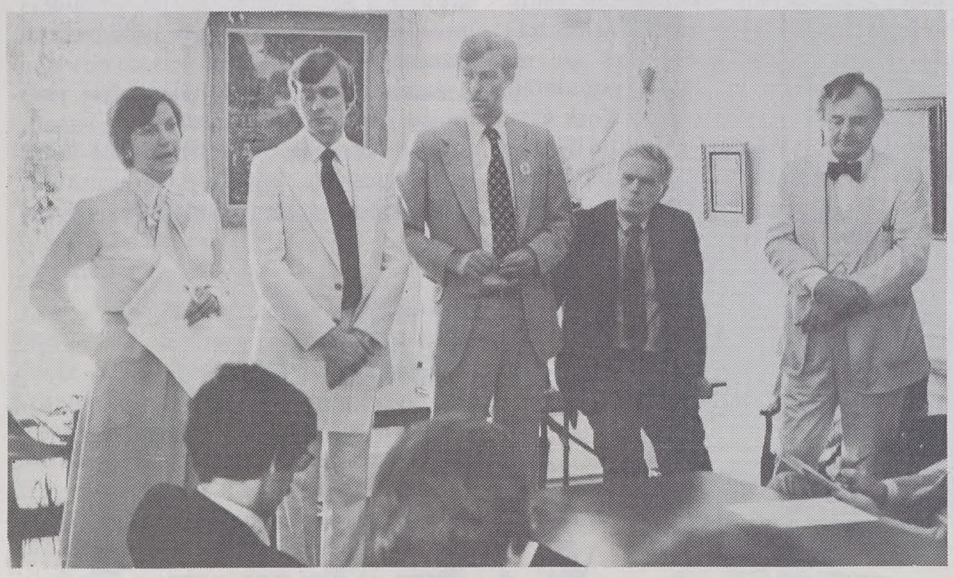
Consumer Federation of America NEWS

WASHINGTON, DC — SEPTEMBER, 1978

CFA Targets Congressional Races



CFA Executive Director Kathleen F. O'Reilly with (l. to r.) Rep. Peter H. Kostmayer (D-Pa.), Rep. Timothy E. Wirth (D-Co.), Sen. Floyd K. Haskell (D-Co.) and Rep. Bob Eckardt (D-Tx.) at CFA press conference.

Speaking before a packed Capitol Hill press conference on August 16, CFA's Executive Director, Kathleen F. O'Reilly, announced the initial list of upcoming Senate and House races selected for CFA campaign involvement. O'Reilly explained that CFA would devote a significant amount of its resources to ensuring the re-election of pro-consumer candidates and the defeat of those candidates who have consistently voted for the giant corporate special interests at the expense of the consuming public.

CFA deliberately compiled a relatively narrow list of races so as to maximize its impact. O'Reilly pointed out that there are dozens of pro-consumer candidates whose election or re-election are sufficiently secure, thus rendering CFA's assistance unnecessary and allowing greater involvement in the tighter races.

In addition to the unprecedented number of reporters, several of the endorsed candidates were present at the press conference, including: Senator Floyd Haskell (D-Co), Rep. Bob Eckhardt (D-Tex.), Rep. Peter Kostmayer (D-Pa.), Rep. Abner Mikva (D-Ill.) and Rep. Timothy Wirth (D-Co.). The complete list of candidates CFA will endorse includes:

Senate — Richard Clark (IA)
Floyd Haskell (CO)
William Hathaway (ME)
Charles Ravenel (SC)

House — Norma Bork (CA), 2
John Brademas (IN), 3
Terry Bruce (IL), 22
Robert Carr (MI), 6
Dan Corcoran (CA), 37
Bob Eckhardt (TX), 8
Robert Edgar (PA), 7
Tony Hall (OH), 3
Tim Hall (IL), 15
Mark Hannaford (CA), 34
Gary Hindes (DE), at large
Peter Kostmayer (PA), 8
Keith McLeod (MI), 11
Dick Meyers (IA), 1
Helen Meyner (NJ), 13
Abner Mikva (IL), 10
Claude Pepper (FL), 14
William Ratchford (CT), 5
Timothy Wirth (CO), 2
Howard Wolpe (MI), 3
Charlotte Zietlow (IN), 7

Those candidates CFA will oppose include:

Senate — Jesse Helms (NC)

House — Samuel Devine (OH), 12
Robert Dornan (CA), 27
George Hansen (ID), 2
Steven D. Symms (ID), 1

In the upcoming races, CFA will emphasize the anti-inflation theme which was the topic of CFA's 1978 annual convention inspired by Dr. Gar Alperovitz of the National Center for Economic Alternatives. Particularly with respect

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Kathleen F. O'Reilly discusses campaign strategy with Sen. William D. Hathaway (D-Me.).

Consumers Hail Co-op Bank Victory

After a four year struggle consumers scored their most significant legislative victory of the 95th Congress on July 13, when the Senate overwhelmingly approved legislation establishing a National Consumer Cooperative Bank. The Senate vote, together with House approval of the bill last summer, and President Carter's signature will enable a wide variety of consumer owned and controlled cooperatives to obtain loans and technical assistance with greater ease. The legislation provides for $300 million in federal funding for the bank over a five year period, with authority to borrow five times its paid-in capital plus other earnings.

Patterned after the highly successful Farm Credit System, the bank will eventually be owned by cooperatives which purchase their stock from the Government. The bill further provides for a $75 million office which would provide technical assistance to new or beleaguered cooperatives. Credit for the passage of the bill belongs to the broad based coalition members and their member organizations who laboriously pressed for the bill's approval behind the guidance of the Cooperative League of the U.S.A., the coordinator of the proponents' efforts.

As an initial member of that coalition and after four years of devoting its time and resources to lobbying the bill, CFA was particularly jubilant after the Senate vote. CFA's state and local member groups played a particularly important role in the approval of the bill.

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Speak Out! Telecommunications—Do Consumers Matter?

By Ralph Jennings, *Deputy Director Office of Communications, United Church of Christ*

We are becoming a service economy. Some estimates place 40% of the total work force in information or information service related jobs. Yet the most neglected and misunderstood consumer interest in America is telecommunications. Telephone, telegraphs, computer networks (common carriers), cable and broadcast systems are vital to our lives as consumers. Who looks after our interests? Up until now it has been the Federal Communications Commission which requires that broadcasters and common carriers use their facilities "in the public interest, convenience and necessity."

Regulation of broadcasting is based on several factors: the electromagnetic spectrum is a scarce natural resource which is in the public domain; there are always more potential users of the spectrum than there are frequencies to go around; only a few, privileged individuals or corporations are granted a license to broadcast; the public depends upon the service they provide. The right to broadcast brings with it the responsibility to meet the tastes, needs and desires of the public served.

Common carriers too, enjoy licensed monopolies over the facilities most businesses, nonprofit organizations and individuals use to communicate with one another. Regulation is necessary to protect the public's interest from exploitation and to insure that the maximum public benefit is derived from both existing and new communications technologies.

The House Communications Subcommittee began hearings on June 17 to consider new legislation that would eliminate the public interest concept from communications regulation. Under the provisions of the "Communications Act of 1978" (HR 13015), introduced by Rep. Lionel Van Deerlin (D-Cal.), the Subcommittee chairperson, and Rep. Lewis Frey, Jr., (R-Fla.), its ranking minority member, future regulation would operate only "where market place forces are deficient." The Van Deerlin-Frey bill would sweep away decades of regulatory procedures developed by the Federal Communications Commission (FCC) to implement the public interest standard. It would free industrial giants to place their interests and profits before the public interest in a free flow of information in our society or in the world.

A New Standard or a New Law?

A communications law drafted a generation before television is inadequate in an age of satellites. Cable television, lasers, fiber optics and other technologies are creating a new and more complex communications environment. Yet thoughtful critics of the present law agree that the public interest standard is as sound a basis for regulation today as it was in 1934. Its flexibility allows the FCC to shape policies that reflect the rapidly changing needs of our society and accommodate new technology at the same time.

The FCC is frequently criticized for its weak enforcement of the law. Yet even under a lackluster FCC, significant progress has been made to give the public a voice to determine communications policy. In the last fourteen years the public has won the right to participate more actively in FCC affairs. Increasingly during that time the Commission has had the opportunity to hear the voice of public interests through citizens, consumer and church groups. Their interests have ranged from industry employment practices to the programming response of broadcasters to local community needs. Consumer groups are also beginning to explore the new communications technologies and to demand a voice in planning for their development. In a real sense the public interest has only lately become a representative force to balance the established presence of communication industry interest before the Commission.

Channels and Diversity

The rationale underlying the Van Deerlin-Frey bill is simplistic and naive. The legislators have magnified public complaints about the past shortcomings of the present regulatory scheme and have declared it a failure. Regulation is blamed for inhibiting the development of new communications services and for throttling free speech and creativity in broadcasting. FCC critics feel enough engineered diversity in communications systems already exists to scrap the notion of natural scarcity and to abandon the need for strict Federal oversight. Freeing the market place forces from regulatory restraint, they contend, will unleash more innovative communications services to meet the public's every desire.

Channel scarcity, of course, has been reduced by advances in technology. Over the past 40 years, broadcast outlets have increased from around 800 to over 9,000. Cable television has increased the number of channels available to many urban Americans. Satellites could bring a greater diversity of communications services to rural dwellers. But scarcity has not been erased. Cable TV systems mainly distribute the signals of over-the-air television stations. New broadcast facilities are no longer available in more populated areas. An FM station in New York City sells for from two to three million dollars and a TV station would probably bring $70 to $100 million. Competing applicants for those licenses usually fight for years whenever a frequency becomes vacant.

Historically, an increase in channels has not meant a greater diversity of ideas or viewpoints available to the public. Radio is dominated by canned formats interspersed with local commercials and "rip-and-read" news. Television delivers ratings-approved messages marked "occupant." Real controversy, honest expression of minority opinion, the robust debate the Supreme Court approved of in broadcasting when it ruled that "the rights of viewers and listeners are paramount," have been drowned in a bubble bath of glamor, gossip and gore.

A regulated market place has produced the most sophisticated broadcasting system in the world to gather the largest possible, highest spending audience to hear commercials. Most of the

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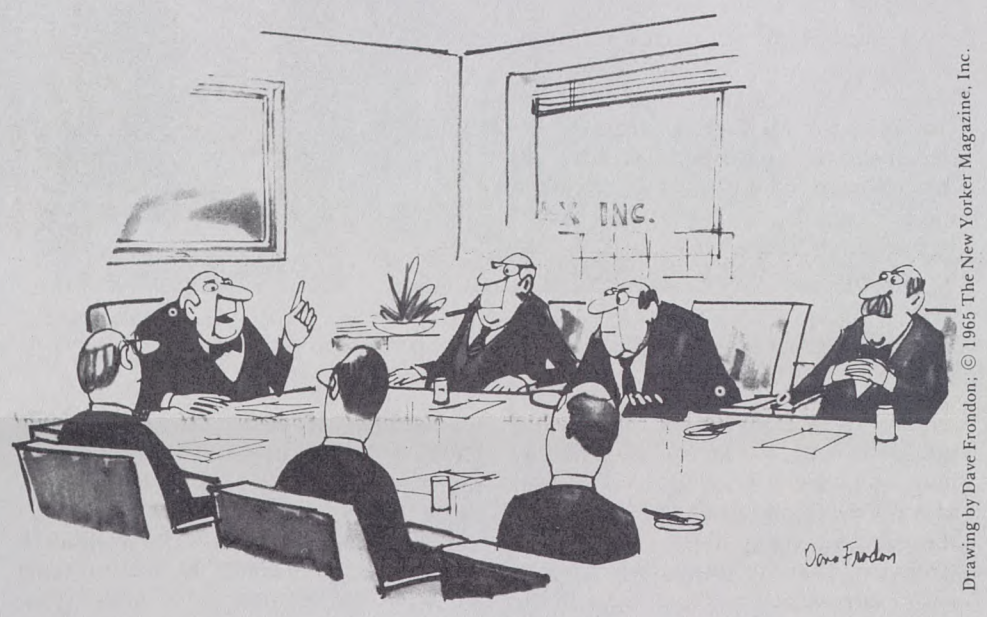

Drawing by Dave Frondon; © 1965 The New Yorker Magazine, Inc.

"All those in favor of passing the added cost along to the consumer signify by saying 'Aye.'"

Telecommunications Network to Educate Consumers

"Consumers for the most part have not become aware of the tremendous impact communications technology exerts in influencing their lives," stated Kathleen F. O'Reilly, CFA's Executive Director. Realizing that in order to take advantage of media technology to serve their own interests, and to become actively involved in the regulatory process, consumers need a source of up-to-date information on telecommunications. Accordingly, consumer, religious, and other nonprofit groups have banned together to form the Telecommunications Consumer Coalition.

Dr. Everett C. Parker, Director of the Office of Communication for the United Church of Christ, will chair the Coalition. Warren Braren, Associate Director of Consumers Union, publisher of *Consumer Reports,* will serve as vice chairperson, and Kathleen O'Reilly, Executive Director of CFA will act as secretary.

"Our goal is to call attention to developments that threaten consumer interests and to help the public fight for its rights," said Braren and Parker in a statement announcing the new coalition.

In addition to providing technical advice and counseling services, the Coalition will concentrate on the revision of the Communications Act pending in the House of Representatives, as well as common carrier issues, and review of select Federal Communications Commission and Federal Trade Commission rulemaking proposals. The Coalition will also:

1) review, distribute and exchange telecommunications information, ideas and experiences;

2) provide information on, and bring attention to developments that affect consumer interests;

3) analyze relevant issues and distribute option papers;

4) encourage and assist groups to become participants in government telecommunications regulatory and legislative activities; and

5) conduct workshops, seminars and other activities designed to inform consumer and community leaders.

A steering committee of twelve will plan the activities of the group. Besides Parker, Braren and O'Reilly the group will include Dr. Ralph Jennings, Deputy Director of the United Church of Christ, Office of Communications, Benjamin Hooks, Executive Director of the National Association for the Advancement of Colored People, Gerald Wilkinson, Director of the National Indian Youth Council, and Dorothy Height, President of the National Council of Negro Women. Additional steering committee members will soon be named.

Non-business, non-profit organizations will be eligible to participate in the Coalition. Only a tentative membership fee schedule has been established. Contributions range from $25 for local organizations to $250 for national groups. For more information, contact Coalition headquarters at 289 Park Avenue South, New York, N.Y. 10010.

Supreme Court Scorecard:
Mixed Bag for Consumers

As the Supreme Court prepares to convene for its new term, it is interesting to recap their major "consumer" decisions of the last term. Although it is a rare Supreme Court decision which does not have an arguably pro- or anti-consumer impact, the past term included a dozen or so cases which highlight the mixed bag approach which the High Court took over the last year on a number of issues of particular interest to consumers. The session included cases which will have a far-reaching effect on: the practical ability of consumers to bring class action suits; the scope of potential antitrust litigation; and the role of the press (and implicitly the public) in gaining information about government activities. On a personal note, CFA had a special role as one of the parties in an action challenging skyrocketing natural gas prices.

Drawing by Ed Fisher; © 1965 The New Yorker Magazine, Inc.

"It's constitutional, it's unconstitutional, it's constitutional, it's unconstitutional . . ."

Antitrust

—*St. Paul Fire and Marine Insurance Co., et al. v. Barry, et. al.* (June 1978; Vote—7-2). Since 1945, under the provisions of the McCarran-Ferguson Act, the insurance industry has been insulated from federal regulation, including the antitrust laws, to the extent it is regulated at the state level. Significantly for consumers, under the holding of this case policyholders *may sue* an insurance carrier in federal court *despite* the McCarran-Ferguson Act. This case is particularly important in light of the recent Justice Department report which questions the merits of McCarran-Ferguson, together with the inclusion of a review of the Act on the agenda of the recently appointed Presidential Antitrust Commission. CFA has met with representatives of that Commission to discuss CFA's position which has continuously been to call for a re-examination of the Act.

—*Pfizer Inc., et al. v. Government of India* (Jan. 1978; Vote—5-3). In this suit brought against six major American drug manufacturers charged with artificially inflating the price of antibiotics, the Supreme Court ruled that foreign countries may bring triple damage suits against United States manufacturers accused of antitrust violations. Reasoning that triple damage suits are aimed at deterring violations and compensating victims of antitrust violations, Justice Stewart in the majority opinion wrote that, "When a foreign nation enters our commercial markets as a purchaser of goods or services, it can be victimized by anticompetitive practices just as surely as a private person or a domestic state." In providing foreign countries with the benefits and remedies enacted originally to protect U.S. consumers, this case adds an additional layer of accountability to the antitrust laws. As an interesting aside, the "Pfizer Amendment" in the upcoming *Illinois Brick* legislation would authorize only single damages to foreign nations bringing antitrust actions against U.S. manufacturers if the foreign nation does not have antitrust remedies similar to those allowed in *Pfizer*.

—*National Society Of Professional Engineers v. United States* (April 1978). The Supreme Court ruled that the National Society of Professional Engineers illegally restrained trade by making it unethical for its 69,000 members to submit competitive bids for engineering services. This pro-consumer opinion will make it more difficult to eliminate competition by other professions which rely on the rationale that they are insuring high ethical standards.

—*National Broiler Marketing Association v. U.S.* (June 1978; Vote—7-2). Another codified antitrust exemption addressed by the Court is the Capper-Volstead Act. Since 1922, "farmer" cooperatives have been exempted from the Sherman Act. In *National Broiler,* the Supreme Court ruled that a nationwide cooperative of huge agribusiness corporations is *not* protected by the Act. The decision affirms the pro-consumer position that only truly *farmer*-created and *farmer*-controlled cooperatives should be exempt—not agribusiness phonies.

—*United States v. U.S. Gypsum Co.* (July 1978; Vote—7-2). The Court further expanded the exposure of businesses to antitrust charges in this case involving several major gypsum board manufacturers in a price-fixing conspiracy. The Court held that companies cannot use as a successful defense to antitrust charges, the claim that their exchange of price information was an effort to adjust prices to "meet competition." Speaking for the majority, Chief Justice Burger wrote: "Action undertaken with knowledge of its probable consequences and having the requisite anticompetitive effects can be a sufficient predicate for a finding of criminal liability under the antitrust laws."

—*City of Lafayette, Louisiana v. Louisiana* (March 1978; Vote—5-4). The Supreme Court last session also narrowed the immunity which cities have enjoyed from antitrust laws. Cities are not exempt when acting in a purely business rather than a governmental undertaking. In this suit, involving a city-owned and operated electric utility system, Justice Brennan for the majority explained: "If municipalities were free to make economic choice counseled solely by their own parochial interests and without regard to their anticompetitive effects, a serious chunk in the armor of antitrust protection would be introduced at odds with the comprehensive national policy Congress established."

Class Action

Supreme Court rulings during the 1978 session make it increasingly difficult to bring class action suits, which are an integral part of consumer litigation, particularly when individual damages are so relatively small that there does not exist a sufficient incentive for individuals to undertake time-consuming and costly litigation.

—The *Oppenheimer Fund Inc. v. Sanders* case (June 1978; unanimous vote) involved a suit challenging allegations of artificially inflated prices for fund shares. The plaintiffs sought to require the defendant brokerage firm to compile a list of some 121,000 names and addresses of people potentially affected. Though recognizing that although a class action suit defendant can more efficiently furnish notice of the suit than the plaintiff, the district court further relied on its discretion to order the defendant to perform that task, and allocate the costs. Justice Powell concluded that the plaintiffs should generally bear all costs relating to the furnishing notice, ". . . given that respondent can obtain the information sought here by paying a transfer agent the same amount that petitioner would have to pay, that the information must be obtained to comply with respondents' obligations to provide notice to that class, and that no special circumstances have been shown to warrant requiring the petitioner to bear the costs."

—*Gardner v. Westinghouse Broadcasting Co., Coopers & Lybrand v. Livesay,* and *Punta Gorda Isles v. Livesay* (June 1978; unanimous vote). Under the facts of *Gardner,* upon being denied employment at a radio station, a woman brought an action seeking injunctive relief on behalf of herself and other females adversely affected by alleged discriminatory practices. In holding that a district court's class action "status" denial should not be granted an immediate appeal, the Court explained that the case did not present a question of law or fact common to the class and that the order denying class action certification did not have any "irreparable" effect on the action.

Energy

On energy issues the Supreme Court this session dealt with inflated prices, methods of handling shortages, and state's power in protecting in-state dealers.

—*American Public Gas Association v. Federal Power Commission* (Feb. 1978; Vote—7-0). CFA joined American Public Gas Association in petitioning the Supreme Court to overturn a 1976 FPC ruling that almost tripled natural gas prices by allowing newly discovered gas sold in interstate commerce after January 1, 1975 to be sold at $1.42 per thousand cubic feet. Ruling that in an emergency situation a federal agency must not be inhibited by normal judicial restraints, the Court declined to reverse the FPC.

—*California v. Southland Royalty Co.* (May 1978; Vote—4-3). The *Southland* decision declares that natural gas, once dedicated to interstate commerce, where gas prices are currently regulated, is always dedicated to interstate commerce. Though the amount of gas to which this decision referred is small, the implications are large. In gas producing states like Louisiana, huge tracts of land were put under contract to interstate pipelines in the early days of pipeline construction. The leases later were passed on to other parties, and the gas was considered intrastate, and thus not price controlled. Such gas may now be claimed by interstate pipelines, and thus

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Consumers organize coalition to challenge pharmaceutical industry

Coalition Focuses on Drug Regulation Reform

Legislation now before Congress which would overhaul the regulations by which drugs are approved, marketed and monitored has become the focus of a new consumer coalition.

Representatives of 20 consumer, labor, public interest, senior citizen, rural and women's organizations announced the formation of the National Consumer Alliance on Prescription Drugs at a July 12 press conference on Capitol Hill. The coalition, which seeks to influence Congressional approval of a strengthened Drug Regulation Reform Act, represents the culmination of longstanding CFA efforts to organize around this issue. Members include: Consumer Federation of America, United Auto Workers, Environmental Defense Fund, International Ladies Garment Workers Union, American Association of Retired Persons, Coalition of American Public Employers, United Steelworkers of America, National Farmers Union, National Council of Senior Citizens, Women's Health Network, Health Research Group, Community Nutrition Institute and the National Association of Retired Federal Employees.

Presently the subject of mark-up in the health subcommittees of both the House and Senate, the Drug Regulation Reform Act contains many positive provisions. However, the Alliance has been particularly concerned with two provisions of the bill which weaken its consumer protection effectiveness. They would:

1) reverse a Supreme Court decision (U.S. v Park) holding senior corporate officials criminally responsible for improper manufacture of drugs;

Representatives of the National Consumer Alliance on Prescription Drugs at Washington, D.C. press conference. (l. to r.) CFA Legislative Director Kathleen D. Sheekey; Anita Johnson, Environmental Defense Fund; William F. Haddad, New York State Assembly; Anne Harrison Clark, National Consumers League; Sidney Wolfe, M.D., Health Research Group; and Fred Wegner, American Association of Retired Persons.

2) allow U.S. companies to export products unapproved in the United States, thus dumping unsafe drugs in foreign nations.

Kathleen D. Sheekey, CFA Legislative Director, expressed additional concern over provisions of the bill which could relax testing standards for so-called "breakthrough" drugs. According to Fred Wegner of the American Association of Retired Persons, "Through this provision decision-making on the safety and effectiveness of drugs, once based on scientific demonstration, would be based on so-called "expert opinion" which could deteriorate into political manipulation of the FDA by the drug companies or special interest groups." Yet another provision of the legislation would weaken present safeguards for human testing.

The Alliance's statement attacked several of the drug industry's false and unethical practices. Drug manufacturers spend millions of advertising dollars annually to convince both the medical profession and the public that generic drugs are not as safe and effective as their trade name counterparts.

The Alliance recommended that:

1) Congress consider stricter controls over drug industry advertisements;

2) Congress consider developing a "Formulary of the United States," to include only those drug products which medical experts consider necessary for good health;

3) FDA require that the official or generic name be used in drug labeling and advertising; and

4) trade names be eliminated;

Despite the several negative provisions of the bill, Kathleen Sheekey's statement emphasized that the bill contains many positive provisions including:

1) public access to data from drug safety and efficacy testing during the approval process;

2) reimbursement for public participation in the FDA administrative process;

3) expanded FDA authority to remove suspect drugs from the market and 5 years of post market surveillance of drugs;

4) establishment of an independent National Center for Clinical Pharmacology to conduct drug testing and investigations;

5) price posting to inform consumers of the cost of medicine; and

6) better patient information labeling.

Chief opponent of some of the positive provisions of the bill, particularly those calling for public access to safety and efficacy testing data, is the Pharmaceutical Manufacturers Association, a large and wealthy lobby. Speaking for the Coalition Sheekey said, "The Alliance opposes some and endorses other provisions of the bill. We plan to challenge the Pharmaceutical Manufacturers on the critical points of the proposed regulations."

Speak Out—Telecommunications

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time the resources of broadcasting are devoted to selling goods to the American people—and a deliberately limited portion of the public, those persons 18 to 49 years old. Market place forces reinforce an endemic scarcity that physical channel abundance alone has not and will not overcome. Freeing the market place from regulation is not likely to improve the consumer's lot. The Van Deerlin-Frey bill would abolish the FCC and replace it with a smaller body, the Communications Regulatory Commission (CRC), with no power over station performance beyond enforcement of technical rules.

What The New Law Would Do

The Van Deerlin-Frey bill would eliminate the system of renewing broadcast licenses every three years on the basis of demonstrated past performance and an adequate proposal for future service. The proposed law would award new licenses through a lottery among applicants without any significant public presence in the process. Public participation in the FCC's licensing processes during the past decade has spurred many stations to be more responsible to the needs of their communities of license.

Now that public intervention is beginning to have an effect, the Van Deerlin-Frey bill proposes to eliminate it. Radio stations would be granted their licenses in perpetuity and TV stations would be afforded the same freedom in ten years. In return for this giveaway of public property, the new bill levies a spectrum fee on users of frequencies. The funds collected are to be used to pay the costs of the new regulatory agency, to help support *public broadcasting* and to underwrite development of minority ownership in communication, and rural telecommunications. The FCC now has authority to collect license fees but has not done it in a way that satisfies the courts. Rep. Frey has said flatly that most of the spectrum use monies collected in the future would be used to defray CRC costs. Very little would be left for anything else.

The Fairness Doctrine would be eliminated. This doctrine requires broadcasters to use a reasonable percentage of their time to inform the public about controversial issues of public importance and to provide listeners and viewers with an opportunity to hear opposing viewpoints. The bill would reduce the requirement to provide equal opportunity air time for political candidates to offices contested at the local level only. This action would deprive the public of exposure to minor parties and opponents of incumbents in all statewide and national campaigns.

The new regulatory agency would be forbidden to require broadcasters to survey the problems and needs of their audiences or to engage in other forms of interaction with the listeners and viewers they serve. Such activity is branded "baloney" by Rep. Frey, one of the bill's main sponsors.

Existing FCC equal employment opportunity rules would be outlawed by the Van Deerlin-Frey bill. The new Communications Regulatory Commission (CRC) created by HR 13015 would be barred from direct action on behalf of minorities and women.

The Supreme Court has recognized that these rules are a significant means of insuring fair representation of minorities and women in television and radio programs. Even under weak FCC enforcement, minority employment in commercial television has jumped from 9% in 1971 to 14% in 1977 and women have increased their industry presence from 22% to 28% during the same period. Most stations are too small to be covered by other government agencies responsible for EEO. Yet these small outlets have a rapid employment turnover and provide entry level jobs that qualify employees for careers in broadcasting.

The Future of Cable

Federal regulation of cable television would be ended. FCC rules requiring cable systems to carry all locally available television signals and to afford access channels for local self-expression would be eliminated. The record of FCC regulation in cable television and services has not been notable to date. Most of the Commission's proconsumer requirements were postponed or never adopted. Future Commissions under specific congressional authority could make cable television grow and serve the diverse needs of the public. These are areas in cable regulation which are difficult to deal with locally. Monopoly interests, even AT&T, would be free to take over CATV. Local broadcasters might purchase a cable system and limit channel capacity to reduce competition.

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Speak Out

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Congress could take action to prevent cross-ownership of cable systems and competing media. It could require that, as common carriers, cable channels would be available on a nondiscriminatory basis to all users. It could forestall attempts to establish local monopolies over such potential uses of cable as delivery of newspapers and magazines, retail sales, banking services, etc., and break up the monopolistic combinations of programming sources and distribution systems which have already begun to develop through mergers and requisitions.

In short, Federally-backed regulatory authority could confront large cable communication interests more forcefully and coherently than divided and divisible local and state authorities.

Organizing Consumer Action

Recently Dr. Everett C. Parker of the United Church of Christ Office of Communication called the Van Deerlin-Frey bill the "biggest giveaway since Teapot Dome." Together with Warren Braren, associate director of Consumers Union, he announced the formation of the Telecommunications Consumers Coalition (TCC) to help the public fight for its rights.* Besides providing technical advice and counseling services the Coalition's initial program will concentrate on the proposed revision of the Communications Act. Kathleen F. O'Reilly, CFA's Executive Director, will serve as Secretary of the Coalition.

Nonbusiness, nonprofit organizations will be eligible to participate in the new organization which will not lobby in regulatory proceedings or legislative activities, or act in behalf of participating organizations. The TCC will be an information source where consumers can find out about the complex issues and policies that affect our ability to send and receive messages. Its headquarters will be at 289 Park Avenue South, New York, NY 10010.

**See Telecommunications Network, p.2*

Natural Gas Deregulation

The Moral Equivalent of Highway Robbery

Since July Consumer Federation of America staffers Kathleen O'Reilly, Mike Podhorzer, Peter Ginsberg, Jerry Hogan and Kathleen Sheekey have assumed an increasingly large role in the national energy debate, vigorously opposing the "compromise" Administration bill which would result in deregulation of natural gas. During the August recess CFA launched a major grass roots effort:

1) contacting opponents of Senators running for re-election encouraging them to publicly support our position in order to increase pressure on Senators;

2) encouraging state and local public interest groups to visit their Senators, organize local media against the compromise; and conduct press conferences on this issue.

The following CFA analysis of the impact of the compromise will have on the low-income consumers (particularly senior citizens) was originally printed in The Washington Post *on Aug. 17, 1978:*

In April 1977 President Carter urged the American public to embark with him on the "moral equivalent of war" against the energy crisis. It is clear now that war must be declared against the Carter energy package. In the coming weeks, the Senate and then the House will be considering the component of the Carter package dealing with natural gas pricing.

If enacted, this bill will unnecessarily cost consumers tens of billions of dollars. By 1985 the average cost of gas would be at least 353 percent of what it was last year, 618 percent of what it was in 1975 and 1608 percent of what it was in 1970.

Higher prices have been euphemistically justified by their proponents as incentives for production and conservation. Experience since 1970 demonstrates that even 100 percent price increases have failed to yield increased production. For billions of dollars more, we get less!

It is painfully clear that the most vulnerable members of society, low-income consumers (particularly senior citizens), will be the first casualties of

----copyright 1978 by Herblock in The Washington Post

this war if the Carter package is approved. According to the Washington Center for Metropolitan Studies, 1/5 of all U.S. households in 1975 were considered low-income, (incomes below 125% of the poverty line), and 37% of all households were headed by someone over 65 years of age. Senior citizens and low-income consumers' budgets are already strained to the breaking point. The lowest 10 percent on the economic ladder spends a 10 times greater proportion of its income on home energy consumption than does the top 10 percent.

That is in part due to the condition of the housing they occupy. For example, insulation already exists in 94 percent of high and moderate-income households, but in less than half of the nation's poor households. Sixty percent of low-income households have no storm windows or insulating glass.

Declining block utility rate structures that charge low-volume users at a higher unit rate than high-volume users is also responsible for the disproportionate burden of natural gas price increases.

Any suggestion that residential users of natural gas (including 60 percent of all low-income households) can significantly reduce their consumption is brutally naive. Economically and practically speaking, conservation is not a viable option.

Undoubtedly consumers will be submerged with Madison Avenue slogans urging them to turn down their thermostats. For the 92 percent of the wealthy and upper-middle-class households that have heat control, that is an option. But what about the nearly 40 percent of low-income households who live in apartments that have no individual thermostats?

Low-income consumers will also be urged to equip their dwellings with better insulation, storm doors and storm windows, but will not have access to credit markets that would enable them to acquire the most efficient combination of weatherproofing, retrofit and insulation.

Low-income homeowners, community groups and government officials agree that rising utility prices and the condition of the housing stock have greatly contributed to the increased rate of mortgage defaults. Last winter, many low-income homeowners reported that their homes were like sieves, requiring a high temperature setting just to maintain bearable warmth. Inefficient boilers, damaged roofs and lack of storm windows or storm doors also played a major role in keeping utility bills at unaffordable levels. Futhermore, as energy prices rise the level of income necessary for home ownership will also increase, locking low- and middle-income consumers out of the housing market.

The emotional price to senior citizens and low-income consumers is particularly high. In November 1977, a University of Michigan study predicted that last winter one out of five senior citizens would have to face the hard choice of paying his utility bills or eating. Those people are victims of utility shut-offs, going for months without heat and becoming ill as a result—and in some cases freezing to death. Some families have been sleeping in their cars in the middle of winter because they were a few dollars short on the gas bill and were shut-off.

Rising energy prices, which would be the product of the Carter package, would have other consequences:

- Higher unemployment as increased spending on energy reduces aggregate demand for other goods and services.
- Higher numbers of senior citizens forced to enter nursing homes or become wards of the state because they are no longer able to make ends meet on their meager fixed incomes (as a recent Michigan study confirms).
- Increased health-care costs from poorer diets and colder living conditions.
- Increased inflation in all production sectors (not just energy) because virtually all production, including agriculture, is energy intensive. At the same time that the

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Congressional Races

(Continued from page 1)

to the basic necessities of food, energy, health and housing, government leaders will be urged to take aggressive actions to assure an adequate standard of living for American consumers without sacrificing health and safety standards and consumer information programs. In addition, antitrust violations (including price-fixing), attacks on anticompetitive marketplace concentration, and Federal Reserve Board policies (among others) will be the focus of anti-inflation attacks.

Arrangements are being made for personal visits to the states and districts by O'Reilly and CFA legislative directors, Gerald F. Hogan and Kathleen D. Sheekey. CFA President, Ellen Haas will also make a select number of campaign trips. In addition, CFA has prepared personalized press releases and material for individual brochures elaborating upon its reasons for endorsing the particular candidates. Following completion of the relevant primaries, CFA anticipates the release of additional names included on CFA's endorsement/opposition list.

Though many of the endorsees are considered to be underdogs, CFA predicts that its efforts will ultimately contribute to many key victories on November 7. If so, it is hoped that a more pro-consumer 96th Congress can be developed.

We urge all consumers in CFA's national, state and local membership organizations to fully participate in the election process and actively support pro-consumer candidates with your volunteer time, financial contributions and VOTE on November 7th!

Natural Gas Deregulation

(Continued from page 5)

Carter inflation fighters (Strauss, Schultze and Bosworth) are railing at the costs of the regulation of motorcycle noise they are deafeningly silent on what threatens to become the next decade's number one cause of inflation.

- An even less equal distribution of wealth as the return on capital increases at a faster rate than the return on labor, and as property ownership among low- and middle-income consumers decreases.
- Increased political power for the already extremely powerful major oil and gas firms. Despite incomes they consider too meager for energy production, they have spent hundreds of millions of dollars advancing their positions on issues ranging from environmental policy to corporate tax rates. Further, the major oil companies will continue to use their enormous cash surpluses to purchase major non-energy firms such as Mobil's purchase of Montgomery Ward.
- Worsening of the balance of trade. The price increase in domestically manufactured commodities would make them less attractive to the rest of the world and thus reduce exports.

On the Senate floor an attempt will be made to delete the sections of the natural gas conference report which deregulate natural gas prices, and pass the sections which deal with emergency natural gas situations. The public is being told that these Senators are ruining any chance for a coordinated energy plan and that they are blocking the President's national energy package. In truth, the Senators who are not willing to settle for the "anything is better than nothing" mentality are owed a debt of gratitude by the poor, elderly, and rural members of our society.

Other pro-consumer titles of the energy package are being held hostage by pro-industry Senators who threaten to block any Senate action on bills involving utility reform, conservation and coal conversion until natural gas deregulation is voted on. They are playing political games with billions of dollars, dollars which might mean the difference as to whether a family can meet its mortgage payments, pay its food bills, or have heat this winter.

Deregulation will only exacerbate these critical human problems, problems so callously ignored by the supporters of the compromise, who speak so confidently about foreign dependency and greater incentives for an industry that is already reaping unprecedented profits. Those who stand to lose the most are those least able to combat the industry lobbyists and champions. The President's current answer to the nation's "moral equivalent of war" is wracked with an immorality that is intolerable.

Supreme Court Decisions Reviewed by CFA

(Continued from page 3)

controlled by prices considerably lower than intrastate prices.

—*Exxon Corp., et al. v. Governor of Maryland, et al.* (June 1978; Vote—8-0). During the 1973 shortage, state officials discovered that oil producers and refiners were favoring company-operated gasoline stations in providing supplies. To deal with the situation, Maryland enacted a statute prohibiting producers or refiners from operating retail service stations within the State. Holding that the statute did not violate the plaintiffs' Due Process rights and that the action bore a reasonable relation to the State's legitimate purpose in controlling the retail market, Justice Stevens for the majority wrote: "For if an adverse effect on competition were, in and of itself enough to render a state statute invalid, the State's power to engage in economic regulation would be effectively destroyed."

—*Ray v. Atlantic Richfield Co.* (March 1978; Vote—6-3). State attempts to regulate were weakened in this case involving an effort to prevent huge oil spills in Puget Sound. Washington State's 1975 attempt to regulate the size, design and movement of oil tankers which cross the Sound on their way to six oil refineries along its coast was struck down. The court held that the act conflicted with federal law and policy under the Ports and Waterways Safety Act of 1972, which gave the Secretary of Transportation that authority as part of his power to regulate the size of tankers permitted into U.S. waters. The Court in two later decisions *(California v. United States* and *United States v. New Mexico)* ruled that states may control the use and allocation of the water within their boundaries—even against claims by federal reclamation projects and national forests. In *California,* the Court specified that a state could impose any condition on the control, appropriation, use or distribution of water passing through a federal reclamation project, so long as the state-imposed conditions were not inconsistent with relevant and clear congressional directives for the project.

—*Trans Alaska Pipeline Rate Cases* (June, 1978; Vote—8-0). Major oil companies lost another important case when the Court decided that the Interstate Commerce Commission was empowered to hold down prices for shipping crude oil through their Alaskan pipeline system. Seven of the pipeline's eight owners had filed tariffs for the oil transportation with the ICC, which at the time had jurisdiction over the pipeline, in anticipation of the line's completion. The Court upheld the ICC's claim that it had the power it desired, to suspend the initial tariff schedule of an interstate carrier, establish maximum interim rate for the suspension period, and the ability to couple the decision not to suspend tariffs with a requirement that the carriers refund any amounts collected under either an interim or initially proposed rates that might be later determined to exceed lawful rates.

Press (Public) Access

—*Houchins v. KOED, Inc., et al.* (June 1978; Vote—4-3). Though equating the press' right to access with the public's, the Court in *Houchins* in fact limited the scope of information the public will be able to acquire about government facilities. The action followed denial of the broadcasting company's request to inspect and take photographs at a portion of a county jail where a prisoner's suicide reportedly had occurred and where conditions were assertedly responsible for prisoners' problems. Chief Justice Burger for the majority explained: "Neither the First Amendment nor 14th Amendment mandates a right of access to government information or sources of information within the government's control." A sharply written dissent by Justices Stevens, Brennan and Powell, argued that information-gathering is entitled to some measure of constitutional protection . . . not for the private benefit of those who might qualify as representatives of the 'press' but to insure that the citizens are fully informed regarding matters of public interest and importance."

Procedural Rights of the Public

—*Memphis Light, Gas and Water Div. v. Craft* (May 1978; Vote—6-3). In a major victory for consumer protection, the Supreme Court declared that "utility service is a necessity of modern life" and ruled that municipally-owned utilities cannot deprive someone of its services without due process of law. Customers must be given a full opportunity to resolve billing disputes before their service is terminated.

—*Citizens & Southern National Bank v. Nick Bougas* (November 1978; Vote—unanimous). The Court in *Citizens* made it easier for individuals to bring legal action against national banks. Venue in a suit against a national bank brought in a state court need not be in the county where the bank's charter was issued, but instead may be in the county in which the bank conducts its business at an authorized branch. The case clarified the U.S. Code which stipulates that action against a national bank may be brought in any federal district court within the district in which the bank is "established" or in any state court in the county or city in which the bank is "located."

Taxation

—*U.S. Steel Corp. V. Multistate Tax Commission* (Feb. 1978; Vote—7-2). In an effort to improve their system of taxing multi-state corporations and assure that the corporations are not avoiding taxes, 19 states pooled their resources in the 1960's and began using uniform auditing procedures. The Court rejected a claim by the affected corporations challenging the compact as a violation of the Constitutional provision forbidding states from entering into compacts without the consent of Congress. Writing the majority decision, Justice Powell explained that congressional consent is required "only in the case of a compact that enhances the political power of the member states in relation to the federal government." This pro-consumer opinion will make it more difficult for large corporations to escape their legitimate state tax responsibilities.

Consumer Calendar

September 29-October 1

A broad range of pension problems will be discussed at the Conference on Retirement Income, sponsored by the Pension Rights Center on September 29, 30, and October 1 at the Capitol Hilton Hotel in Washington, D.C. The Center is a nonprofit public interest group, organized to protect and promote the rights of people who look to private pension plans for a secure retirement income.

Highlighting the program will be discussions of: pension reform, pension needs of women, pension fund investment practices, and their impact on the economy, and a national retirement policy. For further information on the conference, and registration materials, contact the Pension Rights Center, 1346 Connecticut Avenue, N.W., Washington, D.C. Telephone: 202-296-3708.

CFA Board Meeting, November 10.

Consumer Assembly 1979,
February 7-10
Capital Hilton Hotel, Washington, D.C.

Nader Manual:

How to Rate Your Daily Newspaper

Ralph Nader has released a 90-page manual citing the need for citizens to take an active role in appraising and improving the reader-responsiveness of daily newspapers.

The manual, written by Nader associate David Bollier, outlines specific procedures for analyzing newspapers, and provides suggestions on how to improve them.

The cost of the manual is $5.00 for individuals and $10.00 for institutions, checks payable to the Disability Rights Center. Orders should be prepaid, addressed to P.O. Box 19637, Washington, D.C. 20036.

Co-op Bank Victory (Continued from page 1)

Gary Rosenberg, Director of CFA's State and Local Organizing Project orchestrated grassroots lobbying for the bill. Rosenberg was quick to give credit to all of the local groups, CFA members and non-members alike, for their relentless efforts to gain final passage. The dedication of these groups was evident right up to the final vote when several Senators, reacting to hundreds of eleventh-hour contacts from their constituents, changed their votes to support the bill. Such efforts were not always successful however. CFA was particularly disappointed by the negative votes cast by Senator Dale Bumpers (D-Ark.), John Danforth (R-Mo.), John Glenn (D-Oh.), Walter Huddleston (D-Ky.), William Proxmire (D-Wis.), and James Sasser (D-Tenn.). Administration support for the bank gained earlier this year, played a role in attaining the lopsided 60-33 vote in the Senate. Last summer in the House, the bill was approved by a single vote without President Carter's support.

The struggle for passage of the bill was a complicated and tangled process. White House support was gained after the Senate recommended that funding for the creation of the bank be reduced from $500 million to $300 million, over a five year period. Final passage of the legislation sponsored by Sen. Thos. McIntyre (D-N.H.) became virtually certain though, when the Senate crushed an amendment co-sponsored by Senators John G. Tower (R-Tx.) and William Proxmire, Chairman of the powerful Senate Banking Committee. The Tower-Proxmire proposal would have substituted a two-year pilot study, in lieu of the McIntyre bill, to analyze the financial needs of consumer cooperatives and to provide $20 million in loans and technical assistance. Proponents of the bill argued that the needs had already been documented and further delay would serve no useful purpose. The Senate defeated the amendment 59-35.

At that point, it seemed certain that the bill would succeed. However, rejection of the three amendments offered by Senator Richard G. Lugar (R-Ind.) was essential in order to insure success of the bill. The first amendment, the so-called "small business impact" amendment, was potentially the most damaging. Basically, it would have prohibited any loan if the loan would have "substantial adverse impact on small business." It was widely known that small business had stepped up their efforts to defeat the bill. The adoption of the amendment would have entangled the bank in excess paperwork. Furthermore, it would have made it difficult at best, to make any loan since one of the primary purposes of the bank was to inject badly needed competition into the marketplace. Fortunately the amendment failed 59-35.

Since the two most worrisome amendments were resoundedly defeated, the final legislative outcome became academic. Nonetheless, Lugar continued his efforts to handicap the bill with crippling amendments. Both however, were struck down by the Senate.

Supporters of the bill agree that the Coop Bank represents the most significant piece of legislation for consumers in the 95th Congress. CFA's Executive Director, Kathleen F. O'Reilly, described the bill as being "relevant in light of hardships that near double-digit inflation is imposing on American consumers." O'Reilly pointed out that low and middle income consumers will especially benefit because cooperatives inject competition into the marketplace while typically providing high-quality merchandise and services at reasonable rates.

CFA wishes to once again thank and congratulate the many groups and individuals who played a part in the successful passage of the bill. Particular tribute is due to Senator McIntyre who steadfastly guided the bill from committee to final passage. Only when one retraces the history of the bill can the many obstacles that Sen. McIntyre encountered and overcame be appreciated.

SEARCHING FOR: THE WARRANTY ANSWER

The National Warranty Update Conference, co-sponsored by Consumer Federation of America, the Office of Consumer Affairs at HEW, and the Chamber of Commerce of the United States, provided a unique two-day forum in which consumer, business, government and academic leaders aggressively explored the 1975 Magnuson-Moss Warranty–Federal Trade Commission Improvement Act. The Act established minimum standards and disclosure criteria for written consumer product warranties, and since the law was enacted, three regulations have been finalized by the FTC. Still, many questions remain unanswered in the minds of business and consumers. Through thought-provoking discussion and provocative exchange of ideas, conference participants addressed such questions as:

* **What regulations and implementation schedule did Congress impose for the Magnuson-Moss Warranty Act?**
* **What regulations did industry need to carry out the intent of Congress?**
* **What portions of the law are now in effect and what has been their impact on: Big Business? Small Business? Consumers?**
* **What are the rulemaking priorities under Magnuson-Moss from the perspective of: An FTC Spokesperson? A Washington Lawyer? A Business Representative? A Consumer Representative?**

Featured speakers at the November 1977 conference included congressional leaders Representative Bob Eckhardt and ex-Senator Frank Moss. Other speakers and workshop participants addressed the issues of: responsibilities under Magnuson-Moss; implementation and enforcement of the law; the mandatory regulations of disclosure, pre-sale availability, informal dispute settlement; rulemaking priorities and the effect of Magnuson-Moss on state laws.

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