

Pennsylvania Telephone Executives Receive Statewide Recognition

During its annual convention last week at Seven Springs Mountain Resort, the Pennsylvania Telephone Association (PTA) honored two telephone industry leaders for their outstanding contributions to the Association, the telecommunications industry and the customers they serve.

Receiving Distinguished Member Awards were Russell R. Gutshall, senior regulatory affairs manager for Sprint; and G. William Ruhl, chairman of the board, D&E Communications, Inc. The award winners were honored Tuesday evening at PTA's 103rd Annual Convention.

"It is particularly fitting that Russ and Bill were selected for the this award this year as the theme is "Setting the Telecommunications Pace for the Nation." Both Russ and Bill have played key roles in helping to shape Pennsylvania's telecommunications industry over the past 30 plus years," said David Freet, president of PTA. "Looking forward, their knowledge and experience will help us shape the future."

Gutshall is a 38-year veteran of the telephone industry, and over the span of that time has garnered a wealth of experience and institutional knowledge that makes him an exceptional asset to Sprint and PTA.

He currently co-chairs PTA's EAS (Extended Area Service) Committee with colleague Nancy Clay, business relations manager for Sprint. Long recognized by his peers as a "senior statesman," Gutshall has served his industry association on committees before and after the breakup of the Bell System on issues dealing with rate-setting, access issues and inter company working or operational issues with Bell and ITORP (IntraLATA Toll Originating Responsibility Plan).

Gutshall and his wife Wanita reside in Chambersburg, PA.

Ruhl, after a successful 30-year career for Bell of Pennsylvania and Bell Atlantic, joined D& E Communications in 1991 as senior vice president, was named chief executive officer in 2001, and Chairman and President in 2004. He represents the United States Telecom Association (USTA) on the President's National Security Telecommunications Advisory Committee and is Chairman of the USTA's National Security Policy Committee. He is a past member of the USTA Board of Directors and received its Distinguished Service Medallion in October 2002 in recognition of his years of service to the industry.

Ruhl and his wife Carolyn reside in Lebanon, PA.

According to PTA President David Freet, “Bill and Russ are outstanding individuals. As an industry, we applaud their long time service to the telephone industry, the economic development of their regions and the benefits they have brought to local telephone company consumers. And, our 2005 award recipients have provided countless hours of exceptional service to our association. Their leadership, dedication and commitment to PTA through committees and task forces have an impact on legislative issues and technological improvements that benefit every citizen in Pennsylvania. They are the reason that their companies and the entire local telephone industry are so successful today.”

Distinguished service awards were inaugurated during 2002, the Association’s 100th year to honor those pioneers who have helped pave the way to make PTA and the telecommunications industry in Pennsylvania a critical component of the state’s infrastructure.

The Pennsylvania Telephone Association represents the 37 local telephone exchange providers that serve nearly 8 million business and residential lines throughout

the Commonwealth. Born under a different name in the early 1900’s and today based in Harrisburg, PTA has provided Pennsylvania’s smallest and largest telephone companies with a clear voice for more than a century. Committed to the future of telecommunications, the PTA serves as an informational clearinghouse for its members, as an advocate with state regulators and legislators and as a watchdog of consumer protection. For more information about PTA, visit www.patel.org.

D&E Communications, Inc. is a provider of integrated communications services to residential and business customers in markets throughout central and eastern Pennsylvania. D&E provides a comprehensive array of communications services including local and long distance telephone service, high-speed data services and Internet access service. D&E also provides business customers with systems integration services including voice and data network solutions.

Sprint, a Fortune 100 company, develops, engineers and deploys network technologies, including the first nationwide all-digital, fiber-optic network, a Tier 1 Internet backbone, and one of the U.S.’s largest 100-percent digital, nationwide wireless networks.

Justices Side With Studios on File-Sharing

Separate Ruling: Cable Companies Don't Have to Share Infrastructure

The U.S. Supreme Court ruled recently that the creators of Internet file-sharing programs can be held liable for copyright infringement, siding with the interests of Hollywood over technology companies.

The unanimous ruling dealt a blow to online peer-to-peer networks such as the defendants in the case, Grokster Ltd. and StreamCast Networks Inc., which claimed that they weren't infringing if people used their software to download copyrighted music and movies. For such file-sharing companies, the ruling appears to mean almost certain death.

The court vacated a decision of the 9th U.S. Circuit Court of Appeals stating that Grokster and StreamCast were not responsible for how people used their software.

Although the court delivered a unanimous decision, the justices were divided into three camps, resulting in two concurrences with the main opinion.

At issue in *MGM Studios v. Grokster*, wrote Justice David Souter for the court, was how Grokster marketed its service, not the simple fact that it provides peer-sharing technology.

"The record is replete with evidence that from the moment Grokster and StreamCast began to distribute their free software, each one clearly voiced the objective that recipients use it to download copyrighted works," wrote Souter. StreamCast went as far as to directly market its product as an alternative to Napster, which the 9th Circuit said in 2001 was partly liable for copyright violations by users who accessed its centralized server offering free music downloads.

In making their decision in *Grokster* based on evidence in the record of the defendants' intent to infringe on copyrights, the justices sidestepped what many observers said was an important issue at stake: whether the court's 21-year-old so-called *Sony* rule should be revisited.

That rule, forged from a dispute involving the use of Sony Corp.'s Betamax VCR, held that if a piece of technology is capable of non-infringing uses, the manufacturer isn't liable for uses that do infringe.

Correcting the 9th Circuit, Souter wrote that *Grokster* was "significantly different than *Sony* and reliance on that case to rule in favor of StreamCast and Grokster was error."

Geoffrey Beauchamp of Conrad O'Brien Gellman & Rohn in Philadelphia filed an

amicus brief in *Grokster* on behalf of Macrovision Corp., a digital rights management company that supported the entertainment industry's position in the case. Macrovision, Beauchamp said, was one of more than 50 entities granted amicus standing by the high court.

"It appears to be a very decisive win for the entertainment industry, which, when the case is remanded to the district court, may very well provide the basis for a strong argument that the entertainment industry plaintiffs are entitled to summary judgment."

In another corner was Justice Stephen Breyer, who wrote a separate opinion, with Justices John Paul Stevens and Sandra Day O'Connor concurring.

In his concurrence, Breyer urged that if about 10 percent of a product's usage doesn't involve copyright infringement and there are ways to increase that non-infringement usage - including swapping of news broadcasts, digital educational materials, public domain films and the like - then the product's makers should be protected from liability under the *Sony* rule.

Technology advocates say that if the court had gone ahead and adopted Breyer's rule, online file-swapping and similar services would have been less hamstrung by the court's decision.

"Breyer's opinion was consistent with how he has viewed copyright from the beginning - it shouldn't interfere with the progress of technology," said William Patry, a partner at Thelen Reid & Priest in New York and a former copyright counsel for the U.S. House of Representatives.

A third concurring opinion, written by Justice Ruth Bader Ginsburg and joined by Chief Justice William Rehnquist and Justice Anthony Kennedy, dealt with evidence presented in the case in support of the defendants' motion for summary judgment.

"It was very clear that they wanted *Grokster* to lose. It was also very clear that they didn't want to clarify the *Sony* rule," says Eric Goldman, a copyright law professor at Marquette University School of Law. "It wasn't really a unanimous decision in terms of what the *Sony* rule means."

The effect on new technology beyond file-sharing isn't clear, said Bill Rosenblatt, president of New York-based GiantSteps Media Technology Strategies, who has written about peer-to-peer file-sharing and copyright issues.

But Rosenblatt suggested the decision is less a repudiation of technology and more a rebuke on how that technology is marketed. "The people in technology companies who have to hire lots of lawyers to scrub anything that they do [are] not the [people in the] research and development department, but the marketing department," Rosenblatt said.

In another technology-related ruling, the court overturned the 9th Circuit again, siding

with the Federal Communications Commission in deciding that cable companies don't have to share their infrastructure with smaller, competing Internet service providers.

In 2000, the 9th Circuit held that cable modem service is a "telecommunications service" and is therefore subject to rules that require telephone networks to grant open access to competitors. The FCC has insisted that the cable operators provided an "information service" and wouldn't be required to share their lines. The 11th Circuit agreed with the government.

Justice Clarence Thomas wrote for the court in the 6-3 ruling in *National Cable & Telecommunications Association v. Brand X Internet Services*. In citing the Chevron doctrine and deferring to the authority of the FCC, Thomas wrote: "The commission is in a far better position to address these questions than we are. Nothing in the Communications Act or the Administrative Procedure Act makes unlawful the commission's use of its expert policy judgment to resolve these difficult questions."

Souter and Ginsburg joined Justice Antonin Scalia in his dissent, in which Scalia wrote, "After all is said and done, after all the regulatory cant has been translated, and the smoke of agency expertise blown away, it remains perfectly clear that someone who sells cable-modem service is 'offering' telecommunications."