

12 COM. MAYES: That's okay. I like listening  
13 to you talk about the wireless companies.

14 But, you know, Mr. Michaels, you raise a  
15 really good point. It's exactly what I was upset about  
16 in terms of Qwest when they failed to communicate to  
17 their customers better about the fact that they wanted  
18 to raise their rates by \$2.99.

19 And I know you're talking about wireless  
20 companies, and I'll talk about that in a second and  
21 some of the things that the Chairman here has been  
22 trying to get accomplished on wireless companies.

23 But you're right. These companies have a  
24 duty not just to communicate with you, but also to  
25 communicate with the Arizona Corporation Commission.

1 Because we are your watchdog. We are a watchdog on  
2 your behalf of these companies. And so when they  
3 decide to put new rates on your bills, when they decide  
4 to change your bills, they have a duty to not only  
5 offer you an opportunity to object, but also to come  
6 and get approval for those rate increases.

7 On the wireless side, something that you  
8 should be aware of and that we could use your help  
9 with, is that the Arizona Corporation Commission does  
10 not have authority currently to regulate wireless  
11 companies. And I think just about everybody on this  
12 Commission is in favor of having the authority to  
13 regulate certain aspects of wireless companies,  
14 including consumer protection issues. You know,  
15 service to consumers, communication with consumers,  
16 responsiveness to complaints.

17 And so the Chairman is leading the charge to  
18 try and persuade the legislature -- this is where we  
19 could use your help -- to allow the Corporation  
20 Commission to regulate wireless companies in the same  
21 way that we regulate wireline companies. You know,  
22 regular telecommunications companies like Qwest.

23 And, you know, you talk about why don't they  
24 communicate? Well, sometimes they don't communicate  
25 because they don't have to and they know they don't

1 have to. And that's where regulatory bodies like this  
2 come into play. You know, you're looking at four --  
3 five Republicans, and Republicans traditionally don't  
4 like regulation; right?

5 Well, let me tell you something. In this  
6 case, we need regulation. This is where you need a  
7 watchdog for you, and you have a right to know that  
8 those companies are going to communicate with you. I  
9 mean, it's the law.

10 MR. MICHAELS: Well, I have a question I  
11 would like to ask relating to that point. And that is  
12 we don't have the FCCA, and I don't know -- I'm not  
13 sure whether or not the state legislature here has any  
14 control in terms of establishing a regulation process  
15 and authority to do what we need and put some  
16 regulation on these companies.

17 I happen to be a member of the Arizona  
18 Silver-Haired Legislature, and we work on resolutions,  
19 propositions, which deal with many issues affecting  
20 everybody, not only seniors.

21 But if it's possible, if you can answer my  
22 question as to whether or not the legislature can  
23 enforce -- can establish this kind of an authority, I  
24 will work on it.

25 COM. MAYES: I'm going to have Commissioner

1 Mundell or Commissioner Spitzer answer that question.

2 But let me just first say, I would think it  
3 would be great if the Silver-Haired Legislature would  
4 take this issue up. Because I know the organization  
5 you're talking about. I think it's a fantastic  
6 organization. And you have the power of the bully  
7 pulpit just like we do in the sense that you can help  
8 persuade the legislature to take up this issue.

9 COM. MUNDELL: Good afternoon. Let me see  
10 if I can attack it additionally and try to give you an  
11 explanation.

12 The Arizona Corporation Commission gets its  
13 jurisdiction from the State Constitution. And we're  
14 one of only seven states where that's, in fact, true.  
15 And so we've taken the position, the Commissioners have  
16 taken the position, that we have the authority to  
17 protect wireless consumers in Arizona.

18 We passed cramming and slamming rules as, I  
19 think, Commissioner Mayes was talking about when I  
20 first walked in. And we've got rules now that protect  
21 wired service, wired line service. Okay.

22 The Attorney General has taken the position  
23 -- the Attorney General has taken the position that we  
24 do not have authority for wireless consumers. The  
25 Commission has taken the position that we do under the

1 State Constitution. And if we don't have it under the  
2 State Constitution, we've also gone to the legislature  
3 to change the statute to make it clear that we do. So  
4 we have a two-prong approach.

5 We first think that we already have the  
6 jurisdiction because we're in the fourth branch of  
7 government in the State Constitution. Secondly, we've  
8 taken the approach that the legislature confirm the  
9 jurisdiction that we believe we already have. And if  
10 that doesn't work, then ultimately the Arizona Supreme  
11 Court will have to decide whether we're right or the  
12 Attorney General is right when it comes to  
13 jurisdiction.

14 And when I use the word jurisdiction, I mean  
15 do we have the power to protect you? Jurisdiction is a  
16 legal word, and as a lawyer, you know, I sometimes use  
17 words that I shouldn't use. But it means that do we  
18 have the authority to protect you? We think we do. We  
19 tried, and the Attorney General took a different  
20 position.

21 But I agree with Commissioner Mayes that we  
22 would love to have your help when we go back to the  
23 legislature. The Chairman worked numerous hours trying  
24 to convince the legislature that they should clarify  
25 the law and make it clear that we have jurisdiction

1 over wireless telephone providers. Because we  
2 definitely have it over wired: Qwest, Citizens, and  
3 wire companies in Arizona.

4 I hope I explained it.

5 MR. MICHAELS: Yes, you have. Well, I  
6 certainly hope that there's something that can be done  
7 about it, because this is a problem that affects --  
8 this isn't just my bringing this up, because I'm sure  
9 this is happening to everybody out there. We're all at  
10 the mercy of what these companies feel that they want  
11 to do, and I don't think that's right.

12 But I will certainly do what I can, and  
13 we'll talk with you later, if I may.

14 COM. HATCH-MILLER: Mr. Michaels, you don't  
15 have to stay up there if you don't want to, but I  
16 wanted to just share my concern as well with the issue  
17 that you bring up.

18 Mr. Gleason had a good point. He wanted to  
19 organize the bill so you could see each thing and what  
20 section it fell into. I'm pushing that all of the  
21 companies that sell you a product in Arizona, a  
22 telecommunications product in particular, that they  
23 give you the bottom line of the amount you should  
24 expect every month as the total bill without any  
25 additional charges for special services or services

1 that would be normally added on.

2 So not that they could predict how many  
3 times you're going to call Venezuela, but they can  
4 certainly predict that the base cost is going to be  
5 this. The taxes are going to be this. And if you sign  
6 up for text messaging, that's another \$15.

7 So when you're there at the store, you go,  
8 wait a minute. I don't expect to have -- what did you  
9 say? \$35? So you could be there and say, I expected  
10 to have \$35. That doesn't seem right to me, what's  
11 wrong here, before you ever go out that door.

12 So thank you.

13 MR. MICHAELS: Thank you.

14 CHMN. SPITZER: I think what we had in that  
15 case with Mr. Michaels was a case of cramming where  
16 there was a \$15 unauthorized charge. And the FCC does  
17 not exercise jurisdiction over that aspect, which  
18 leaves it to the states.

19 And the current circumstance is you can file  
20 a complaint with the Attorney General's office, and the  
21 Attorney General's office, in fairness, is deluged with  
22 many consumers complaints. They try and prioritize the  
23 higher value complaints.

24 I know they have a task force on used-car  
25 sales and automobile repair where thousands of dollars

1 are at stake; predatory lending where people are losing  
2 their homes; health and safety issues. They  
3 prioritize, and the \$15 is relatively small.

4 But that is precisely why the Corporation  
5 Commission ought to have authority. Because if you  
6 steal \$15 from a couple of million people, pretty soon  
7 you're starting to talk real money.

8 And in your case, I guess the good news is  
9 AT&T Wireless will cease to exist. It's being bought  
10 by Cingular. They had a hemorrhaging of customers.  
11 They lost many, many customers due to very poor  
12 service. And there's an interesting article in the  
13 Seattle Post about the fall -- the collapse of AT&T  
14 Wireless as a corporation.

15 And corporations that displease customers  
16 ultimately should go out of business if they perform  
17 poorly. That's part of capitalism. What's very  
18 frustrating is during that transition time, people like  
19 you -- and I can assure you, because I've taken the  
20 phone calls, there are tens of thousands of people just  
21 like you who have failed to get redress.

22 And the wireless companies are tenacious  
23 adversaries. They have legions of lawyers. They have  
24 legions of lobbyists. I wish they would spend some of  
25 the money they spend on lawyers and lobbyists on hiring

1 customer service people that speak English in the  
2 United States.

3 That completes the slips. Does anyone else  
4 wish to -- please step forward. And we have a court  
5 reporter who will transcribe your words verbatim if you  
6 could identify yourself for the record.

7 MR. COOK: My name is Harry Cook.

8 And I've got a couple of questions. I'm  
9 sure you gentlemen all know, but some of the audience  
10 may not, where the first excise tax on telephones  
11 occurred?

12 COM. MUNDELL: Spanish-American War.

13 CHMN. SPITZER: 1898.

14 MR. COOK: Either the Spanish-American War  
15 or the Civil War. There were three phones, one in  
16 Washington, one in New York, and one in Philadelphia,  
17 and we haven't gotten rid of it.

18 And your comment about the -- talking about  
19 real money, you know where that came from. Senator  
20 Dirksen.

21 COM. MUNDELL: Edward Dirksen out of  
22 Illinois.

23 MR. COOK: Yeah. He said a bit in here and  
24 a bit in there, and pretty soon you're talking about  
25 real money.

1 And that gentleman's problem, crazy.

2 A question for you, Ms. Mayes. You found  
3 out the \$2.99. Now, what is your legal authority?  
4 Can't you tell Qwest, stop that? Isn't that something  
5 that the Commission has to approve? Can't you just  
6 call up and say -- call their attorney, and I'm sure  
7 you have their number, and say stop. We'll issue a  
8 stop order right this minute.

9 COM. MAYES: Yes, sir. I believe that they  
10 did have a duty to come to the Corporation Commission  
11 for approval. It's called A.A.C. Rule 14-2-1110, to be  
12 precise.

13 In fact, it's interesting you bring this up,  
14 and then I want you to continue. But we had a  
15 gentleman named Steve Davis who was a top -- who is a  
16 top executive. What's his position, Marc?

17 CHMN. SPITZER: Senior Vice President for  
18 Communications for Law and Policy.

19 COM. MAYES: Right. The Senior Vice  
20 President for Law and Policy from Qwest came to the  
21 Corporation Commission after several of us started  
22 raising questions about this \$2.99 fee. And I said,  
23 sir, don't you think you have a duty under the law to  
24 ask for permission?

25 And he said, no, because it's really an

1 interstate services fee, it's not intrastate, even  
2 though if you pay for both intrastate long distance and  
3 interstate long distance on your Qwest long distance  
4 plan. So they're trying to claim that it's colored by  
5 the interstate services portion. Okay.

6 And then I said, well, sir, don't you think  
7 you had some kind of a duty to come and at least talk  
8 to the people of Arizona about this issue? And he said  
9 -- and let me read you his words, because I took notes  
10 during our meeting.

11 He said, quote, yes, shame on us. We should  
12 have done that.

13 Well, that's not good enough. I mean, a  
14 company executive coming to the Corporation Commission  
15 and admitting that, yes, they should have at least come  
16 and talked to us, probably in my mind is not good  
17 enough. We need to see whether or not -- we need to  
18 really explore the issue of whether they had a duty  
19 under the law to come and get approval first.

20 MR. COOK: After retirement from the Marine  
21 Corp, I made my living as your friendly-neighborhood  
22 process server. You get your lawyer to draw up the  
23 papers, and I'll do it. I mean, free gratis.

24 I was exceptional. Several of you are  
25 attorneys. I was probably one of the world's finest

1 process servers for 18 years. I returned six services  
2 that I had been given to serve by my attorney clients  
3 unserved, and every one of those cases was a guy moved  
4 out of California and the plaintiff didn't want to go  
5 after him.

6 I'll find that sucker and I'll serve him.  
7 I'll be happy to do it. I'm not doing anything. I'm a  
8 miserable son of a -- I'm a miserable son of a gun.

9 And this kind of thing just infuriates the  
10 daylights out of me. That's why I'm here today. We  
11 don't have anything to say about it.

12 Now, Mr. Gleason mentioned about the website  
13 down in Texas. Have you suggested that to Qwest and  
14 Cox and the others here? What's their reply to that,  
15 Mr. Gleason, about putting it on the website? That's a  
16 piece of cake.

17 COM. GLEASON: Well, I've suggested that --  
18 they can hear me. I've suggested that, but these  
19 hearings aren't over yet, and we have yet to formalize  
20 what we will say to them.

21 But I have talked to Cox last night, and  
22 they thought that was a good idea. They think they'll  
23 probably do that. I haven't gotten far enough up  
24 Qwest's line. I don't know.

25 Does Qwest have a website?

1 MALE VOICE: Yes.

2 COM. GLEASON: They have a website that will  
3 give you those explanations, so it's not a new idea.

4 MR. COOK: You're talking about the bills.  
5 My biggest gripe -- and I think if there is an  
6 afterlife and you can speak to different people, the  
7 first guy I want to talk to is somebody from the Roman  
8 legions. And I want to ask him, what was your biggest  
9 gripe when you were conquering all of Gaul? And I'll  
10 bet you money what he's going to tell me is failure to  
11 pass the word.

12 And these people don't give you the word.  
13 You go in there and you sign up as this gentleman was  
14 saying with his cell phone. And, you know, you people  
15 have got some kind of -- well, the Attorney General  
16 says you don't.

17 But do you ever consider issuing some kind  
18 of order, and then have you taken him to court? Are  
19 you in the process now of taking the Attorney General,  
20 who you mentioned, up to the Supreme Court?

21 COM. HATCH-MILLER: We have considered that  
22 and have done in the past.

23 MR. COOK: Let's do it again.

24 COM. HATCH-MILLER: We're hoping to work  
25 together with the Attorney General going together to

1 the legislature in the next session to seek the changes  
2 in statutes so that we could have that authority to  
3 really represent you, to defend you, if you will, when  
4 there's a dispute between you and your provider.

5 Right now, instead of going and trying to  
6 find a court case against them, we're looking at a more  
7 amicable --

8 MR. COOK: More amiable.

9 COM. HATCH-MILLER: Yes.

10 MR. COOK: Does the Commission employ a  
11 lobbyist?

12 COM. MAYES: Yes.

13 CHMN. SPITZER: Well, the answer is yes, but  
14 the best lobbyists are the five of us.

15 MR. COOK: Yeah. Okay. I just wondered.

16 CHMN. SPITZER: Just so the record is clear,  
17 we do have a court reporter here and I want to be full  
18 and fair and accurate.

19 The Commission voted and did, in fact, file  
20 a special action in the Supreme Court against the  
21 Attorney General asking that our rules on slamming and  
22 cramming for wireless -- and wireless you really can't  
23 slam. Slamming is when people's service is changed  
24 without their consent. And it was very rampant in long  
25 distance for a long period of time, and it still

1 happens from time to time in long distance. In  
2 reaction to that, the states have said, we want to put  
3 a stop to this.

4 Cramming, which is actually more insidious,  
5 was what happened to Mr. Michaels when he asked for  
6 basic service for \$29.99 for X many minutes, and they  
7 sold him text messaging for \$15 a month in addition,  
8 which was a service and a charge that he did not  
9 request that was crammed onto his bill.

10 So we sued. We filed a complaint in special  
11 action in the Supreme Court against the Attorney  
12 General. We did not take that lightly, because it's  
13 with great reluctance that one governmental agency sues  
14 another. Because then you have government attorneys  
15 who are, you know, paid for by the taxpayers, in court  
16 arguing against each other.

17 And it's sad, frankly, to me that it had to  
18 come to that. And, you know, my own believe is that  
19 the Attorney General's office did not read the statute  
20 correctly and did not exercise good judgment in  
21 declining to certify the rules.

22 And the wireless companies, by the way, sued  
23 the Commission as soon as we adopted rules. So we are  
24 and will be in court anyway, and it's not just Arizona.  
25 We are members of national regulatory associations.

1 MR. COOK: Of course.

2 CHMN. SPITZER: We regularly contact and  
3 meet our fellow regulators from across the country.  
4 And the wireless companies have made a business  
5 decision at the head offices that they do not want any  
6 state regulation of their services anywhere, anyplace,  
7 anytime. And they fight in every state in the Union  
8 against any form of state regulation.

9 And it's pretty brass knuckles, pretty  
10 hardball stuff that goes on in every state in the  
11 Union. And hopefully we will be able to persuade the  
12 Arizona legislature that this is an appropriate  
13 exercise of our authority.

14 MR. COOK: I have come to the conclusion --  
15 I was a cynic at six and a curmudgeon at seven. And  
16 I've come to the conclusion that what we need to do is  
17 have another revolution. And instead of going to  
18 Boston and throwing chests of tea into the Boston  
19 Harbor, we'll go down to Washington and throw Congress  
20 into the Potomac River on a cold day.

21 COM. MAYES: Boy, I don't know what to say  
22 to that. Because you could turn on us next.

23 MR. COOK: And it's being reported.

24 COM. MAYES: But I appreciate those  
25 comments, and I appreciate your offer of your services

1 as a process server, too. But usually when we call,  
2 they come answering. But to your -- I mean, it was a  
3 serious question, actually. And it was, I think, what  
4 power do we have over this \$2.99 fee and how would we  
5 go about addressing that?

6 And there are a couple of different ways, to  
7 be totally serious with you. One is our Staff could  
8 issue what's called an order to show cause, and I think  
9 they may be moving toward that. Another is for the  
10 Commissioners sitting in front of you to call for an  
11 order to show cause. And if it were up to me right  
12 now, I would call for one. We actually haven't had  
13 this discussion. We may have that discussion in the  
14 next few weeks. But our Staff may also do it.

15 So it's called an order to show cause, and  
16 when we issue that we usually don't need a process  
17 server.

18 MR. COOK: I've served a few of those. What  
19 would be the situation if I refused to pay that, and  
20 then they cancelled my service and I'll take them to  
21 court? Make a test case out of it?

22 COM. MAYES: Well, I'm going to let Bill,  
23 who is a better lawyer than I am, answer that question.  
24 But let me just say this. I am going to be asking  
25 Qwest in a letter in the next few days to discontinue

1 the \$2.99 fee until we have this resolved. I think  
2 that's only fair to the people of Arizona. I think  
3 there are enough questions about that \$2.99 fee to  
4 warrant them waiving it right now.

5 COM. MUNDELL: Well, I don't know if I'm a  
6 better lawyer. I'm an older lawyer.

7 But having said that, one of the purposes of  
8 these meetings that we're conducting -- we had one in  
9 Mesa a couple of weeks ago and we had one at the  
10 Commission and now we're here today -- is to gather  
11 evidence. And that's why we have a court reporter here  
12 so that we have a record to make a decision that there  
13 is, in fact, a problem in Arizona.

14 We're like judges. That's why we're called  
15 Commissioners. And even though we know there is a  
16 problem, because we have had people call us and we've  
17 had articles in the newspaper, we are developing the  
18 record here so that we can proceed forward, as  
19 Commissioner Mayes said, with an order to show cause  
20 hearing or whatever other mechanism is appropriate.

21 You can certainly file an individual  
22 complaint at the Commission, but the order to show  
23 cause is more analogous to a class-action lawsuit.  
24 And that's not what it's called, but we issue -- our  
25 Staff issues an order to show cause or an order to show

1 cause is issued, and then there's a hearing that's  
2 conducted. And the company has a right to due process,  
3 and a hearing is conducted, and then we will make a  
4 determination after the hearing.

5 MR. COOK: Okay. Thanks.

6 COM. MAYES: And not to belabor that point,  
7 but to Commissioner Mundell's point, our Staff has been  
8 gathering a lot of evidence independent of us up here.  
9 In fact, I'm holding some of it right here in my hands.  
10 These are data requests that our Staff has done over  
11 the last few weeks on that \$2.99 fee. I was reading  
12 the second set of data request responses last night in  
13 bed watching TV.

14 But this was the first set, and I've read  
15 these responses. I've read the second set of data  
16 requests, and I think there's a lot of evidence here.

17 COM. MUNDELL: And as -- I was going to say  
18 an old process server, but I'll just say a retired  
19 process server.

20 MR. COOK: Yeah. I'm 78. I'm old.

21 COM. MUNDELL: When Commissioner Mayes uses  
22 the word data requests, that is similar in a court case  
23 to an interrogatory. Okay. It's written questions  
24 that are sent to the company that have to be responded  
25 to under oath. We call them data requests for some

1 reason at the Commission. That's what they were called  
2 when I got here. That's what they'll be called when I  
3 leave. But in the court setting they're called  
4 interrogatories, and they're questions that are  
5 answered under oath.

6 CHMN. SPITZER: Do we have anyone else who  
7 wishes to come forward? And, again, once we gavel the  
8 public comment session to a close and go off the  
9 record, we'll be happy to speak with you individually  
10 if you have a personal concern that you didn't want to  
11 take the microphone.

12 But we would at this time ask if anyone else  
13 wishes to be heard?

14 You know, it's a shame, sir, that you talked  
15 about hiring a lawyer or filing a suit on your own.  
16 And this is the problem with the \$15 cramming text  
17 messaging fee. It shouldn't have to come to hiring a  
18 lawyer to get justice.

19 I mean, these are public utilities. It's  
20 not widgets. A utility is a term of art in the law.  
21 And this Corporation Commission and similar bodies  
22 throughout the country exist to provide justice to  
23 those who receive utility services.

24 And that's why it is so irritating to me  
25 that we at this time are unable to give justice to

1 Mr. Michaels and in cases such as yours. And sometimes  
2 the citizen's complaint is justified, and sometimes  
3 it's not. But we have handled those over utilities for  
4 a long time.

5 And wireless is becoming a very important  
6 means of communication for an awful lot of citizens.  
7 And lots of people who don't have land lines anymore,  
8 they use exclusively the cell phone. And the result  
9 that they're second-class citizens is very, very  
10 disturbing to me, obviously.

11 Ma'am, and then Mr. Michaels.

12 MS. HERRERA: My name is Debra Herrera.

13 And I just have a comment that I am so  
14 confused on these telephone bills it makes me sick. I  
15 either pay it, or I throw it away and wait until it's  
16 late, or I give it to my husband and throw it at him,  
17 and then he gets upset and he gets on the phone and he  
18 calls them.

19 They're always adding different charges.  
20 Our cell phone, when we bought our cell phone, we said  
21 what we wanted. The next thing we know we're charged  
22 for insurance. And we even cancelled within the next  
23 day and they still charged us. We had to hire an  
24 attorney to get half of -- not even half of it back,  
25 just to make a point, I guess.

1           And so it's disgusting. And to think that  
2 we have to pay over \$1,000 a year just to communicate  
3 with families and businesses and things at home. I'm  
4 young, but for the senior citizens here it's awful.  
5 \$1,000 is a lot for me, and I can imagine what it is  
6 for them.

7           And so anything that you can do is  
8 appreciated. But surcharge after surcharge, Arizona  
9 charge, telephone surcharge, taxes, another tax, here's  
10 a tax. You're right. It needs to be listed, itemized,  
11 but it still doesn't matter. They're still going to  
12 make us pay whether it's itemized or not. Whether we  
13 know what it is or not, we're still going to have to  
14 pay. So I don't know what resolution you can come up  
15 with where we don't have to pay it, because they're  
16 just -- it's just doubling that surcharges.

17           CHMN. SPITZER: We would like to hear about  
18 your story, and we have consumer services  
19 representatives in the back who are employees of the  
20 Commission who can confidentially take your story, and  
21 particularly your issue regarding, again, the cellular  
22 phone. It sounds like it was a cramming case where you  
23 were charged for services that you didn't order, and  
24 that's not acceptable.

25           MS. HERRERA: And on Qwest, we use their DSL

1 line. And you're paying one thing, and then you see it  
2 advertised on TV for \$10 or \$15 less. You call and say  
3 how come? I want to change. And then they say, no,  
4 you're actually paying cheaper. I don't know how they  
5 get it, but you need it. So just anything to lower the  
6 bill.

7 CHMN. SPITZER: Thank you.

8 Mr. Michaels.

9 MR. MICHAELS: I would like to know if you  
10 know of any other states that have -- where the  
11 Corporation Commission has control over the cellular  
12 phones? Is there any state that controls that yet?

13 COM. MUNDELL: That's a great question. The  
14 question was do any other states have authority or  
15 taken jurisdiction and asserted they have jurisdiction.

16 In California recently there were rules  
17 passed. And lo and behold the same thing happened in  
18 California that happened here as the Chairman was  
19 saying. The wireless companies have sued the  
20 Commission there to block the rules from being put into  
21 place.

22 And the same thing happened here in Arizona.  
23 Again, as the Chairman said, we passed cramming and  
24 slamming rules that included wireless providers, and  
25 the wireless companies immediately sued us in Superior

1 Court.

2 So yes, but as we were talking about  
3 earlier, the wireless companies are going state by  
4 state, scorched-earth policy, suing saying that none of  
5 the commissions have jurisdiction.

6 And so we will see how this all evolves.  
7 That's why I said earlier, in Arizona, if we can't  
8 reach an agreement with the legislature and convince  
9 them to pass legislation, we'll probably be back in  
10 court. And the Arizona Supreme Court will ultimately  
11 decide the jurisdictional issue.

12 We would like to work together, I think as  
13 Commissioner Hatch-Miller was saying, with the Attorney  
14 General with the legislature and pass legislation that  
15 protects people in Arizona, consumers. But if we're  
16 unsuccessful in that regard, we'll go back to our  
17 original position that we already have the authority  
18 without any change in statute, because we have it under  
19 the Constitution.

20 But yes, other states are trying, and the  
21 wireless companies are suing every time they try.

22 CHMN. SPITZER: Does anyone else wish to be  
23 heard?

24 (No response.)

25 CHMN. SPITZER: If not, then we will

1 certainly, again, stay here and entertain your  
2 questions or comments.

3 Thank you very much for attending. We are  
4 adjourned.

5 (The Special Open Meeting concluded at  
6 4:00 p.m.)

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1 STATE OF ARIZONA )  
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 2 COUNTY OF MARICOPA )

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I, MICHELE E. BALMER, Certified Court Reporter  
 No. 50489 for the State of Arizona, do hereby certify  
 that the foregoing printed pages constitute a full,  
 true and accurate transcript of the proceedings had in  
 the foregoing matter, all done to the best of my skill  
 and ability.

WITNESS my hand this 28th day of October, 2004.

*Michele E. Balmer*  
 MICHELE E. BALMER  
 Certified Court Reporter  
 Certificate No. 50489

ARIZONA CORPORATION COMMISSION

Information for Public Comment Meeting

PLEASE PRINT CLEARLY

Date 11/27/04 Telephone No. 623-566-2196

Name R. Mike Michaels

Street Address 7118 W TARD LN

City Peoria State AZ Zip 85382

I WOULD like to speak.  I do NOT want to speak.

Comments: Snipe about lack of communication

\*\* THREE MINUTE SPEAKING LIMIT \*\*

ARIZONA CORPORATION COMMISSION

Information for Public Comment Meeting

PLEASE PRINT CLEARLY

Date \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name JACK HART

Street Address 9318 W. WILLANBROOK DR

City SUN CITY State AZ Zip 85373

I WOULD like to speak.  I do NOT want to speak.

Comments: \_\_\_\_\_

\*\* THREE MINUTE SPEAKING LIMIT \*\*