

May 2, 2000

Via Hand Delivery

The Honorable
Senate of Pennsylvania
Room
Harrisburg, Pennsylvania 17120

Re: Nomination of Robert K. Bloom to the Pennsylvania Public Utility Commission

Dear Senator _____ :

The purpose of this letter is to share with you my serious reservations concerning the nomination of Robert K. Bloom to serve another term as a member of the Pennsylvania Public Utility Commission and to ask for your help in opposing his confirmation. Only six days ago, the Senate Consumer Protection and Professional Licensure Committee conducted a three hour hearing on the qualifications of the nominee. It is my opinion that the record produced from the hearing provides substantial and credible evidence demonstrating that the nominee is simply not capable of considering matters involving utility deregulation in an impartial and unbiased manner.

Included for your consideration is a copy of the hearing transcript, attached exhibits and a recent editorial opinion from the *Patriot News* echoing some of the same concerns raised in last week's hearing. I would note that my opposition to the nominee is not motivated by partisan considerations. Rather, during the past two years I have worked cooperatively with Senators Madigan and White before the Commission in an effort to ensure that the benefits of telephone competition are actually delivered to ratepayers, in all areas of the Commonwealth. In fact, I have supported the last two Republican nominees to the Commission. Unfortunately, I cannot support this nominee.

The following is a brief account of the reasons for my opposition (the citations refer to the page number of the attached Committee hearing transcript):

- (1) The nominee is not qualified to manage utility deregulation. The debate concerning the wisdom of utility deregulation has been conclusively settled by the General Assembly through our enactment of electric, gas and telecommunication deregulation laws. As the administrative arm of the legislature, the proper role of the Commission is to execute these laws in a manner that breathes life into their legislative purpose – to provide competitive benefits in all areas of the Commonwealth, rural, urban and suburban. Since our enactment of telecommunication deregulation in 1993, there has been no competition in the local rural or residential markets. Unfortunately, instead of viewing the Commission's role as important and active during this transition period, the nominee believes the role of the Commission is "diminishing." Tr. 38. This

stood in stark contrast with the views expressed by Senators White (Tr. 21-22) and Bell (Tr. 44) during the hearing.

Furthermore, when questioned about specific matters involving telecommunications issues, the nominee simply appeared unknowledgeable. For example, he could not recall the name for Caller ID service (Tr. 37),¹ did not know if Bell Atlantic offered any advanced broadband service to residential customers (Tr. 57), either did not know or did not believe it was important to know how Pennsylvania's Lifeline Program compared with other states (Tr. 60), thought Lifeline was not a proper issue for the Commission (Tr. 41), and was not involved in operational system testing efforts and only appeared "hopeful" problems would be corrected (Tr. 27-28). These admissions contrast sharply with the nominee's current position as the Commission's Vice-Chairman.

- 2) The nominee is not committed to addressing the problems of rural Pennsylvania. The residential and rural market segments are in the unfortunate position of being the most in need of advanced telecommunication services, yet the most vulnerable to market power abuse by incumbent companies. This dilemma demands the Commission pay particular attention to rural and residential ratepayer needs and not subordinate these needs to the belief that rural incumbent utility companies need protection from competition. The nominee does not share this view. Tr.13. To the contrary, he believes that competition threatens these utility companies, and that they need to make a profit, regardless of their ability to compete. *Id.* The Commission's landmark decision last year, intended to finally open Pennsylvania's local exchange service market to competition, included special provisions designed to encourage new competitive market entry into the rural and residential markets. The nominee was the only member of the Commission to vote against this decision, otherwise referred to as the *Global Order*.
- 3) The nominee is not committed to addressing the needs of ratepayers. Despite serving on the Commission for over ten years, the nominee was unable to point to a single pro-consumer or ratepayer initiative he sponsored. He apparently did not care that his nomination is not supported by a single consumer or ratepayer group in the state. Tr. 62 Though claiming to have been the "leader" in supporting the Commission's lifeline program (intended to provide low cost basic phone service to persons at or below 100% of the federal poverty level) (Tr. 33), the nominee did not think it was a proper role for the Commission, it was a "welfare problem." Tr. 40-41. In fact, the nominee represented to the Committee that Pennsylvania's lifeline program is "ahead of the game" as compared to other states. Tr. 60.

Unfortunately, he is wrong. Pennsylvania's take-rate (the percentage of eligible persons who actually receive lifeline assistance) is one of the lowest in the country. (In Pennsylvania, of the 1.2 million lifeline eligible ratepayers, only 32,803 people participate in the program. By comparison, 3 million people take advantage of the program in California, 675,000 in New York, and 45,000 in Rhode Island). The nominee said he was unaware of these facts and did not appear

¹ While the nominee's omission may seem trivial, it is not something that many rural consumers in the Commonwealth can take for granted. For example, over 30% of the customers within the GTE service territory cannot receive such basic telephone services as Caller ID, Call Waiting, Call Forwarding or Priority Call. This disparity should have been of significant concern to the nominee.

to even care about the take rates in California, New York or Rhode Island. Tr. 60. Amazingly, the Vice-Chairman stated that it was simply “not an issue” for him. *Id.*

- 4) The nominee has failed to avoid the “appearance” of impropriety. State law explicitly provides that members of the Commission shall “avoid impropriety and the *appearance of impropriety in all activities.*” (Emphasis added) 66 Pa.C.S.A. § 319(a)(1). Listed as the first among twelve different mandates on commissioners, this rule mirrors the second Canon of Judicial Ethics promulgated by our State Supreme Court – indicating the similar nature of the duties of a commissioner and a judge. Though claiming to understanding the purpose behind the rule and its meaning, the nominee has failed to conduct his behavior accordingly. Tr. 50-51, 54.

The nominee admitted that during his time on the Commission, he made numerous political contributions to public officials and attended political fund-raising events. Tr. 88-90. The nominee also admitted to being taken out to dinner and receiving gifts from utility representatives. Tr. 101.² However, the nominee refused to respond to a written inquiry requesting that he account for all gifts, without regard to value, he received from utility representatives during his past few years as a Commissioner. By comparison, judges are not permitted to attend any political event, make any political contribution, receive any gifts or maintain any improper relationship with any party appearing before him.

Of a more serious nature, the nominee candidly admitted under oath that “from time to time” he looks to resolve “procedural problems” utility lobbyists may have before the Commission, (Tr. 63.) and that he “gets calls all the time” for similar favors for “lots of people every day.” Tr. 73. Unfortunately, the nominee’s description of procedural matters as not being of a sufficient nature to demand the avoidance of ex parte conversations is not correct. The ability of a judge to delay or expedite a case is a significant power that can dramatically change or alter the outcome of a litigated case. The procedural posture of a case is often a highly contested matter and the Pennsylvania Code of Ethics applicable to members of the Commission demands handling such matters with impartiality and within the bounds of ethics (e.g., avoiding the appearance of impropriety and refraining from ex parte conversations). The nominee has not adhered to this mandate.

- 5) The nominee has failed to act in an impartial manner. The statutory Rules of Ethics applicable to members of the Commission requires a Commissioner to “disqualify himself from proceedings in which his impartiality might be reasonably questioned.” 66 Pa.C.S.A. § 319(a)(7). Undisclosed to either myself, or to Senators Madigan or White, the nominee has had a long-standing disagreement and personal distrust for an expert witness we retained to testify on several matters before the Commission.³ The nominee admitted to knowing personally our witness for a long

² In fairness, it should be noted that the nominee denied receiving anything of value, “other than a sleeve of golf balls, a pen, that sort of thing,” from utility representatives. Tr. 101. I am presently investigating the accuracy of this statement.

³ We retained Peter Bradford, a nationally recognized expert on utility regulatory matters. Mr. Bradford was a former Nuclear Regulatory Commission member at the time of the TMI accident, a former Chairman of the New York State Public Service Commission, and a former Chairman of the Maine Public Utility Commission.

period, (Tr. 25) strongly disagreeing with his philosophy, (Tr. 26), and informed staff members of the Commission several years ago that he would oppose any decision to retain our witness to provide consulting services on behalf of the Commission. Tr. 91-94. Yet, at no time did the nominee inform either myself or Senators White and Madigan of his past disagreements with our witness.

An additional example of the nominee's failure to act in an impartial manner relates to his expressed support for a petition presented before the Commission by Bell Atlantic seeking to amend the Commission's *Global Order* of last year. Under oath, the nominee admitted to attending a meeting of four of the five members of the Commission and signed a letter expressing his support for the principles of a petition that was to be filed by Bell Atlantic with the Commission. Exhibit 2; Tr. 69-70.⁴ Most of these principles, of which the nominee stated his support, are pending before the Commission in different cases. To make matters worse, the nominee stridently stated that he does not intend to disqualify himself from voting on any matter related to the Bell Atlantic petition of which he has already indicated his support. Tr. 87.

- 6) The nominee has been accused of attempting to coerce a party-litigant to support a settlement petition sponsored by Bell Atlantic. The most recent manifestation of the nominee's casual attitude toward his responsibility to avoid even the appearance of impropriety involved a phone call he placed to his friend and contract lobbyist for MCIWorldCom. The nominee has admitted, under oath to the following: On January 12, 2000, he initiated a phone conversation with his friend (Ron Lench) who he knew represented MCI, a telecommunications phone company appearing before the Commission on several contested matters. Tr.62-64. At the time of the call the Commissioner was aware that MCI had an application seeking approval of its proposed merger with Sprint pending before the Commission.

According to the nominee, he admitted that in the past he had discussed procedural and other matters involving Mr. Lench's client, MCI (Tr.63-64), and that he helped expedite the approval of a prior merger involving MCI and WorldCom (the predecessor to MCIWorldCom). Tr. 72.⁵ The nominee's call of January 12th was to seek MCI's support for a proposal to be submitted by

⁴ A fair reading of this portion of the Committee hearing transcript indicates a possible violation by the Commission of the Sunshine Act, requiring advanced public notice and hearing on all governmental determinations. Tr. 69-70. Though admitting that it may have been a violation of the Sunshine Act, the nominee, stated that "it was not an issue for him at the time," despite being the Commission's Vice-Chairman. Tr.70.

⁵ It should be noted that the nominee described the merger between MCI and WorldCom as an uncontested matter and implied that because it was noncontroversial his efforts to expedite Commission approval of the transaction was permissible. Tr. 72. Unfortunately, the nominee's characterization of the merger is wrong. Rather, the MCI / WorldCom merger was a highly contested matter before the Commission. *See, Joint Application, As Amended, of WorldCom, Inc., MCI Communications Corporation and MCImetro Access Transmission Services for the Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc. by Merger, Through the Transfer of Stock*, PUC Dkt. Nos. A-312025F0002; A-310236F0004 (Order issued June, 18, 1998) (GTE challenged the merger and the allocation of merger savings).

Bell Atlantic seeking to resolve Bell Atlantic's challenges to the Commission's *Global Order*.⁶ Tr. 73. Under oath, the nominee described his conversation requesting MCI's support as his suggestion to Mr. Lench "that over the time that he came to me and asked for procedural help on mergers, et cetera, and would he do the same for me and go to his client and ask for the same kind of help." Tr. 71-72. In other words, the nominee has admitted to actively seeking the support of Bell Atlantic's proposed petition from parties adverse to Bell Atlantic, and that he intended to collect on past "favors" that he provided to MCI's lobbyist. Tr.73.

However, the nominee's account of his phone conversation with Mr. Lench is in dispute. In a sworn statement submitted to the Committee, (Exhibit 6), Mr. Lench asserts that the nominee made a subtle threat to MCI by noting that MCI "still has their merger out there," referring to the still pending merger between Sprint and MCI. Though the nominee denies ever making the threat (Tr. 76) and agrees that the accusation is serious (Tr.83) at no time did the nominee attempt to rectify the matter with either Mr. Lench or the other members of the Commission Tr. 84. If true, this accusation suggests an extortion demand made by a member of the Commission. Without explanation, the Committee refused to seek the testimony of Mr. Lench to determine the truthfulness of his accusations. (Tr. 112-114).

It should be noted that when asked by a newspaper reporter if he ever contacted MCI to seek their support for the Bell Atlantic petition, the nominee denied ever making a phone call. Tr. 82. The nominee also misled the Chairman of the Commission (John Quain) when asked about the matter. Tr.80-81; Exhibits 9 & 10.⁷ The Committee's hearing represents the first time the nominee has attempted to explain his actions.

Based on the forgoing reasons I have concluded that the nominee should not be confirmed for another term as a member of the Public Utility Commission. The duties of a utility commissioner is similar to that of a judge – impartial, unbiased and diligent in avoiding any action that may reflect adversely on his office. The public has an absolute right to expect members of the Commission to conduct themselves in a manner that

⁶ The Bell Atlantic proposal was a highly contested matter – seeking, in effect, to withdraw all its appeals of the *Global Order*, in exchange for the Commission agreeing to remove its structural separation directive to the Company. The Bell Atlantic proposal was opposed by a significant number of the litigants in the underlying proceedings, including myself and Senators Madigan and White.

⁷ The nominee has attempted to use the existence of a Pre-Settlement Agreement signed by all the litigants in the underlying proceedings as support for his authority to contact parties seeking their support for the Bell Atlantic proposed petition. Tr. 8-9. However, the nominee misses the entire point of his phone conversation – first, it evidences that he is no longer impartial about the merits of Bell Atlantic's petition, he acted as an advocate; and secondly, he attempted to use his position as a Commissioner to extract a "favor" from a litigant that regularly appears before the Commission.

Furthermore, the nominee admitted that he never signed the Pre-Settlement Agreement (Tr.105), he never sought or received any legal advice concerning the scope or application of the Pre-Settlement Agreement prior to calling Mr. Lench (Tr.102), and that he does not know how the Pre-Settlement Agreement applies to either the Code of Ethics or the Sunshine Act. (Tr.105-106). Taken at its best, this is not prudent behavior for a public official.

avoids even the appearance of impropriety, for any such failure compromises the public trust placed in our institutions of government.

Thank you in advance for your careful consideration of my concerns. Please do not hesitate to contact my office if you need any additional information.

Sincerely,

VINCENT J. FUMO
State Senator