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**March 27, 2003**

**TESTIMONY OF GARDNER F. GILLESPIE ON SB 400**

Mr. Chairman and members of the Committee, my name is Gardner Gillespie. I am a partner in the law firm of Hogan & Hartson and I appear here on behalf of Cox Communications of Las Vegas.

With considerable respect, Mr. Chairman, SB 400 is a very dangerous and misguided piece of legislation.

Chapter 704 of the NRS and NAC provide a carefully thought-out mechanism for managing the transition from regulation to competition and deregulation. This existing mechanism is the product of extensive hearings and negotiations involving all interested parties before the PUC. The procedures and standards were agreed to by the ILECs and approved by the Commission.

Contrary to the testimony of the ILECs here, those mechanisms appear largely to have worked. Sprint, for example, has requested reclassification 18 times. It has been successful 17 times. One request – which involved multiple services – was withdrawn. On the basis of a batting average of 940, Sprint would have the system declared a dismal failure.

Similarly, I understand that Sprint has been successful in winning the vast majority of large contracts for telcom services in Clark County. Yet because it was unsuccessful in obtaining the contract with the Clark County Schools, again it would describe the system as unworkable.

Though the evidence seems to show that the system continues to favor the ILECs, if the system does have deficiencies, it would seem that the proper forum for consideration of the issue – at least in the first instance – would be the Commission. If there is a problem with the way that the transition to competition is going, the Commission is a place where the record could be fully developed. That is why administrative agencies were created in the first place.

I have spent my legal career working in the field of administrative agency law. Agencies were created in part to develop records to carefully consider solutions for problems in complicated areas of evolving technologies – like telecommunications. In fact, a proceeding was begun last year to consider whether there should be revisions to the rules for ILEC plans of alternative

regulation. That proceeding was not completed because the ILECs requested it be stayed so that they could seek legislation instead.

SB 400 is not deregulation by careful consideration based on a full record. It is deregulation by meat cleaver based on selected anecdote.

I would ask each member of the Committee:

- Can you be fully confident that there already exists effective competition sufficient to justify this sweeping legislation?

- Do you understand what the bill says and how it would work?

- Do you understand what would be the result? For example, do you have a general understanding of what services would be declared competitive or deregulated virtually automatically?

- What if the bill leads (as I believe it would) to elimination of competition and higher prices for consumers? How would the genie be put back in the bottle?

I would ask each of you to consider – in your position of great responsibility to the consumers in Nevada how could you approve this legislation if you cannot answer these basic questions.

I have a memorandum for each of you that I would respectfully ask you to consider. The memo describes how I understand the bill to work and it raises questions about some of the serious ambiguities that are not answered, in my judgment, in the bill. The way that I read the bill, it would almost immediately deregulate all ILEC business services without any showing that the services are actually subject to effective competition in the market. It would also eliminate the price cap system that the ILECs agreed to as part of the bargain under which they have already obtained considerable deregulation.

But there are other questions that the bill does not resolve – in my mind, anyway. For example, it would appear that the ILECs could achieve full deregulation simply by describing a service as nonregulated in their Cost Allocation Manuals filed with the FCC. Indeed, under the circular working of Section 3 of the Bill, a service would be deregulated simply because was described that way in the Manual.

What would happen if the ILECs move toward packet-switched services, as Sprint has testified in other proceedings it is rapidly moving toward? Under my reading of the bill, those services would be automatically

deregulated under Section 10 of the bill which fully deregulates all so-called Broadband services..

I understand the frustration felt by the PUC Chairman and perhaps yourself, Mr. Chairman, that the benefits of competition have been slow to develop. Surely, this is partly the result of general economic conditions. It may also be partly the result of the failure of the regulatory system to adequately encourage and protect competitors. The competitive carriers would undoubtedly say the reason, at least in part, is the fact that the rates for obtaining unbundled elements from the ILECs are too high.

In any case, the fact that the benefits of competition has been slow to develop is no reason to give up on competition.

Regulation is generally understood to be a substitute for competition. You need one or the other to curb the abuses of monopoly power. This bill would deliver the worst of both worlds – no competition or regulation. I don't believe that any economist would approve.

Indeed, this bill would go much further toward the elimination of regulation than any deregulation in any other state with which I am familiar. It is one thing to be a leader. It is quite another to be off the map.

Mr. Chairman and members of the Committee, I urge you to have these issues considered where a full record can be developed – either before the PUC or an interim legislative committee. To pass this legislation would be to abandon the residential and business telecommunications consumers in Nevada.