

STATEMENT

of

DAVID H. SOLOMON

Chief, Enforcement Bureau

Federal Communications Commission

Before the

Subcommittee on Telecommunications and the Internet

of the House Committee on Energy and Commerce

on

H. R. 1765

Thursday, May 17, 2001

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2123 Rayburn House Office Building

**SUMMARY OF STATEMENT OF
DAVID H. SOLOMON, CHIEF, ENFORCEMENT BUREAU
BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
OF THE HOUSE COMMITTEE ON ENERGY AND COMMERCE
MAY 17, 2001**

Strong and effective enforcement is critical to implementation of the Telecommunications Act of 1996. Chairman Powell has emphasized on numerous occasions his strong commitment to enforcement as a central part of his vision for a more effective FCC dedicated to implementing the competitive and deregulatory vision of Congress in the 1996 Act. Within the scope of responsibilities Congress has delegated to the Commission, he has charged the Enforcement Bureau to move quickly to respond to complaints or requests for investigations that we receive. Only in partnership with the states can we facilitate compliance with the local competition provisions of the 1996 Act and we will continue to work with the states to do so.

As Chairman Powell recently indicated in a letter to the leaders of the House and Senate Commerce and Appropriations Committees, attached to my testimony, the effectiveness of the Commission's enforcement efforts could be increased with the help of Congress. We are pleased that H.R. 1765 incorporates certain proposals made by Chairman Powell and, not surprisingly, we strongly support these measures.

Statutory Forfeiture Caps. Given the vast resources of the nation's large common carriers, including incumbent local exchange carriers and long distance carriers, the existing caps on common carrier forfeitures of \$120,000 per violation or per day of a continuing violation, up to \$1.2 million overall for a continuing violation, are an insufficient sanction or deterrent in many instances.

The proposed 10-fold statutory increases – to \$1 million and \$10 million – would significantly strengthen our enforcement authority against incumbent local exchange carriers and other common carriers. Through deterrence as well as the impact of sanctions that are imposed, we believe this should increase compliance with the Act and the Commission's rules, to the overall benefit of consumers.

Statute of Limitations. As Chairman Powell has noted, the one-year statute of limitations for common carriers has often proved an impediment to the Commission's enforcement actions. While it is certainly important that the Commission commence forfeiture proceedings before the evidence relating to the alleged violation becomes stale, it is imperative that the Commission have enough time to conduct a meaningful investigation into the matter before issuing a publicly available notice charging the carrier with apparent misconduct. The proposed extension of the statute of limitations to two years would give the Commission the needed flexibility to proceed with its investigations without running up against an artificially short deadline.

Good morning Mr. Chairman and members of the Subcommittee. I am pleased to appear today on behalf of FCC Chairman Michael K. Powell regarding H.R. 1765. We appreciate the interest of Chairman Upton and others on the Subcommittee and the full Committee in enhancing our enforcement tools.

Strong and effective enforcement is critical to implementation of the Telecommunications Act of 1996. Chairman Powell has emphasized on numerous occasions his strong commitment to enforcement as a central part of his vision for a more effective FCC dedicated to implementing the competitive and deregulatory vision of Congress in the 1996 Act. Within the scope of responsibilities Congress has delegated to the Commission, he has charged the Enforcement Bureau to move quickly to respond to complaints or requests for investigations that we receive. Only in partnership with the states can we facilitate compliance with the local competition provisions of the 1996 Act and we will continue to work with the states to do so.

Our common carrier enforcement efforts generally take place in one of three contexts. First, through the formal complaint process set out in section 208 of the Communications Act, the Commission decides formal complaints between private parties. These are generally the equivalent of private law suits filed in court. Second, as an adjunct to the formal complaint process, Enforcement Bureau staff provides mediation assistance to litigants or potential litigants in an effort to help them reach a private settlement of their disputes where feasible. Third, the FCC conducts informal

investigations pursuant to sections 218, 403 and 503(b) of the Communications Act. These investigations may lead to monetary forfeitures or consent decrees. While outside entities sometimes informally bring information to our attention in connection with such investigations, they are not parties to the investigation or any subsequent forfeiture proceeding. The only party to this type of FCC investigation is the subject of the investigation.

As Chairman Powell recently indicated in a letter to the leaders of the House and Senate Commerce and Appropriations Committees, which I have attached to my testimony, the effectiveness of the Commission's enforcement efforts could be increased with the help of Congress. We are pleased that H.R. 1765 incorporates certain proposals made by Chairman Powell and, not surprisingly, we strongly support these measures.

Specifically, I'd like to focus my remarks on two provisions of H.R. 1765 that would amend section 503(b) of the Communications Act: (1) the increase in the caps on the Commission's forfeiture authority for common carriers; and (2) the lengthening of the statute of limitations period for such forfeitures. Both of these provisions relate to the informal investigation process I mentioned before.

I. *Statutory Forfeiture Caps*

Right now, under section 503(b) of the Communications Act and the inflationary adjustments provided for under the Debt Collection Improvement Act of 1996, the Commission can fine common carriers only \$120,000 per violation or per day of a

continuing violation. In the case of a continuing violation, the total fine cannot exceed \$1.2 million. Given the vast resources of the nation's large common carriers, including incumbent local exchange carriers and long distance carriers, this amount is an insufficient sanction or deterrent in many instances.

H.R. 1765 would increase the statutory caps 10-fold to \$1 million per violation or per day of a continuing violation and \$10 million for continuing violations. We think these statutory increases would significantly strengthen our enforcement authority against incumbent local exchange carriers and other common carriers. Through deterrence as well as the impact of sanctions that we impose, we believe compliance with the Act and the Commission's rules should be increased, to the overall benefit of consumers. We thus strongly support this provision. For similar reasons, we also support the proposal to increase the caps to \$2 million and \$20 million in situations where a carrier has violated a cease and desist order or where there has been a repeated violation that has caused harm to competition.

II. *Statute of Limitations*

In addition to setting out forfeiture caps, Section 503(b) of the Communications Act spells out the procedure for the imposition of forfeitures and the timetable for the initiation of such actions. Under the statute, the Commission may impose a forfeiture through a hearing that begins with a Notice of Opportunity for Hearing or through a paper process that begins with a Notice of Apparent Liability. Under either process, the Commission may not impose a forfeiture penalty unless the carrier is notified of the

charges and provided an opportunity to respond. For common carriers, the requisite notice must be issued within one year of the violation or violations at issue.

As Chairman Powell has noted, this one-year limitations period has often proved an impediment to the Commission's enforcement actions. While it is certainly important that the Commission commence forfeiture proceedings before the evidence relating to the alleged violations becomes stale, it is imperative that the Commission have enough time to conduct a meaningful investigation into the matter before issuing a publicly available notice charging the carrier with apparent misconduct.

Let me explain some of the practical constraints that the one-year limitation creates. In some situations, the Commission first hears about a violation from information informally provided by a competitor that has been harmed by the alleged violation. This can take several months as the harmed competitor determines whether there is a serious violation or pattern of violations at issue. In other instances, we are first notified of potential violations through incumbent carriers' required filings with the Commission, which often cover time periods dating back many months. Thus, when the Commission receives these reports, we are often already fairly deep into the limitations period. Moreover, once we start an investigation, much of the evidence relating to the alleged violation resides with the carrier whose conduct is under investigation.

Accordingly, in both types of situations, to determine whether there is sufficient evidence of a violation to proceed, the Bureau is often required to send a letter to the carrier requiring the submission of relevant information and documents, and then await the

carrier's response. Moreover, because some carriers employ mechanisms to slow the progress of our investigations, the Bureau is often required to send follow-up letters to the carrier before obtaining the information sought. This cuts still further into the limitations period.

Because of the one-year statute of limitations for forfeiture proceedings, there have been instances in which the Commission has been constrained from commencing forfeiture proceedings. In other instances, we have been put in the unfortunate position of requesting that the subject carrier enter into an agreement to toll the running of the limitations period. While carriers often agree to such arrangements when they believe it is in their interest to do so, they do sometimes refuse. When they refuse, the Commission is left racing against the clock to make a decision on whether or not to initiate a forfeiture proceeding before the limitations period expires.

These problems would be largely solved if the Congress were to extend the statute of limitations in Section 503(b)(6)(B) of the Communications Act to two years. Thus, we thus strongly support this provision in H.R. 1765 as well.

Thank you again for this opportunity to testify. I would be happy to answer any questions you may have.